



# Review of the Financial Ombudsman Service

UK Finance response to HM  
Treasury consultation.

# Introduction

8 October 2025

Sent via email to: [FOS.Review@HMTreasury.gov.uk](mailto:FOS.Review@HMTreasury.gov.uk)

UK Finance is the collective voice for the banking and finance industry. Representing around 300 firms across the industry, members act to enhance competitiveness, support customers and facilitate innovation.

Members welcome the opportunity to respond to this consultation and given the subject matter, have consulted widely across our membership to attain views from a broad range of firms, with different business models and customer bases.

Our high-level views and responses to the consultation questions are set out below and members would be happy to discuss this submission in more detail if that would be useful. Please contact [Daniel.ryall@ukfinance.org.uk](mailto:Daniel.ryall@ukfinance.org.uk) in the first instance to discuss further.

## Executive Summary

Please note we repeat these key points in our response to the FCAs Modernising Redress Consultation CP25/22 and this response should be read in conjunction with our response to the FCA's proposals.

### Introduction and early implementation

This is a pivotal moment for the UK's redress system, with HMT's review of the FOS running in parallel to the FCA's consultation on modernising redress. Taken together, these consultations provide an opportunity to restore consistency and fairness to the complaint's framework, while supporting the Government's growth agenda.

We strongly support HMT's ambition to ensure the FOS remains a quick, simple and impartial dispute resolution service, while also calling on the FCA and FOS to act with greater urgency in areas where DISP rule changes can bring immediate improvements. Relying solely on legislative reform risks leaving firms and consumers waiting until at least 2027 before experiencing meaningful change. Delays in implementing DISP-based reforms would hinder the industry's ability to contribute effectively towards the growth agenda and undermine confidence in the system.

To bridge this gap, we recommend a dual track approach.

- **Introduce targeted DISP changes now.** Key proposals should be implemented through DISP ahead of legislative reform, reflecting HMT's clear

direction of travel. Acting now would provide a valuable testing opportunity, making future amendments smoother. We have already previously shared with HMT and the FCA documents setting out the route to change via DISP alone and provide an updated pathway at the end of this document. *(Please see [Annex A](#), which analyses the implementation pathways for each proposal, assessing whether changes can be made through DISP rule amendments first).*

- **Test new mechanisms before roll-out** by piloting HMT’s proposals from April 2026 for complaints linked to targeted support. This would provide assurances to firms, ensure proposals work in practice and allow FCA/FOS to refine processes in a controlled environment ahead of legislation.
- **Undertake structured industry testing** - with FCA and FOS working in partnership with firms through workshop or sprint style engagement. This would enable practical learning, for example testing how real case studies raised at the CFI stage would be resolved under the new proposals.
- **Commit to future evaluation** by building in a post-implementation review to assess whether the reforms deliver the intended outcomes for consumers and firms. We recommend the Financial Services Regulation Committee ‘own’ the post implementation review.
- **Provide an indicative timetable** published jointly by HMT, FCA and FOS setting out when the reforms will take effect and how they interact with other major initiatives such as CCA reform and the introduction of targeted support under the AGRB.

We recognise the FCA may be cautious about introducing DISP reforms ahead of legislation. However, the risks are limited and the benefits of acting now are clear.

Interim rules aligned with HMT’s direction could serve as a testing ground, helping refine future legislative changes without pre-empting Parliament.

There is nothing preventing HMT, the FCA, and the FOS from agreeing now on the desired changes. Where DISP amendments are possible—either exclusively or in advance of legislation—they should be implemented promptly. Later legislative reform would simply formalise what’s already working in practice.

The FCA has already acknowledged in its consultation (paragraph 63) that waiting for legislation would cause delays and that early intervention is necessary to improve the redress system. Meanwhile, the FOS is already evolving its framework, with changes to professional representative charges and plans to revise interest rates and case fees—firms and consumers are already adapting.

Delaying DISP reform risks compounding redress costs, increasing CMC activity, operational strain, and consumer harm. It also undermines the government's growth agenda, which aims to unlock investment and innovation by improving the redress system. Early action is essential.

## Key Consultation themes

### **Fair and reasonable test**

The proposals on the fair and reasonable test are central to restoring consistency in FOS decisions. Members strongly support the principle that compliance with FCA rules should determine whether a firm has acted fairly and reasonably. This addresses the long-standing issues where firms complying with the rules have nonetheless faced divergent FOS conclusions. However, we recommend further amendments, including;

- Removing the requirement for the FOS to consider good industry practise.
- Embedding s.3B(1)(d) of FSMA 2000, emphasising consumer responsibility for decision making
- Preventing retrospective application of new rules, guidance, or codes to historic conduct.

These reforms would provide clarity not just for the FCA rules, but also for other regimes such as PSR rules, APP fraud standards, the consumer duty and lending standards. Where principle based rules are open to interpretation, FOS should refer questions to the FCA, preserving regulatory intent and preventing de facto rule making.

### **Referral mechanisms**

Members strongly support structured mechanisms allowing complaints with wider implications, or where FCA rule interpretation requires clarification, to be escalated to the FCA. Clear, objective referral criteria are essential, but FOS should not act as gatekeepers. The FCA must be the final arbiter of referrals to ensure transparency and market confidence. Timely communication of outcomes and reasoning will be critical.

