

TheCityUK response to the HM Treasury review of the Financial Ombudsman Service (FOS) and the Financial Conduct Authority (FCA) and FOS consultation on modernising the redress system

TheCityUK

TheCityUK is the industry-led body representing UK-based financial and related professional services. We champion and support the success of the ecosystem, and thereby our members, promoting policies in the UK and internationally that drive competitiveness, support job creation and enable long-term economic growth. The industry contributes over 12% of the UK's total economic output and employs almost 2.5 million people – with two-thirds of these jobs outside London across the country's regions and nations. It pays more corporation tax than any other sector and is the largest net exporting industry. The industry plays a vital role in enabling the transition to net zero and driving economic growth across the wider economy through its provision of capital, investment, professional advice and insurance. It also makes a real difference to people in their daily lives, helping them save for the future, buy a home, invest in a business and manage risk.

Key messages

We support the government's aim to reform the legislative and broader framework in which the Financial Ombudsman Service (FOS) operates to prevent the FOS from acting as a quasi-regulator, and to ensure that the FOS is delivering its role as a simple and impartial dispute resolution service. These reforms, if fully realised, can bolster the UK's competitiveness. We recommend that:

- HM Treasury works in partnership with the Financial Conduct Authority (FCA), the FOS and the industry to ensure an holistic approach to the proposals, ensuring that there are no unintended consequences arising from rules-based or operational changes made before the enabling legislation, which will provide the key benefits outlined, comes into effect.
- The FOS and FCA expedite their work on rules-based application of elements of the regime where legislation may be repealed or amended. We recognise that legislation can take time, but suggest this work should not be undertaken sequentially.
- There is a rigorous approach to removing ambiguity and uncertainty. For example, the proposed new fair and reasonable test should state that a firm's conduct is fair and reasonable where 'it has complied with relevant FCA rules'. It should not include the component 'in accordance with the FCA's intent for those rules' as this will undermine the ability of the reforms to achieve the full benefits envisaged by HM Treasury.
- The reforms ensure there can be no retrospective application by the FOS of contemporary FCA rules. This is a priority and will result in more predictable and consistent resolution of complaints for both consumers and firms, and positively impact the UK's competitiveness.
- HM Treasury reconsiders the need for an appeals process. This mechanism exists in other ombudsman schemes and would provide judicial clarity through the creation of binding precedent to inform future FOS cases. This would be beneficial for customers and firms who are parties to complex and high-value cases, including mass redress events.
- The formal referral mechanism outlined by the FCA and FOS should include the ability for the FCA Practitioner Panel to help inform the accurate interpretation of FCA rules. They can also provide sector-specific commercial insight to ensure a full understanding of the products and services that could form the basis of FOS complaints.

Introduction

The proposed reforms set out by HM Treasury, the FCA and the FOS represent a key opportunity to deliver a more effective framework and a constructive, proactive approach to the relationship between the FCA and the FOS.

These reforms can provide much-needed clarity and certainty, delivering three key benefits:

- Better outcomes for consumers.
- Enabling firms to more fully benefit from opportunities to innovate in an outcomes-based regulatory framework.
- Bolstering the competitiveness and investability of UK-based financial services firms.

The main substance of the reforms is set out in the HM Treasury review of the FOS, much of which requires legislation. It will, therefore, take some time for the reforms to progress. We urge HM Treasury to work collaboratively with the FCA to progress changes to the regulator's rulebook, which will both demonstrate positive action and help prepare for further, more substantive reforms in due course. We would welcome confirmation that the government will use the Financial Services Bill expected to be introduced to Parliament in 2026 to implement the measures set out in HM Treasury's consultation.

We set out below our views on the key elements of the review and consultation, which are based on input from our members across the financial and professional services industry. If helpful, we would be pleased to convene members to discuss these in further detail to ensure the outcome of the review and consultation delivers the three key benefits outlined above.

FCA and FOS proposals

The proposals outlined in the FCA and FOS consultation do not match the ambition and clarity of those set out by HM Treasury. As noted below, we welcome the introduction of the new 'Registration Stage'. However, there are several enhancements that should be expedited by amending the FCA's Dispute Resolution Complaints Sourcebook (DISP). These are important in their own right, but are also important in the context of the need to modernise the redress system to support other initiatives, for example, Targeted Support. They include:

- The introduction of a longstop in DISP, which means this can be implemented more quickly than the legislative approach outlined by HM Treasury.
- Amendments to the read-across rules, which will help prevent the FOS from acting as a quasi-regulator.
- Amendments to the factors the FOS must take into account when deciding what is 'fair and reasonable'. Specifically, removing 'good industry practice', adding 'consumer responsibility' and preventing the FOS from retrospectively applying current standards/rules to historic conduct.

The FCA and the FOS can play a key role in facilitating the launch of Targeted Support by managing complaints related to Targeted Support based on HM Treasury's amended fair and reasonable test and the FCA and FOS referral mechanism from April 2026. This will aid certainty and clarity for firms offering Targeted Support solutions and, crucially, provide the FCA and FOS with a defined test bed for these new mechanisms before wider post-legislative implementation.

