

FCA

Financial Services
Consumer Panel

Email: enquiries@fs-cp.org.uk

8 October 2025

By email: FOS.Review@HMTreasury.gov.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to HMT Consultation - Review of the Financial Ombudsman Service

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to provide comments on the HM Treasury's consultation following its review of the Financial Ombudsman Service (FOS).

The Panel is an independent statutory body that represents the interests of consumers of financial services including both individuals and small businesses (collectively referred to as consumers in the rest of this response). Our focus is on the outcomes and impacts to these stakeholders.

While our focus is predominantly on the work of the FCA, we are responding to this consultation paper due to its likely significance to consumers, both directly as well as indirectly through its potential impact on the work of the FCA.

Please note that we are also responding to the concurrent joint consultation by the FCA and the FOS (CP 25/22) on Modernising the Redress System (insert link to our response). Our two responses should be read together.

Overview

The FOS plays a crucial role in the financial services sector. By providing consumers with a free, independent and easy-to-use dispute resolution service, it helps underpin consumer confidence in financial products, providers and growth in financial markets more generally. In order to stimulate economic growth, consumers are being urged to adjust their

risk appetite. The availability of a robust system of redress gives consumers confidence to take more risk in their financial transactions. Without such redress, should things go wrong, consumers are likely to be more cautious.

We are therefore pleased to see HM Treasury's commitment to ensuring the FOS is safeguarded in order to provide its critical service for many years to come.

We recognise that the financial services sector has changed significantly since the FOS was introduced. We recognise too that the FOS has faced challenges and a volume of cases that were not necessarily anticipated at its inception. We agree, therefore, that it is right to review whether the FOS is delivering for its stakeholders.

In general, we consider that the FOS has performed – and continues to perform - well in the face of numerous challenges. We do not think it is a fair assessment to say the FOS has become a quasi-regulator or overstepped its defined remit, regularly delivers inconsistent outcomes or has been acting in a way which undermines confidence in the UK financial services sector to any meaningful extent. While such views are reported, they seem to be underpinned at best by anecdotal examples. We urge HM Treasury to be steadfast in requiring clear evidence in support of any such claims before proposing any greater wholesale changes. We have seen no evidence of systemic faults in how FOS operates.

The Panel therefore broadly welcomes the proposals set out in the HM Treasury's Consultation Paper, albeit the devil is in the detail, and we consider that there are a number of areas where improvements to the proposals could be made.

We respond to the specific questions raised in the consultation paper in Annex 1, but we first provide some overarching comments and themes which underpin our response.

- **Increased FCA/FOS cooperation must not lead to slower dispute resolution.** Where the FCA is to be consulted on specific issues, we support the introduction of obligations for it to respond within a fixed timeframe. To the extent that parties to a dispute can request referrals, we propose the introduction of clear safeguards to ensure such a referral process cannot be abused. In particular, the FOS should be able to refuse such a request in appropriate circumstances and be able to do so without the fear of being dragged into lengthy or unnecessary satellite disputes.

- **The impact on the original complainant must not be forgotten.** Where issues having wider implications arise, it is of course right that the issues are properly understood, the correct legal position is determined (if this is not already clear) and consideration is given to the wider implications for the market and the longer-term impacts for consumers. However, it is also critical to remember that even if this is all resolved efficiently, the original complainant will still be waiting a significant period of time. This could have significant financial implications for that complainant. Accordingly, consideration needs to be given to whether (i) the FOS should be empowered to ensure such implications can be properly addressed; and (ii) how the firm in question should provide appropriate support to the complainant in the intervening period.
- **Some flexibility is crucial and needs to be built into any changes to the current regime.** A key risk in seeking to introduce greater certainty in the regime is that the regime becomes over-engineered. An over-engineered and rigid system can be just as detrimental to the efficient operating of the market as the uncertainty caused by excessive flexibility and discretion. We think HM Treasury should be seeking to identify appropriate 'guiderails', avoid implementing straitjackets and ensure both the FCA and the FOS retain sufficient flexibility to decide how they operate and best resolve any particular issue or set of issues.
- **Risks from complexity.** Taken as a whole, there is a risk that the proposed FOS case registration system along with the various potential referral processes could create opportunities for Claims Management Companies and other paid representatives to suggest taking a complaint to the FOS is now far more complicated and consequently consumers 'need' to use a paid representative. We would urge HM Treasury, the FCA and the FOS to consider this point carefully so that consumers are not misled and only use a paid representative in cases where this is actually needed.
- **Independence.** As noted in the consultation paper, the FOS was specifically established to operate independently from the FCA and the Government. The FCA and FOS perform different functions, which is why regulators and redress mechanisms are maintained separately in most other jurisdictions. We consider this to be a critical element of how the FOS operates and should be preserved, both structurally and operationally. While facilitating efficient cooperation between the FOS and the FCA is to be encouraged, appropriate safeguards must be introduced to ensure FOS can operate independently in practice. In