### **Absolute time limits**

Our members welcome proposals Introducing a 10-year absolute time limit for complaints, with limited exceptions for long-term products, which provides certainty and reduces administrative burdens. Early implementation through DISP rules ahead of legislation is strongly encouraged.

## **Chief Ombudsman Authority**

Our members agree that giving the Chief Ombudsman authority over FOS determinations can improve internal FOS consistency, provided board level oversight includes both active industry and consumer representation.

## **Thematic Guidance**

Members support clearer, more consistent transparency from FOS to help firms and consumers understand expected outcomes. While some value access to individual decisions, others caution against their misuse—especially through AI tools that can exploit complaint trends. A preferred approach is thematic guidance, supported by anonymised case studies and improved search tools, ensuring clarity without unintended precedent effects. Enhancements like limiting older decisions and FCA-FOS collaboration on mass redress would further strengthen consistency and accessibility.

## **FCA powers and mass redress events**

Members support FCA powers to pause complaints, issue interim guidance, and direct the FOS or firms to align with mass redress schemes. Simplifying the legal test for s.404 schemes will allow the FCA to intervene more quickly, but we caution the potential erosion of legal protections. More broadly, we wish to reiterate that the authorities' overarching priority should be to avoid mass redress events (MREs) in the first place. It is vital that these steps to improve the handling of MREs do not unintentionally lead to them becoming normalised.

## **Defining Mass Redress Events (MREs)**

Members support the proposed qualitative approach, recognising it avoids rigid thresholds and better reflects cumulative and systemic risks. However, terms such as *'high number of consumers'* or *'high redress bill'* are subjective risking inconsistent interpretation. Members seek greater clarity through indicative benchmarks or illustrative examples.

Concerns remain about slow developing events, inconsistent treatment of complaints raised before designation and the role of external factors (such as media coverage). Timely decision making and transparent governance will be essential.

We also encourage the authorities to ensure they do not to create a rigid set of rules and processes that result in a mass redress event being declared when certain criteria are met, regardless of whether that is the right outcome. The framework must include a degree of discretion and expert judgement.

## **Lead Complaints Process**

Members support the introduction of a lead complaints mechanism. However, its success will depend on clear eligibility criteria, efficient prioritisation, and timely resolution.

Case studies are needed to illustrate what qualifies as a lead complaint and what types of issues can be grouped. Members also emphasise that firms and consumers must have routes to challenge lead complaint decisions and that non-parties should have access to published reasoning to ensure benefits are shared across the market.

### **Registration stage**

The principle of a registration stage is supported, with members recognising its potential to filter speculative cases, and reduce case fees. Members stress, however, that design will be critical. Minimum evidential standards should be defined but flexible, ensuring that consumers – particularly those in vulnerable circumstances – are not unfairly excluded.

Professional representatives should face higher thresholds, there should be safeguards for vulnerable consumers, clear triage by FOS as well as transparent communications.

Members agree that the ability to pause or pass back cases at registration stage would help manage mass redress events and avoid duplication. However, they stress that ‘pause’ and ‘pass back’ should be clearly distinguished and used only in defined circumstances, with transparent communication to customers.

### **Proposed DISP changes**

Members generally support measures to strengthen cooperation and improve transparency, including clear expectations on evidence provisions and timelines in acknowledgement letters. However, they stress that cooperation must remain proportionate, with evidence requests relevant to the complaint at hand, and not unnecessarily intrusive into commercial decisions.

### **FSCS Amendments (COMP Rules)**

Members are broadly supportive of the proposals to simplify eligibility, determine defaults, exercise payment discretion, and apply additional factors. They see the benefits in improved clarity, fairness, and responsiveness. However, they stress that discretion must be guided by clear criteria, transparent oversight, and illustrative examples to avoid unintended consequences.

## **Proposals not included in the consultations but worth further consideration**

## Appeals mechanism

While HMT has rejected a formal appeal route, a limited mechanism for respondent firms to challenge points of law in exceptional circumstances would improve legal accountability without undermining the FOS's quick resolution function.

## Precedent effect

Read across of FOS decisions, particularly in wider implications cases, should be limited to avoid conflicting obligations and unintended consequences.

## Quality of complaints

Poorly substantiated or speculative complaints continue to place a significant burden on firms. Mechanisms (such as the ability to pause a complaint during the 8 week process) to ensure complaints are properly supported *before* entering the FOS process are necessary.

## Publishing professional representative performance

Requiring claimant firms and the FOS to publish claims volumes, success rates, and average redress would improve transparency, deter opportunistic behaviour, and support fair outcomes.

## Binding determinations

Making FOS decisions binding on complainants could reduce tactical complaints and improve fairness across the system.

## Conclusions

HMTs proposals represent a bold and necessary step to modernise the redress system, while the FCA's consultation provides complementary but more incremental improvements. To deliver real impact, both strands must be aligned and sequenced; swift DISP changes and controlled pilots now, with legislative reforms to follow. This combination offers the best route to a redress system that is predictable, proportionate, and fair – for both consumers and firms.

