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By email: cp25-22@fca.org.uk

Dear FCA,

**Financial Services Consumer Panel response to FCA CP25/22 –
Modernising the Redress System**

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation on Modernising the Redress System (CP 25/22).

The Panel is an independent statutory body that represents the interests of consumers of financial services including both individuals and small businesses. Our focus is on the outcomes and impacts to these stakeholders.

Please note that we are also responding to the concurrent consultation by HM Treasury regarding its review of the Financial Ombudsman Service (FOS) ([insert link to our response](#)). Our two responses should be read together.

Overview

We respond to the specific questions raised in the consultation paper in Annex 1, but we first provide some brief general comments.

The Panel supports the ambitions outlined in paragraph 1.8 of the consultation paper and is broadly supportive of the proposals outlined. However, the devil is in the detail, and without careful consideration, the Panel notes that the implementation of some of the proposals (for example, a lead complaints process or a case registration process) could lead to unintended consequences and poorer consumer outcomes than are hoped for.

The Panel notes the proposed basis on which the success of any changes are measured. We welcome the intention to monitor the impact on the time taken for consumers to receive redress. However, we note that there are a wide variety of case types and accordingly consider there needs to be a good degree of granularity in the data monitored in order to properly assess the impact. In addition, we consider it would be helpful to track consumer satisfaction with the FOS process, given the potential scope for the various proposed changes to increase complexity for complainants.

At a general level, we think consideration should be given to whether, and if so how, the FOS and/or the FCA can publish its views on the extent to which firms are falling short in the early identification and/or resolution of potential redress issues, or in their use of any new mechanisms established for resolving disputes through the FOS, naming and shaming as appropriate. The Panel would expect this could be an effective way of addressing some of the concerns inherent in this consultation paper's questions regarding necessary safeguards to mitigate the risk of firms seeking to unduly delay or avoid complaint resolution.

The Panel would also urge the FCA to consider implementing other incentives and / or disincentives that will encourage firms to engage in the right behaviours in this context. We refer to the FCA strategy of placing supervisory emphasis on firms that are not proactively addressing complaint resolution or adjusting capital requirements as suggested in CP23/24: Capital deduction for redress: personal investment firms.

More generally, we consider it will be important for the FCA and/or the FOS to closely monitor any changes implemented to ensure that they are facilitating faster and more effective resolution of consumer complaints, and to ensure any unintended consequences leading to poorer consumer outcomes are identified and resolved early. Careful consideration should be given to this from the outset.

Yours sincerely

Chris Pond

Chair of the Financial Services Consumer Panel

Annex 1 - Responses to Specific Questions

Question 1: Do you agree with the proposed criteria for considering whether an issue is a mass redress event?

The Panel broadly agrees with the proposed criteria and the FCA needs to have sufficient flexibility to determine a mass redress event in appropriate circumstances (rather than be constrained by rigid criteria), but notes:

- It is not clear how many of the criteria would need to be satisfied. Would satisfaction of just one criterion be enough, for example?
- It is not clear how the criteria to be applied by the FCA would interact with those to be applied by a firm when trying to identify a potential mass redress event that needs to be notified to the FCA. In particular, would the FCA be able to determine a mass redress event if there are specific thresholds that are established for determining when a firm is required to notify the FCA of a potential mass redress event.
- We consider greater clarity is required with regards to what is meant by a 'high number of consumers' in criterion (a). For example, is a high number measured by reference to the number of customers of a particular firm, the market overall or in absolute terms?
- More generally, is the intention that a mass redress event could be declared in relation to an individual firm, or would a multi-firm or market wide impact always be required? This needs to be clearly set out.

See also our response to question 3 below.

Question 2: Do you agree with the guidance provided in Annex 4 of this consultation paper, for how firms can proactively identify and rectify potential issues?

The Panel agrees that firms have a particularly important role to play in terms of identifying and responding to redress issues. Critically, we consider the early identification of potential mass redress issues by firms could, if handled correctly, lead to a significant overall reduction in the cost, time and administrative burden of responding to a mass redress event overall.

We are supportive of FCA guidance which helps clarify the expectations on firms and which help facilitate the early identification of redress issues. However, we would urge the FCA to exercise caution to ensure such guidance does not risk becoming overly prescriptive and/or used by firms as a simple checklist.