particular, there will be times where the FOS has particular relevant expertise or where issues arise that have simply not been considered by the FCA: the FOS must be able to deliver the right outcome for consumers when adjudicating on complaints in such circumstances.

- **Definition of FCA rules.** These proposals do not make it clear to all stakeholders what constitutes an FCA rule. This must be specifically articulated to include the wider framework: FCA principles, guidance, enforcement decisions, multi-firm review recommendations, Dear CEO letters, firm-specific supervisory communications, etc. Our response to this consultation is provided on the basis of this broader definition of 'FCA rules'. Firms must not be given the impression that, as long as specific rules set out in the handbook are ticked off, they are compliant with FCA expectations. The HMT should also be alive to the possibility that the industry may campaign for adding more and more rules to provide greater certainty relating to FOS determinations. This risks complicating the regulatory framework, negating the overarching benefits of principles, and increasing the demands on the FCA.
- **The FCA needs to be properly resourced.** Given the volume of complaints historically taken to the FOS, one can envisage the proposals set out in the Consultation Paper will lead to significant new calls on the FCA's time. It is important that the FCA is properly resourced for this additional workload and that it does not, for example, lead to underinvesting in other areas of the FCA's remit (which could ultimately lead to longer-term issues and/or increased complaint levels if emerging problems are not properly identified and resolved at an early stage).
- **Mass redress events.** While we support the introduction of a new regime which facilitates the more effective and efficient repayment of redress owed to consumers arising from such events, we believe the FOS should play a key role in such a regime. We recognise the focus of the FOS should be on resolving individual complaints and the FCA should lead when it comes to mass redress events. However, the Panel notes the FOS has a particular skillset, perspective and range of experience that is likely to be extremely valuable in the fair resolution of mass redress events. The FCA should ensure it takes full advantage of this and the regime should facilitate that.
- **Measuring success and identifying unintended consequences.** We consider it will be important for HM Treasury, 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.

Overall, we are supportive of a process which safeguards the continued existence of the FOS and ensures it is positioned to continue to provide fair, effective and efficient redress to consumers in the long-term. This subject is of considerable importance to the Panel, and we stand ready to support HM Treasury, the FCA and/or the FOS in helping to ensure this review delivers those outcomes.

Finally, the Panel notes that under the current redress regime, a consumer who is adversely affected by a firm's act or omission, but is not a customer of that firm, cannot seek redress through the FOS. In considering potential reforms to the FOS, the Panel believes consideration should be given to addressing this anomaly.

Yours sincerely

Chris Pond

Chair of the Financial Services Consumer Panel

Annex 1 - Responses to Specific Questions

Question 1: Do you agree that, where conduct complained of is in scope of FCA rules, compliance with those rules will mean that the FOS is required to find a firm has acted fairly and reasonably?

Question 2: Will the aligning of the Fair and Reasonable test with FCA rules still allow the FOS to continue to play its relatively quick and simple role resolving complaints between consumers and businesses?

The Panel welcomes HM Treasury's view that the Fair and Reasonable test should be retained for the reasons set out in the consultation paper. However, the Panel does not consider that completely aligning the Fair and Reasonable test with the FCA rules to be the right approach. This is the case even where this is limited to those cases where the interpretation of the FCA rules is 'material to the complaint'. While we understand the rationale for such an approach, we think it would be far more preferable for there to be 'a rebuttable presumption' rather than an absolute requirement on the FOS to determine a complaint in a certain way. In either case, we consider it will be essential for there to be clarity as to what is to be understood by the interpretation of FCA rules being 'material to the complaint'.