## Consultation questions

- 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?**
  - ▶ Members agree with the proposal. Firms operate on the understanding that the FCA's rules set the standards they are expected to meet, and compliance with those rules should provide a strong indication that their actions were fair and reasonable. Requiring the FOS to take compliance with the FCA rule as

determinative of fairness – where the complaint is squarely within the scope of those rules – would bring greater predictability and consistency to outcomes for both firms and consumers.

- ▶ In practice, members have seen instances where firms have acted in accordance with the relevant FCA rules, but the FOS has nonetheless reached a different conclusion on fairness. This can lead to regulatory uncertainty, where firms are unsure whether following FCA's requirements will be enough to satisfy the FOS's interpretation of fair and reasonable. That uncertainty undermines confidence in both regimes and increases compliance and redress costs, with little clear benefit to consumers.
- ▶ There will still need to be room for the FOS to exercise judgement in cases that fall outside the FCA rules, or where compliance is in question. But where conduct clearly falls within regulated territory, including compliance with the law, and the firm has demonstrably acted in accordance with legal requirements, members believe the FOS should be bound to find that the firm acted fairly and reasonably. This would also reinforce the FCA's role as the primary standards-setter for firms.
- ▶ Members would also like to see complementary changes to DISP to reinforce this principle. In particular, the provision requiring the FOS to consider 'good industry practise' (DISP 3.6.4.(2)) should be removed, as it creates uncertainty by allowing the FOS to hold firms to standards beyond those required by law and regulation. Members propose amending DISP 3.6.4 to require the FOS to consider FSMA Section 3B(1)(d) - that consumers should take responsibility for their decisions - bringing the FOS framework into closer alignment with the FCA's statutory duties. Further, DISP 3.6.4 should be amended to ensure the FOS cannot apply rules, guidance, standards, or codes introduced after the event complained of, preventing retrospective application of contemporary standards.
- ▶ Members also believe this approach should extend to PSR rules, particularly in the context of APP fraud cases where firms require certainty of outcome. Clarification is also needed on whether FCA principles, consumer duty, and other regulatory frameworks such as the lending standard, Board Standards of lending Practise for Business customers will be within scope.
- ▶ Members note that where FCA rules are open to interpretation - for example, proportionality in CONC 5 Creditworthiness assessments - the FOS should use the proposed framework to seek clarification from the FCA rather than reaching its own interpretation.

## **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?**

- ▶ Yes, members believe so. Where FCA rules are clear and robust, aligning the Fair and Reasonable test with those rules should lead to more predictable and consistent outcomes, and a more binary assessment of complaints. This should reduce the scope for extended deliberation by the FOS, enabling faster decision making and reinforcing its role as a quick and accessible redress mechanism.
- ▶ Members recognise that the FCA's regulatory framework is often principles-based, which can result in rules that are broad in scope or leave room for interpretation. However, the additional proposals in the consultation – including the mechanism for the FOS to refer matters to the FCA for clarity, and the FCA's ability to issue guidance in response – should help address any uncertainty or regulatory gaps and allow the FOS to focus on resolving cases quickly and simply. The ability to refer complaints that raise wider implications also provides an appropriate route for more complex or systemic issues to be escalated beyond the FOS's informal process.

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

- ▶ Members broadly agree with the proposed approach. It is right that the FOS should take into account what the FCA says about the law, particularly where this is reflected in FCA rules or guidance. In practice, firms will have been operating under these rules and guidance for some time, so there should be limited uncertainty or risk in aligning them.
- ▶ There is however, a residual concern that where the FCA rules or guidance are silent, the FOS could interpret aspects of law in a way that create inconsistency or results in de facto rule setting, which is not its role. However, the proposed safeguard – requiring the FOS to refer cases to the FCA where a legal issue could have wider implications, and our earlier suggestion that the FOS should be bound to find a firm has acted fairly and reasonably when following the law – should help manage this risk. Members would welcome clarification on how this referral process will operate in practise and how it will be reported.
- ▶ The ability for the FCA to pause complaints and, if necessary, seek legal clarity from the courts through the Financial Markets Test Case Scheme is particularly welcome. While previous test cases have tended to focus on industry critical issue, members note that other cases may arise that are less

systemic but still raise important questions of law. This could result in significant redress exposure if the FOS's fair and reasonable test is applied inconsistently.

- ▶ Where clear legal precedent, statute or regulation exists, the FOS should be required to apply it or provide a clear explanation if it does not. This ensures that customers do not achieve a better outcome via the FOS than they could through the courts maintaining fairness and consistency in complaint outcomes.
- 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?**
- ▶ Yes, members agree that there are some cases that fall outside the intended scope of the FOS as a quick and informal dispute resolution service. In particular, members have raised concerns about the FOS handling complaints with wider implications – where the issues are especially complex, legally uncertain, or involve questions better resolved through regulatory action or court intervention.
  - ▶ Members suggest that the framing of the FOS's remit could be reinforced to discourage overreaching. Without such safeguards there is a risk that the FOS might address complex cases on a 'quick and dirty' basis, potentially biasing outcomes in favour of consumer reimbursement. For example, this risk has been noted in the APP Scams sphere. This is particularly relevant in complex investment cases involving ongoing criminal investigations, where it remains unclear whether firms should reimburse consumers under APP rules or await the outcome of a prosecution. In such instances, premature decisions by the FOS could undermine legal due process and lead to inconsistent or unfair outcomes. Consideration should be given to how the FOS determines when a complaint is inappropriate for its process and what procedural safeguards can prevent premature or inconsistent decisions.
  - ▶ Mass Redress Events – such as those described in the FCA's Modernising Redress System Call for Input that arise from product failures or market-wide conduct – are better suited to FCA-led redress schemes. In these cases, the FCA is better placed to consider proportionality, consistency, and wider market impact.
  - ▶ The FOS should continue to focus on resolving individual, business-as-usual complaints, where it performs a valuable and accessible function for consumers. The FOS should also be empowered to dismiss cases that are more appropriately resolved through an alternative channel, taking into

account the potential costs of such alternatives, as litigation can be significantly more expensive.