We are broadly supportive of the proposed guidance in Annex 4, but consider it could be usefully strengthened in a few areas, for example:

- We think it could be helpful for firms to notify the FCA where it has considered a potential issue but decided it does not need to carry out a proactive remedial action (see para 20 of the draft guidance).
- We would suggest adding in para 26/27 of the draft guidance a clear expectation on firms to be proactively monitoring external sources (e.g. FOS publications) to determine whether similar firms are facing issues that might also relate to them (but have not been identified yet by that firm).
- Strengthening the expectations in paras 40-42 of the draft guidance on when a firm should notify the FCA. For example, this should build on the expectations set out in the preceding paragraphs of the draft guidance.
- In the section on proactive redress/designing a redress exercise (see paras 43-58 of the draft guidance), we think it would be helpful to:
 - o Emphasise that to a large extent, a firm can control the number of complaints and the number of complaints going to the FOS,
 - o Clarify that when deciding whether to be proactive, one factor a firm needs to take into account is the extent to which consumers would likely be aware (or likely to become aware of) the issue in question. For example, a consumer is unlikely to identify if an insurance premium has been incorrectly calculated - this should give considerable weight to the need to proactively inform affected consumers.
 - o Suggest firms need to consider appropriate publicity in situations where past consumers may have been affected by an issue but the firm does not have up to date contact information. Such consumers should not be ignored, particularly in cases where they may not be aware of the issue at all.

- Clarify the general expectation that opt-out will be the preferred default approach, unless there are strong and clear reasons why an opt-in approach would be necessary.

Question 3: Do you agree with the additional guidance proposed at SUP 15.3.8G for when firms are expected to report serious redress risks or issues to the FCA?

We agree that additional guidance is required regarding when firms are expected to report serious risks or issues, noting in particular that reliance on regular 6-month reporting obligations would not be sufficient.

We are broadly supportive of the proposed additional guidance, but are concerned the thresholds are far too high. In our view, the proposed thresholds for notification of issues relating to a particular issue affecting 40% of relevant customers or 50% of relevant revenue risks leaving significant issues or potential issues unreported. Widespread issues should be rare and accordingly we think significantly lower thresholds can be used without placing a materially different burden on the firm.

Further we note that for many consumers there is likely to be a significant impact where the loss for any individual consumer is considerably less than £10,000. Again, we would suggest a much lower figure which more accurately tracks the real-life impacts on consumers.

Whichever criteria is used, it will be crucial for the guidance to clarify that notification is required whenever one of the criteria are met.

Question 4: Do you support the introduction of a 'lead complaints' process to address novel and significant complaint issues?

Question 5: Do you think that the lead complaints process will achieve its intended benefits?

Question 6: Do you agree that firms should be allowed to pause related complaints while lead cases are under investigation in the lead complaints test process?

Question 7: What safeguards should there be to ensure the lead complaints process is not used to delay or avoid complaint resolution?

The Panel can see a potential role for the proposed 'lead complaints' process, but agrees that any such process needs to be carefully implemented so that the process is not abused and does not lead to unnecessary delays for complainants. In particular, we consider:

- Clear guidance is likely to be required setting out the FOS and FCA expectations regarding the types of situations where the process is more and less likely to be relevant.
- Any such process should be used relatively sparingly – it certainly should not be employed as a matter of course for any novel issue (but instead only, for example, those which are genuinely likely to have a material and widespread impact on consumers).
- FOS should have a role in identifying any case or cases that are selected to be a lead complaint. We are conscious that any outcome of a lead complaint will carry a significant precedential weight. Therefore, we would be concerned if firms were to be solely responsible for selecting 'lead complaints' given the risk that cases could be selected in a way that makes a certain outcome on adjudication by the FOS more or less likely. For example, it might be appropriate for firms to share all complaints relating to a particular issue with the FOS and it is for the FOS to determine a representative sample.
- We consider the FOS should have a reasonable amount of discretion to act as it deems appropriate in choosing whether to employ the lead complaint process and, where applicable, which cases are to be considered as lead complaints. The FOS should not be unduly hamstrung by an inflexible regime or be at risk of undue distraction regarding how it is using the regime when it should be focusing on resolving the complaints at issue efficiently.
- There should be clear guidelines regarding the timeframes to be adhered to by all relevant stakeholders at each stage of the process.

At a more general level, the Panel is not clear how a new 'lead complaints' process would interact with or complement the proposed processes around mass redress events given, at least on their face, they seem to cover a similar range of issues. In particular, the Panel would be concerned if a firm can take advantage of a new Lead Complaints regime and, if it is not satisfied with the outcome seek a referral to the FCA on the grounds that it is a potential mass redress event. This would likely lead to unwarranted delays in the resolution of consumer complaints.

Question 8: Do you agree in principle with the introduction of a new registration stage before a complaint is investigated by the Financial Ombudsman?

The Panel can see the potential benefits of introducing a new case registration stage. It is in the interest of all stakeholders for the FOS to have an efficient means of identifying claims that are not appropriate to be brought to the FOS (for example, those outside of the jurisdiction of the FOS, those for which the applicable time limits for firms to deal with the complaint have not elapsed or claims which are vexatious or wholly unevidenced). We can also see particular value of such a process in relation to complaints that are related to a mass redress event.