At this point, we reiterate that firms may make a distinction between rules specifically set out in the FCA handbook and the wider FCA standard-setting framework, and we urge the HMT to make sure that it is clear that these proposals cover the wider regulatory framework (as further discussed above).

It is likely that in many cases, if the FCA rules are being followed in the way the FCA intended, the firm will be acting fairly and reasonably, and the FOS will find in favour of the firm. However, there are circumstances where this may not be the case. In such circumstances, we consider it is not appropriate for the FOS' discretion to be overly fettered by legislation. It is not helpful for consumers - or the financial markets as a whole - if the FOS is prevented from reaching an obviously 'right' outcome.

For example, we note that:

- firms are expected to meet the full range of legal requirements, not just those in the FCA rules. While the vast majority of the broader legal requirements are likely to be captured by the FCA rules, the

FCA rules are not – and cannot be – fully comprehensive. In particular, we note that FCA-produced guidance on applicable consumer legislation is not intended to cover the full extent of a firm's entire legal obligations on such matters.

- there will inevitably be novel situations that arise that are not – or are not fully captured – by the FCA rules. It is not always clear whether an issue is (a) within scope, but expressly not covered by the FCA rules; (b) within scope but not considered at all when the rules were established; or (c) out of scope of the relevant FCA rules.
- it is conceivable that the specific circumstances of a particular case mean that notwithstanding the FCA rules have been complied with, it would generally be considered to be morally wrong for the FOS to rule against the consumer.

The Panel would not expect any exceptions to be large scale but do consider that the inability of the FOS to deliver a fair outcome in such cases could do significant harm to consumers and the regime as a whole. We think a rebuttable presumption provides the right balance, noting the expectation that the FOS will be consulting with the FCA on any such case.

We do not consider consumers having access to the courts in 'exception cases' to be a sufficient safeguard given the well-known (and accepted) barriers to consumers using the court regime, particularly in situations where there is a more proportional legislative approach which can deliver the desired policy outcome.

Question 3: Do you agree with the proposed approach for dealing with law which may be relevant to a complaint before the FOS?

We agree the FOS should be able to determine a complaint where relevant law is not addressed by FCA rules. We also agree that where a particular complaint of this type has the potential to raise wider implications, the FOS should be consulting the FCA. However, we consider such consultation should be with the purpose of determining who is best placed to deal with the issue and how the issue should be dealt with (rather than the issue being formally passed over to the FCA as a matter of course). We think this should help ensure that both the original complaint and any potential wider implications are dealt with efficiently and without introducing any unnecessary delays for the consumer.

See also our response to question 1 in relation to the position where relevant law is covered (or partially covered) by FCA rules.

Where it is necessary to have the UK courts formally decide a particular legal issue, the FCA should have the ability to seek such a determination. However, we do not consider it is appropriate to limit the FCA's discretion in deciding whether or not to seek such a determination. We consider there are already sufficient safeguards under public law to ensure the FCA's use of such a power is reasonable.

Question 4: Do you consider that there are some cases that are not appropriate for the FOS to determine, bearing in mind its purpose as a simple and quick dispute resolution service? How should such cases be dealt with?

The Panel is of the view that if a complaint falls within the jurisdiction of the FOS, that complaint should be dealt with by the FOS (subject to a new regime for dealing with mass redress events). It is difficult to see when such cases would be better addressed through other channels. That said, if the FOS considers that it is more appropriate for a complaint falling within its jurisdiction to be dealt with by another body, then we consider it would be appropriate for the FOS to recommend to the complainant that they follow this path. Bearing in mind the complainant will be motivated to have their complaint resolved promptly and efficiently, they will likely follow this advice if they consider it reasonable.

We do not think it is necessary to introduce new rules to force complainants out of the FOS regime. Further, such rules could have the unintended effect of encouraging the lobbying of the FOS to refer cases. At best this would soak up precious FOS resources, but it could lead to unnecessary legal challenges and delays – with consumers ultimately paying the price.

Question 5: Do you agree that there should be a mechanism for the FOS to seek a view from the FCA when it is making an interpretation of what is required by the FCA's rules?