**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?**

- ▶ Members agree there should be a clear mechanism for the FOS to seek a view from the FCA when interpreting FCA rules. Given the principles-based nature of some of the handbook, differences in interpretation will inevitably arise when rules are applied to individual circumstances. Without such a mechanism, there is a risk of the FOS moving beyond its remit and acting, in effect, as a rule-setter.
- ▶ Members also agree that the FCA should not consider the merits of individual complaints. The FCA and the FOS have distinct, complementary roles which should not overlap. The FCA's function in this context is to set and clarify regulatory standards; the FOS's function is to apply those standards to resolve disputes quickly, fairly and reasonably.
- ▶ Members are concerned that the proposal positions the FOS as the sole gateway to the FCA. In our previously shared proposals, parties to a complaint would have a more direct ability to require the FOS to seek the FCA's view where rule interpretation was in question. The current proposal appears to narrow that route, which may reduce transparency.
- ▶ Members further emphasise the need for clarity on how the mechanism will operate in practise. There should be an explicit requirement that both the FOS and FCA provide reasons for their interpretation and that these views, including the rationale, are shared in full with the parties to the complaint. Firms note that without appropriate safeguards, there is a risk the proposal could create a 'shadow rule book' which firms feel they must follow.

**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?**

- ▶ Yes, members agree that parties to a complaint should be able to request that the FOS seeks a view from the FCA on rule interpretation where the FCA has not already given one. The proposed case handling process, with a provisional decision stage, gives parties a clear point to challenge the interpretation where criteria are met. Members agree that these criteria are important to prevent the referral process from being misused while still giving all parties a fair opportunity to raise legitimate interpretation issues.

- ▶ However, our earlier concerns still apply. The FOS remains the gatekeeper to the FCA, which may limit transparency and create uncertainty over when a request will be accepted. Members emphasise that the FOS should be obliged to refer the case to the FCA if the requirements are met, and that that process should include clear obligations for the FOS to explain its decisions and whether a further request meets the criteria, as well as to share the FCA interpretation in full with the parties.
- ▶ Firms also proposed that the FCA should have the power to require that certain decisions are referred. In addition to referrals initiated by the FOS or parties to a complaint, the FCA should be able to proactively require referral of significant or complex cases, for example, where an emerging issue is identified that has not been referred. This would allow the FCA to provide clarity on the interpretation of its rules in cases where guidance is required.
- ▶ Referral should still be permitted even where the FCA has previously provided a view on interpretation of the same rule(s), provided the context is sufficiently different. It is conceivable that multiple referrals on the same rule(s) may be appropriate. For example, if the FCA has provided a view on how aspects of the Consumer Duty should be interpreted in relation to a specific pensions issue, that should not preclude a referral being made regarding how the same rule(s) should be interpreted in relation to a retail banking matter, provided the matter is suitably different to that on which the FCA has previously provided a view.
- ▶ Similarly, referral should be possible regarding established FOS decision making practises where firms believe there is ambiguity or uncertainty over whether the FOS interpretation aligns with the FCA's regulatory intent. For example, there may be particular interpretations of FCA rules that the FOS has been applying for a number of years, but which firms feel should be referred to the FCA because there is a lack of clarity on whether the FOS's interpretation is correct.

**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?**

- ▶ Yes, members agree that parties to a complaint should be able to request that the FCA considers whether the issues raised have wider implications for consumers or firms. Allowing both the FOS and the parties to refer such matters to the FCA is sensible and ensures important issues are escalated promptly.

- ▶ Members support the statutory obligation on the FCA to assess these referrals. The requirement for the FCA to consult its consumer panels and its ability to seek clarity from the courts where necessary, provides an appropriate level of scrutiny and ensures decisions are informed by a range of perspectives.
- ▶ To maximise transparency and trust, members believe the process should include clear communication back to the parties on whether a wider implications issue has been identified, the reasoning behind that decision, and any regulatory actions the FCA intends to take as a result.
- ▶ Members suggest that the FCA should publish clear and accessible referral criteria, supported by transparent decision-making and regular publication of referral outcomes. Where an individual firm is able to raise wider implication issues directly with the FCA, some members believe there should be consultation with the wider industry before such a referral is accepted to ensure that the issue is considered in its full market context.