However, it is not clear to the Panel whether the proposed change is merely a procedural one, or whether the FCA and/or the FOS is proposing that any new registration phase would also be accompanied by new threshold considerations for considering complaints, for example new evidential standards, or changing the circumstances in which the FOS may not investigate a complaint due to other regulatory activity. If the proposal is more than purely procedural, the Panel would want to hear further information regarding any proposed changes before providing a view.

Even if simply a procedural change, we would urge the FCA and the FOS to take great care in the introduction of any new registration phrase to help mitigate the risk of unintended consequences. In particular, without appropriate disincentives, we can see the potential for some firms to try and 'game' the new system by failing to properly deal with a consumer complaint in the hope that the complaint will not be taken to the FOS (and knowing that if it is, there is an opportunity to resolve it without incurring a case fee or there are opportunities to delay its resolution by seeking to have the case referred to the FCA for consideration, again potentially without incurring a case).

We also believe careful consideration is given to how any new case registration process is described to consumers. It would be unfortunate if such a process appeared to complicate the bringing of claims to the FOS (or could be used by certain entities to create this impression) with the result that consumers felt the need to use a paid representative to bring their complaint (when in fact this was not necessary) or they were deterred from bringing valid complaints to the FOS at all.

Finally, we would be concerned if the introduction of a new case registration phase could lead to delays to the resolution of consumer complaints. For example, due to there being greater scope for extended discussions with firms regarding how the complaint should be dealt with, or because there are operational incentives on the FOS to delay the start of the investigative stage. Accordingly, we think consideration should be given to the establishment of a fixed timeframe in which the vast majority of complaints navigate a registration process (albeit with the opportunity to extend in rare cases where there are extenuating circumstances).

Question 9: Do you agree that the registration stage will help complainants preparing and submitting complaints to the Financial Ombudsman?

We are not convinced the introduction of a new registration process will necessarily help complainants in this way, compared to the current situation. In our opinion, potential complainants are more likely to be helped by the provision of additional easy to use guidance which they can access prior to submitting their complaint.

Question 10: What safeguards should there be to ensure the registration stage does not limit access to justice, particularly for vulnerable consumers?

Please see our responses to Questions 8 and 9 above.

Question 11: Do you agree that the Financial Ombudsman being able to pause or pass back cases at the new registration stage would improve respondent firms' ability to manage mass redress events or emerging regulatory issues?

As noted above, we can foresee the risk that some firms use the increased flexibility that such a case registration process provides to 'game' the system by not properly considering the complaint at the first opportunity or seeking to delay resolution by inappropriately utilising new opportunities for cases to be referred to the FCA for consideration.

Question 12: Do you agree that the Financial Ombudsman should consider differential case fees for cases in the registration stage?

The Panel can see the logic in the proposal for differential case fees and considers that, with appropriate safeguards, it could be a sensible change. However, as noted above, the Panel is concerned that without careful implementation, differential case fees could have the unintended consequence of changing the incentives of some firms to deal with consumer complaints properly at the first opportunity.

We also believe that, if implemented, the imposition of differential case fees and the impacts to outcomes and timeliness must be closely tracked and monitored to address any unintended consequences as quickly as possible.

Question 13: Do you agree with the proposed changes to DISP to improve the Financial Ombudsman's operational efficiency?

On an initial view, these proposed changes appear to the Panel to be sensible, and we do not have any specific comments on them at this time.

Question 14: Do you agree with the proposed amendments to COMP 4 and COMP 12A to simplify the list setting out who is and is not eligible to make a claim to the FSCS?

Question 15: Do you agree with the proposed amendments to COMP 6.3.4R to enable the FSCS to determine a relevant person in default, where they are not co-operating with the FSCS, or where personal circumstances prevent them from co-operating?

Question 16: Do you agree with the proposed amendments to COMP 11.2 to give the FSCS greater discretion over where compensation is paid under specific circumstances as described in that provision?

Question 17: Do you agree with the proposed amendments to COMP 12.2.10R and the additional factors listed in COMP 12.2.11R that FSCS must take into account, when considering if a claimant is eligible?

On an initial view, these proposed changes appear to the Panel to be sensible, and we do not have any specific comments on them at this time.

Question 18: Do you agree with our assumptions about the sizes of the compliance and legal teams involved in familiarisation and gap analysis, and with our treatment of costs associated with changes to firms' complaint acknowledgment letters?

Question 19: Do you agree with our analysis of the costs and benefits of these proposals?

The Panel does not have any specific comments at this time.