The Panel can see the potential benefits in there being such a mechanism. However, any such mechanism should:

- not introduce unnecessary delays. The FCA should be subject to fixed time periods (no longer than 30 days) in which to respond,

albeit with the ability to extend in rare cases where there are extenuating circumstances which demand it. Consideration also needs to be given to how complaints should be dealt with if the FCA is unable to meet the required deadline.

- ensure the FOS retains a discretion over whether to refer a matter to the FCA, such as (as suggested) where the FOS considers there is ambiguity in how the FCA rules apply. We note the expected consultation between the FCA and the FOS should allow the FCA the opportunity to prompt a referral where it considers this to be necessary.
- Only be used when it is needed – there should be no expectation that such a mechanism will be used as a matter of general practice.
- not undermine the independence of the FOS, for example by requiring the FOS to determine individual cases in a particular way.

Question 6: Do you agree that parties to a complaint should have the ability to request that the FOS seeks a view from the FCA on interpretation of FCA rules where the FCA has not previously given a view?

We are not convinced such a right is necessary. However, if such a right is granted, it should be accompanied with appropriate safeguards to ensure it is not misused nor leads to unnecessary delays. For example, the FOS should not be obliged to adhere to such a referral request and should not feel unduly pressured to make a referral due to the threat of a legal challenge of its decision. It should also not be possible for parties to a complaint to use any right to make a referral as a sort of quasi review process.

Question 7: Do you agree that parties to a complaint should have the ability to request that the FCA considers whether the issues raised by a case have wider implications for consumers and firms?

We are not convinced such a right is necessary. We are concerned that it may lead to unnecessary delays in the resolution of individual complaints, and we note that firms will already have had ample opportunity to proactively raise the risk of a mass redress event with the FCA prior to the complaint going to FOS.

However, if such a right is granted, as above, it should be accompanied with appropriate safeguards to ensure it is not misused nor leads to

unnecessary delays. For example, the FOS should not be obliged to adhere to such a referral request and should not feel unduly pressured to make a referral due to the threat of a legal challenge of its decision. It should also not be possible for parties to a complaint to use any right to make a referral as a sort of quasi review process (which seems to be more of a risk here given the suggestion the referral right could apply after the FOS has issued its provisional assessment).

Where a referral is made, whether by the FOS of its own volition, or as a result of a request from a party to the complaint, the FCA should be under a duty to consider the matter expeditiously. We support the proposal that the FCA should consult its statutory panels as part of its consideration of any wider implications referral.

Question 8: As part of implementing the proposed referral mechanism, do you think there are any issues which should be considered in order to ensure the mechanism works in the interests of all parties to a complaint?

See our responses above.

The Panel agrees with the views of HM Treasury in paragraphs 2.31-2.37.

Question 9: Do you agree that the Chief Ombudsman should have overall authority for determinations made by FOS ombudsmen, and through that authority, should be responsible for ensuring consistent FOS determinations?

This proposal seems sensible.

Question 10: What approach to transparency arrangements would provide the most accessible way for consumers and firms to understand what outcomes to expect for particular types of cases that the FOS deals with?

The Panel shares the view that a requirement on the FOS to publish each of its decisions may not be the most effective way to deliver a greater understanding of how the FOS determines complaints, due to the volume of material such an obligation generates.

We are minded to support the publication of a periodic summary or thematic review alongside the publication of full individual decisions where these are likely to have a wider importance and/or it is likely to be more useful to see a full decision than just a summary.

We also think it would be useful for the FOS to publish where it has made a referral to the FCA, either for clarification on a particular FCA rule or where they consider an issue to raise wider implications. In addition to keeping the broader market and range of stakeholders informed, it will also help improve understanding of when such a referral is likely to be merited.

Question 11: Do you think the package of reforms outlined above, taken together, will be sufficient to address the problems identified by the review and ensure the FOS fulfils its original purpose?

As noted above, the Panel remains unconvinced that there are systemic issues with how the FOS currently operates that need addressing. That said, we are supportive of proposals that facilitate the provision of efficient and effective redress to consumers where this is required, whether on individual cases or following a mass redress event. Providing appropriate flexibility and safeguards are built into the proposals (as referred to above) we consider the majority of the proposals could be beneficial.

Question 12: Taking into account the other reforms proposed in this consultation, do you think that the FOS should be made a subsidiary of the FCA? If so, what are your views on the appropriate institutional arrangements?