**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?**

- ▶ Yes, members agree with the proposal but believe the process must be supported by a clear, comprehensive definition of 'wider implications' to ensure consistent application.
- ▶ The consultation does not currently set out such a definition, but there is an existing one in the Wider Implications Framework Terms of Reference, which considers factors such as;
  - The number and type of consumers affected
  - The amount of potential loss or redress owed
  - The risk of firm failure
  - The extent of alignment between members understanding of the issue
  - The risk of contagion to other firms or markets, and
  - Wider regulatory action under contemplation, including use of statutory powers to require a redress scheme.
- ▶ Members recommend building on this by incorporating additional illustrative factors, as set out in our previous proposals, to form a non-exhaustive list for use in the referral mechanism. These include;

- Whether FCA input on interpretation of relevant rules, guidance, industry standards or acceptable practice is desirable, particularly where FCA has not previously provided a view
  - The number and type of consumers (beyond the complainant) potentially affected
  - The potential value of loss or redress that may be payable
  - The number of similar complaints received or anticipated by the FOS
  - The risk of failure of respondent firms
  - The risk of contagion to other financial services businesses or markets
  - The existence or contemplation of wider regulatory action, including industry wide change affecting expectations of financial services businesses or the operation of a statutory redress scheme
  - Whether any litigation (including appeals) is ongoing or foreseeable between complainants and respondents, and
  - Judicial clarification on a point of law would be desirable.
- ▶ Embedding a definition along these lines – combining existing Terms of Reference factors with additional, practical criteria – would provide clarity for firms, consumers, the FOS and the FCA.

**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?**

- ▶ Members recognise the Treasury’s aim of improving consistency across FOS determinations and agree that there may be operational benefits in giving the Chief Ombudsman overall authority for case determinations. Centralising responsibility could help ensure that decisions are made within a clear and coherent framework, reducing the risk of variation between individual ombudsmen.
- ▶ However, this change is largely internal to the FOS and does not address our broader concern around governance oversight of decision-making and policy. Our previous proposals sought to strengthen the FOS’s governance by amending FSMA to require the FOS board to include both current financial services industry and consumer representatives (for example, at least one non-executive director from each).

- ▶ Without such governance reform, there remains a risk that the consistency achieved under this proposal will reflect only internal FOS policy direction, without adequate external accountability. We therefore recommend combining the governments operational proposal with changes to board composition to ensure that strategic oversight is balanced, representative, and aligned with the interests of all parties.
- ▶ In addition, members recommend that the FOS should be transparent in how it operationalises this requirement. This should include explaining what governance checks and balances will underpin the Chief Ombudsman's oversight role, publish the results of internal assurance activity, and setting out how changes to the quality assurance framework and FCA oversight arrangements will evidence that consistency is being delivered.

#### **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?**

- ▶ Yes, members agree that improvements are needed to ensure greater transparency and consistency in how FOS decisions are shared.
- ▶ Current access to individual ombudsman decisions is valuable for some firms' root cause analysis, policy review and risk monitoring. Some members feel moves to restrict or filter published cases should be approached with caution, as this could undermine firms' ability to identifying emerging themes or respond to changes in interpretation.
- ▶ Alternatively, some members argue that the FOS should no longer publish individual decisions. While there are benefits from the current statutory obligation, they feel individual determinations are not the most practical way of providing clarity to stakeholders and risk being weaponised by professional representatives. This concern is heightened by advances in artificial intelligence (AI) tools (such as ChatGPT) that can rapidly analyse published FOS decisions to identify exploitable complaint areas, draft submissions, and highlight tactical opportunities for professional representatives. These members therefore support HMT's proposal for quarterly thematic guidance documents instead, why they believe would deliver clarity without the same risks.
- ▶ At the same time, other members see merit in retaining access to published decisions but supplementing them with thematic summaries or quarterly guidance documents, which highlight how particular case types are approached and how relevant FCA standards are applied. Several suggested that any thematic guidance should be supported by anonymised case studies,

rather than directly linked decisions, to avoid the risk of respondents in those cases being unfairly targeted by claimant firms.

- ▶ These members also propose a number of practical enhancements to make published information more accessible and useful;
  - The existing searchable database of FOS decision should be improved with stronger search functions, better grouping of outcomes, trend data, and clear decision rationales.
  - Consideration should be given to limiting published decisions to those from the past five years, as older cases (dating back to 2013 on the website) may be less relevant to current regulatory standards and practises.
  - A decision review forum or data sharing mechanism between the FCA and FOS could support consistency in areas such as mass redress events.
  - Guidance should be clearer on what constitutes a strong defence in high loss areas to help firms understand expectations.

**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?**

- ▶ Members welcome the package of reforms outlined in the consultation and recognise that, taken together, they represent a constructive step towards improving coherence between FCA rules, and the FOS's decision-making framework. The proposals address several key operational and procedural issues and are generally aligned with our own previous recommendations.
- ▶ However, we consider that the reforms will only be fully effective if implemented as a cohesive package. Individual proposals in isolation are unlikely to resolve the broader concerns raised by the industry. HMT's focus appears to be on addressing inconsistencies between FCA rules and FOS determinations, which is an important aspect, but our earlier proposals were more holistic and aimed at addressing additional governance, procedural and transparency issues.
- ▶ We highlight a number of areas where further improvement could strengthen the package:
  - The reference to 'good industry practice' in the fair and reasonable test within DISP – the current wording allows the Ombudsman to determine

‘good industry practice’ themselves. This risks subjectivity and may undermine predictability.

- FOS as gatekeeper to the FCA – the proposed role of the FOS in controlling referrals to the FCA remains a potential concern.
  - Quality of complaints – measures such as the right to request further information from CMCs and CLFs and pausing the time to provide a final response are absent from this (and the other) consultation. Suggested solution of a registration phase (in the FCA Modernising Redress Consultation) at FOS may assist FOS operationally but offers little relief to firms obliged to respond to poorly substantiated complaints under current complaint definitions.
  - Binding determinations – making FOS decisions binding on complainants, irrespective of the outcome, could reduce tactical complaints, and promote parity within the system.
  - Removal of the precedent effect – especially for wider implication complaints, removing precedent effect would help prevent unintended consequences. The read across rules should be amended such that firms only need to read across FOS decisions if it is appropriate to do so, and not when there are conflicting determinations by the FOS.
  - Appeals mechanism – while HMT has rejected an appeal process to a court or tribunal, we maintain that legal matters should ultimately be determined by a court. Introducing an appeal route for respondent firms for points of law (only in very exceptional circumstances) would improve confidence in the system. Members also suggested that FOS should be required to follow its approach to previous similar complaints and provide a clear rationale when departing from this.
  - In addition, members highlighted concerns about the conduct of claimant firms, who in some cases encouraged speculative complaints that increased costs for firms, and the FOS. Suggested solutions include requiring claimant firms to publish data on the volume of claims they pursue, their success rates, and the average redress recovered, with FOS publishing comparable data.
- ▶ The proposed reforms are a positive step, and we believe that incorporating additional measures around governance, procedural fairness, and legal accountability would be necessary to fully ensure FOS fully fulfils its original purpose.

**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?**

- ▶ We note that the concept of making the FOS a subsidiary of the FCA was not raised in the Modernising Redress CFI and does not appear to be a central recommendation from HMT. While we understand the potential benefits identified – particularly around information sharing and strategic management – the Legal, operational and staffing changes required would be costly, time-consuming and likely disruptive.
- ▶ We consider that the package of reforms proposed elsewhere in the consultation, if implemented effectively, should resolve the operational issues between the FCA and the FOS without the need for structural change.
- ▶ While the FOS should continue to engage constructively with the FCA, including on rule interpretation and wider implications cases, it should do so within the framework of the proposed reforms, rather than being structurally subsumed into the regulator. This will allow effective collaboration without the significant costs and disruption of a subsidiary model.
- ▶ Making the FOS a subsidiary of the FCA is not necessary and the reforms proposed should be the primary mechanism for addressing current challenges.

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

- ▶ Members welcome the proposal to introduce a statutory ‘absolute time limit’ for bringing complaints to the FOS. This reform is long overdue and aligns closely with our own suggested proposals. An absolute time limit of ten years should provide greater certainty over long-term redress exposure, while retaining appropriate protections for consumers.
- ▶ We agree that allowing the FCA to set exceptions in DISP is a pragmatic approach. However, we strongly believe the FCA should proceed with the DISP rule changes now, rather than waiting for any enabling legislation. There is nothing preventing them from introducing an absolute limit under their existing rule-making powers, and early implementation would bring immediate benefits. For example, firms would no longer need to retain records indefinitely just in case of a late claim, aligning more closely with GDPR principles. With fresher evidence available, cases referred to the FOS could be resolved more quickly, and both firms and the FOS would be able to focus resources on current and emerging issues, rather than complex historical disputes with limited evidential value. Waiting for legislative change risks

unnecessary delay and prolonging the uncertainty this reform seeks to address.

- ▶ While the majority view supports a 10-year limit, a small number of members expressed a preference for a shorter absolute time limit—such as six years—on the basis that it would align more closely with existing DISP rules, legal limitation periods, and data retention requirements.
- ▶ Care will be needed to define what constitutes the ‘event’ triggering the 10 year long stop, as differing interpretations in past cases have led to uncertainty.
- ▶ Similarly, clarification is needed on how the 10-year limit interacts with the existing 6 and 3-year rule and the 15-year limitation under the Limitation Act 1980, to ensure consistent application. Guidance is needed as to what is meant by ‘cause for complaint’ under the existing 3-year rule, as there have been different approaches to interpreting this within FOS over time.

#### **14. Do you agree that the FCA should have the ability to make limited exceptions to this time limit?**

- ▶ Members agree the FCA should have the ability to make limited exceptions to the absolute time limit, recognising that some products are inherently long term (such as pensions, certain investments, or long dated mortgages) and that complaints about these products may not crystallise until well beyond the standard timeframe.
- ▶ Some members have noted that providing exceptions for certain products and circumstances could introduce complexity and undermine the clarity and certainty that the absolute time limit is intended to provide. Complaints falling outside the longstop period could still be addressed through the courts, subject to their own limitation periods.
- ▶ We note the FCA has already confirmed it will consult on the scope and design of any such exceptions. If exceptions are to be applied, they should be genuinely limited and proportionate, and only apply to specifically defined long-term products where the harm could not reasonably have been discovered within the ten-year period. In these cases, the complainant should be required to demonstrate that the harm was not reasonably discoverable during the standard timeframe. Further details on what the FCA would consider exceptions would be beneficial.