The Panel strongly disagrees with the suggestion that the FOS should become a subsidiary of the FCA. Such a change would undermine the operational independence of the FOS and one of the fundamental principles established to govern the FOS when the organisation was set up.

While we absolutely agree that there should be close cooperation between the FCA and the FOS, it is also extremely important that the FCA is not responsible for 'marking its own homework'. Such a position would

seriously undermine confidence in – and the effectiveness of – the FOS for all stakeholders.

At a practical level, a merger of the two organisations would be a huge operation sapping significant amounts of staff time and resources, particularly at a senior management level. We consider this would be wholly inappropriate given the limited (if any) benefits a merger would bring, but particularly over the forthcoming years when the FCA is overseeing a significant period of change within the financial services markets. The sector needs an FCA which is focused on the important issues.

To the extent there are legal barriers which hinder the exchange of information between the two organisations, looking to address these issues with specific targeted legislative amendments would be a far more proportionate and appropriate response.

Question 13: Do you agree that 10 years is an appropriate absolute time limit for complainants to bring a complaint to the FOS?

Question 14: Do you agree that the FCA should have the ability to make limited exceptions to this time limit?

The Panel does not believe the current DISP rules regarding time limits for bringing complaints to the FOS need to be changed. While we recognise that dealing with a historic complaint is more complex, we note

- the older the complaint, the more difficult it will be for the complainant to substantiate their complaint, so in practice such complaints will be relatively rare;
- a complainant should not be prevented from seeking an appropriate resolution because the case is more difficult to resolve;
- historic challenges regarding record keeping are less problematic in the digital age;
- in most cases, we understand the FOS rules reflect the time limits that would be applicable were the matter to be brought in court.

Furthermore, many financial products are complex and/or have a long expected lifespan, meaning that it is not unreasonable for issues to come to light a significant time after purchase. For example, it is only upon a certain life event occurring that the significance of a particular aspect of a financial product comes to light. To ensure fair outcomes for consumers,

it is important they are not unduly barred from bringing a reasonable complaint. It is also important to note that in practice, it will often be far easier for firms to guard against latent issues with their products than it will be for consumers.

Should HM Treasury pursue their proposal to introduce a longstop, then we would suggest a 15-year longstop to reflect the Limitation Act. If, however, HM Treasury is minded to adopt a 10-year longstop, it will be absolutely essential that some financial products are exempted from this time limit to ensure fairness. This should include all long-term financial products including at a minimum any products which are held – or expected to be held – for at least 10 years (or whatever length of time is pursued for a new longstop). In our view, the Consumer Duty does not obviate the need for specific exemptions. There should also be built-in protections to ensure that more vulnerable consumers are not particularly disadvantaged by any new time limits. For example, by maintaining the current FOS discretion to disapply the time limits in exceptional circumstances.

More generally, we would expect an appropriately carved set of exempted products from any new longstop date to largely match the range of products that under the current DISP rules, as a matter of practice, would be those which raise historic issues. Therefore, properly implemented, we are not convinced a new longstop would make a significant change for industry stakeholders, but would risk leaving consumers vulnerable to being unable to pursue a reasonable complaint. If consumers are prevented from being able to remedy issues effectively when they go wrong, this will undermine consumer confidence in financial products and markets and consequently, hinder growth.

If a longstop time limit is introduced, then we consider it will be important for the FCA to consider the extent to which particular groups of consumer may be at particular risk of poorer outcomes and make sure there are appropriate protections in place for them (rather than specifically seeking to exclude particular products).

We recognise the current car finance case has raised concerns regarding historic claims, but we consider this to be an exception rather than a rule. We do not think it is appropriate to introduce wholesale change on the basis of one – albeit material – example.

Question 15: Do you agree that the FCA should have more flexibility, when investigating a potential MRE, to take steps that are designed to avoid disruption and uncertainty for consumers and firms? In addition to the proposals made above, do you think there are other tools for the FCA which should be considered?