#### **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?**

- ▶ Yes, members agree that the FCA should have greater flexibility when investigating potential mass redress events. Provided that this flexibility is exercised carefully and with appropriate safeguards. The current approach can create long periods of uncertainty for both consumers and firms, particularly where expectations about redress shift over time.
- ▶ Members support the proposal for the FCA to have the power to pause complaint handling, both within firms and at the FOS, while a potential MRE is under active consideration. This would help reduce operational friction, avoid poor outcomes, and ensure consumers are treated consistently. However, pausing complaints also carries risks. Claim management companies are likely to use the announcement of an FCA investigation to generate speculative claims, even before the FCA's findings are known. To mitigate this, members recommend that:
  - The FCA should only exercise its power to pause complaints where there is sufficient evidence that an MRE exists.
  - Clear messaging should be issued to consumers to explain why complaints are paused, alongside warnings that customers can complain directly without using a CMC.
  - Stronger action should be taken against CMC's submitting speculative or poorly evidenced complaints not aligned to the FCA's requirements.
- ▶ Members also believe the FCA should make full use of early communication tools to reduce uncertainty. For example, non-binding interim guidance could be issued while formal investigations are ongoing, setting out the FCA's direction of travel and expectations for firms. This would help prevent duplication of effort, reduce reliance on the FOS in the early stages, and ensure more consistent handling of emerging cases.
- ▶ Several members also suggested additional tools to strengthen the framework:
  - Clear definitions of what qualifies as an MRE - ensure that only issues of real significance trigger intervention.
  - Early engagement protocols with affected firms to co-design redress pathways and ensure proportionate implementation.
  - Data sharing frameworks to enable firms to proactively identify affected customers.

- Temporary operational relief or guidance for firms during redress implementation to ensure resources can be deployed effectively and consistently.
- Close coordination with firms whose financial stability may be impacted by large scale redress to avoid unintended consequences.

**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?**

- ▶ Most members agree that the current legal test for triggering a Section 404 redress scheme is overly complex and can delay necessary action. A simpler, more proportionate test - potentially linked to the volume and severity of consumer harm - would enable the FCA to act more quickly and decisively in response to systemic issues. This would reduce delays, minimise uncertainty for firms and consumers, and provide a clearer route to consistent outcomes.
- ▶ Members emphasise that any simplified test should still be underpinned by clear criteria, thresholds and supporting guidance, so that redress remains fair and targeted. Safeguards would be necessary to ensure schemes are evidence based and proportionate and that speed is not prioritised at the expense of fairness to individual circumstances.
- ▶ That said, some firms cautioned that a materially simpler test represents a significant extension of FCA powers and a potential erosion of legal protections for firms. If the current requirements for s.404 schemes are stripped back, there is a risk that the FCA could effectively override, or appear to push aside, the role of the courts. This raises important access to justice considerations and questions about whether firms would have sufficient recourse if they disagreed with FCA's conclusions. Members therefore stress the need for appropriate checks and balances in any new framework - for example, independent oversight, consultation requirements or defined appeal routes - to ensure confidence in the process.

**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?**

- ▶ Yes, members agree this is a sensible and proportionate approach. Allowing the FCA to direct the FOS to align with relevant redress schemes, auto return related complaints to firms, would avoid duplication of effort, reduce unnecessary case fees, and prevent inconsistent outcomes. It also frees up FOS capacity and provide firms with greater clarity on how cases should be

resolved, ultimately delivering quicker and more coherent outcomes of consumers.

- ▶ Consistency of approach is essential in the context of MREs. Without such direction, there is a risk of fragmented handling between the FOS and firms, which could undermine consumer confidence and negate the intended impact of a redress scheme. The ability to reroute complaints back to firms is particularly practical, ensuring they can investigate and respond in line with the scheme rules while avoiding bottlenecks at the FOS.
- ▶ Members highlight, however, that any such process must come with clear procedural expectations, including timelines, required documentation, and consistent consumer messaging. This would ensure smooth handovers between the FOS and firms, avoid customer frustration at being passed back and forth, and provide transparency about why complaints are being managed in a particular way.

## **Annex A: Assessing DISP Readiness for FOS Reform Proposals**

This annex outlines the key proposals referenced in the consultations by HM Treasury, and jointly the FCA and the FOS. It considers whether each proposal can be implemented through legislative change or by amending the DISP rules in the FCA Handbook. While it is anticipated that many of the changes will ultimately require updates to both, in several cases, implementation may be possible through one route initially.

In some cases, it is difficult to determine definitively whether a proposal requires legislative change or could be implemented solely through amendments to DISP. This uncertainty arises because the consultations set out the proposals at a relatively high level and do not always provide sufficient detail at this stage to assess the precise mechanism required for implementation.

**Proposal**

**Comments**

**DISP or  
Legislation  
first?**

<p>Clarify FOS’s decision-making basis – adapt the <b>Fair and Reasonable Test</b></p>	<p>Section 228(2) of FSMA 2000 provides that complaints are determined by “<i>what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case</i>”.</p> <p>DISP 3.6.4R then sets out what the ombudsman will take into account (e.g. relevant law and regulations, regulators’ rules, guidance and standards, codes of practice and good industry practice at the relevant time).</p> <p>The proposal to adapt the fair and reasonable test, so that there is a hierarchy of factors to consider, could be made in DISP first and mirrored in legislation afterwards if necessary. Or the legislative wording could remain the same, as the factors do not appear in legislation, only DISP.</p> <p>Note that FCA/FOS consultation (para 2.9) provides that if HMT’s proposals are taken forward, FOS/FCA will take steps to help support changes in the shorter term, which may include considering potential changes to DISP before any legislative change, to ensure the Handbook provisions align with legislation.</p>	DISP
<p><b>FOS referral to the FCA for input on wider implications complaints</b></p>	<p>FCA/FOS consultation supposes that this change will be made in legislation first.</p> <p>The extent to which legislative change is required will depend on the scope of the reform. If the change affects the statutory remit of FOS as established under FSMA – particularly in relation to its independence – then primary legislation would be necessary before such changes could be implemented.</p> <p>As currently proposed, FOS will remain the ultimate decision-maker of a complaint and</p>	DISP*

	<p>so it may be possible for the process for referral to be built in DISP (and then enshrined in legislation if necessary). Notably a process has been incorporated into the updated <a href="#">Memorandum of Understanding</a>.</p> <p>There may be a desire for this change to be made in legislation first (for example, if it is considered that section 415C FSMA 2000 (duty to co-operate) requires amendment).</p>	
<p><b>FOS referral to the FCA on the interpretation of FCA rules</b></p>	<p>FCA/FOS consultation supposes that this change will be made in legislation first.</p> <p>The extent to which legislative change is required will depend on the scope of the reform. If the change affects the statutory remit of FOS as established under FSMA – particularly in relation to its independence – then primary legislation would be necessary before such changes could be implemented.</p> <p>As currently proposed, FOS will remain the ultimate decision-maker of a complaint and so it may be possible for the process for referral to be built in DISP (and then enshrined in legislation if necessary). Notably a process has been incorporated into the updated <a href="#">Memorandum of Understanding</a>.</p> <p>There may however be a desire for this change to be made in legislation first.</p>	<p>DISP*</p>
<p><b>Introduction of limitation long-stop</b></p>	<p>We consider that change could be made in DISP first. Note that the consultation documents suppose this change will be made in legislation first.</p> <p>Para 13(1) of schedule 17 FSMA 2000 requires the FCA to make rules regarding time limits. The detail re time limits for referring complaints to FOS is set out in</p>	<p>DISP</p>

	DISP. We consider that the change could therefore be made in DISP first, and then enshrined in legislation if necessary.	
<b>Amend the statutory basis for FOS</b> so that the Chief Ombudsman holds overall responsibility for all FOS case determinations	Provisions in legislation (eg para 5 of schedule 17 FSMA 2000 (the Chief Ombudsman) will need amending to reflect this proposal.	Legislation
<b>New registration stage</b>	FOS/FCA consultation refers to this proposal as a DISP change. We agree.	DISP
Give the FCA greater powers to <b>investigate and respond to MREs</b> , most notably lowering the bar for the FCA to instigate a consumer redress scheme under s404 FMSA:	FCA/FOS consultation supposes that this change will be made in legislation first. We agree as the test for a consumer redress scheme is set out in section 404 FSMA 2000.  The FCA has also said it will amend SUP 15 guidance re notification of a potential MRE.	Legislation
Transparency around the approach to FOS determinations – <b>thematic publications</b>	Unclear whether change will be captured in DISP (FOS/FCA consultation notes that FOS is considering how any approach could be implemented ahead of legislative change)).  Section 230A FSMA sets out the requirement for FOS to publish determinations. If the proposal results in a change to this process, amendment to legislation may be necessary.	TBC
Introduction of <b>‘Lead Complaints’</b> process	Unclear whether change will be captured in DISP.	TBC
Introduction of <b>decision frameworks</b>	FOS/FCA consultation provides that “summary versions of the frameworks” will be published – but not the full frameworks.  It is understood that this will be a FOS led initiative – no DISP changes necessary.	N/A
<b>Collection of data</b>	Change to Handbook/DISP required	DISP

<b>Other changes to improve FOS and FSCS operational efficiency</b>	Draft amendments to DISP shown in Appendix 1 of FOS/FCA consultation	DISP and COMP
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## Overlooked proposals included in UKF Consultation response

Proposal	Notes	DISP/Legislation
<b>Appeals mechanism</b>	Right of appeal to court/tribunal once FOS has made final determination.	Legislation
<b>Removal of precedent effect (at least in wider implications complaints)</b>	An explanatory note could be added to DISP to clarify circumstances in which it may not be appropriate to follow FOS decisions.	DISP
<b>Quality of complaints</b>	Improving quality of complaints before referral to FOS (right for firm to request further information from CMCs and CLFs and pausing of time to provide a final response)	DISP (changes to CMCOB may also be desired/required)
<b>Publishing professional representative performance</b>	Requirement for professional representatives to publish performance figures such as uphold rates	CMCOB (and SRA for law firms)
<b>Binding determinations on all parties</b>	Making FOS decisions binding on complainants, irrespective of whether FOS upholds the complaint or not.  Section 228(5) FSMA 2000 provides that a determination is binding on a firm if the complainant accepts it. Amendment to legislation will be required.	Legislation

END