The Panel agrees that a clearer, more efficient and effective regime for dealing with mass redress events is desirable. We recognise that the ability for complaints to be paused, whether those complaints are with the FOS or the relevant firm is likely to be an important element of such a regime. That said, we do not consider that it will always be appropriate for complaints to be paused while the FCA is considering whether a mass redress event has occurred and/or how such an event should be addressed. In many cases, for example, it may be more appropriate for any pause to only take effect once the FCA has determined that a potential mass redress event has occurred. Accordingly, we think it would be helpful for there to be clear guidance regarding when a pause is more and less likely to be appropriate to help manage expectations.

Further, it is critical to remember that even if the mass redress event is resolved efficiently after complaints have been paused, the original complainant(s) will still have been waiting a significant period of time for any redress owed. This could have significant financial implications for those complainants, particularly financially vulnerable consumers.

Accordingly, adequate safeguards should also be built into the regime where complaints are paused. For example, this could include strict timeframes for the issues to be resolved, a duty on the FCA to act expeditiously and/or express powers to ensure the firm in question provides appropriate support to the complainant in the intervening period. In all cases, where complaints are paused, firms should be under an obligation to ensure any delays in resolving complaints are minimised once the FCA has determined a way forward, by taking appropriate preparatory steps in the intervening period.

Consideration should also be given to whether complainants should be able to have their complaints resolved through FOS if the FCA-led process is not expected to deliver a reasonable outcome within a reasonable period.

In terms of whether the FCA should consult before implementing a pause of complaints, the Panel considers that it generally should. However, the Panel recognises that there may be some situations where it is necessary for the FCA to act more quickly than an obligation to consult would allow.

Where this is the case, we think the FCA should be able to act without first consulting on its proposed action.

The Panel does not currently have any specific views on whether the FCA's general powers are sufficient to support the stability of firms in the context of a mass redress event. However, we agree that any FCA intervention must not only ensure appropriate redress, but also leave consumers with long-term access to a market that provides high quality competitively priced products. That said, we do not consider this means the FCA needs to ensure the market continues in its current form, structure or with a similar number of providers. We accept that in some markets, a reduction in the number of providers could lead to increased prices. However, this is not necessarily the case. A market with a small number of well-regulated providers can deliver better outcomes than a market with lots of choice and complexity and a reliance on competition through customer switching.

Question 16: Do you agree that there should be a simpler legal test for the FCA to satisfy in deciding that a section 404 redress scheme is needed to respond quickly and effectively to an MRE?

Yes, we consider the FCA needs a clearer and simpler power to enable it to intervene where it considers an industry-wide redress scheme is required. The circumstances in which the FCA may need to act are varied and difficult to predict precisely. As such, we think the FCA needs a reasonable amount of discretion to act as it deems appropriate: it should not be unduly hamstrung by an inflexible regime. A rigid regime is likely to unnecessarily distract the FCA and other stakeholders from the primary goal of delivering the effective and efficient resolution of the matter.

In particular, the Panel believes it is critical the FCA is clearly able to intervene to implement or specify a redress scheme where there has been a breach of the Consumer Duty (even though a consumer may not be able to action the breach in court – albeit the Panel is of the clear opinion that a consumer should have a private right of action for a breach of the Consumer Duty).

The Panel also considers that the FCA should have a clearly set out, broader discretion to specify to firms the redress to be provided to consumers and/or how the redress should be calculated. We note that identifying perfectly the loss suffered by any individual consumer or group of consumers can be time-consuming and costly for firms, as well as

leading to unhelpful delays for consumers. The ability for the FCA to cut through this process could be extremely valuable. There is clearly a balance to be struck, but we note that generally speaking, consumers will prefer to receive near-perfect redress today rather than perfect redress at some point in the future.

Question 17: Do you agree that the FCA should be able to direct the FOS to handle complaints consistently with relevant redress schemes, or to direct the FOS to pass related complaints back to firms, to be dealt with by those redress schemes?

The Panel agrees that where it has been determined that a mass redress event has occurred, the FOS should generally refer relevant complaints to a centrally organised redress scheme that has been established by the FCA or with appropriate oversight by the FCA. However, we do not consider this should be an absolute obligation on the FOS. We consider it remains important that consumers should have recourse to the FOS if, due their own particular circumstances, any such centrally organised redress scheme is not appropriate for them. While we consider this to be an important and necessary safeguard in any redress scheme, reliance upon it should be extremely rare if an effective redress scheme is established.