Fair and reasonable test

The proposed adaptation of the fair and reasonable test is a sensible approach. We support the proposal for the FOS to be bound to find that a firm has acted fairly and reasonably by complying with FCA rules (where conduct complained of is in the scope of FCA rules).

However, we believe this can be strengthened by the new test simply stating that a firm's conduct is fair and reasonable where 'it has complied with relevant FCA rules', rather than including the component 'in accordance with the FCA's intent for those rules'. Including this in the new test would create unnecessary ambiguity and, with it, the potential for unclear and inconsistent interpretation of rules, thereby undermining the intention for these reforms to provide greater clarity.

As part of the new test, the FCA must provide clearer guidance on how the FOS should apply the test within the boundaries of existing regulations. As well as being bound by those, the test should be adapted to make clear that the FOS should apply it with reference to existing law (including reference to the FCA using its powers to refer a matter of law to the courts as a test case), including legal contractual agreements setting out the terms and conditions of an agreement between a customer and supplier. This would provide the basis for a structured framework against which FOS case handlers would work when reviewing cases, promote consistency in decision-making, and reduce the potential for variations between decisions made by individual case handlers.

Ensuring a robust and clear fair and reasonable test will underpin efforts to reduce uncertainty, bureaucracy and cost, all of which are crucial to achieving the full benefit of the reforms envisaged by the HM Treasury review.

This includes ensuring there can be no retrospective application by the FOS of contemporary FCA rules. Removing the ability for retrospective application by the FOS is a priority and must be achieved. It will result in more predictable and consistent resolution of complaints for both consumers and firms.

Formal referral mechanism and the need for an appeals mechanism

We support the introduction of a formal referral mechanism to aid the FOS's interpretation of FCA rules. This is particularly important in the context of the growing shift to outcomes-based regulation and the need for firms to innovate and differentiate their offerings while achieving the outcomes set by FCA regulation. However, as outlined below, we consider an appeals mechanism to be a crucial component of the overall architecture.

The potential for obtaining legal certainty by referring a matter to the courts as a test case is a positive step. It will help the ongoing development of case law and is another powerful tool to bring certainty to consumers and firms alike.

There is merit in the proposal that parties to a complaint can request that the FOS refer an issue to the FCA at the provisional determination stage. However, as HM Treasury notes, detailed grounds for such a request will need to be set out in the FCA's Handbook, and the FOS will need a robust mechanism to ensure the grounds have been met before granting the request.

There are concerns that companies acting on behalf of claimants might otherwise impede the system and thereby the FOS's ability to quickly resolve disputes. It is essential that the FOS consistently applies this criterion to ensure that the number of issues referred to the FCA does not become difficult to manage efficiently.

HM Treasury states that the formal referral mechanism is not intended to act as an appeals mechanism. A judicial review of FOS decisions usually focuses on the process the ombudsman has used to make their decision, not on the facts and evidence of the dispute itself. However, members noted that the FOS could follow due process and come to an incorrect decision, which could, in turn, be applied to mass redress events and therefore have significant financial consequences.

We therefore urge HM Treasury to reconsider its approach. Contrary to the HM Treasury paper, we consider that an appeals mechanism to the senior courts would provide benefits to both users and providers of financial services. Specifically, the key benefit would be to provide judicial clarity through the creation of binding precedent to inform future FOS cases. Judicial clarity is especially beneficial to customers and firms who are parties to complex and high-value cases, including mass redress events.

We recognise that such an appeals mechanism should only be used in limited circumstances to ensure the vast majority of FOS cases are resolved quickly and effectively. Such appeal mechanisms exist in other ombudsman schemes. For example, the Pensions Ombudsman, where the person lodging the appeal needs to satisfy the court that the appeal has a real prospect of success, or that there is some other compelling reason why it should be heard. This is an effective check and balance that would minimise the number of appeals heard by the courts and help to maintain the speed and efficiency of managing FOS cases.

We believe that HM Treasury, the FCA and the FOS should consider the potential for the FCA Practitioner Panel to be involved in the formal referral mechanism. If a referral is made to the FCA to check on the interpretation of its rules and/or wider implications issues, the Practitioner Panel (perhaps through the establishment of sector-specific sub-groups to provide the necessary expertise) could help inform the FCA's view, analogous to the function of the Cost Benefit Analysis Panel. This mechanism would serve a useful purpose in its own right to inform accurate interpretation of the FCA's rules, and also serve to minimise the number of appeals.

It would also address a missing aspect of the proposals: that is, the need to ensure a full understanding of the sector-specific commercial offerings that could form the basis of FOS complaints. This need has been identified due to FOS decision-making undermining the commercial basis on which a differentiated range of products is offered to consumers. For example, in the case of a risk-based approach to underwriting insurance products. There is concern at the FOS justifying such decisions based on insubstantial links to the Consumer Duty and/or other regulations. The FCA and the FOS must, therefore, have access to both sector-specific regulatory and commercial expertise as per the proposed Practitioner Panel model suggested above, or other means.

We support the proposal for the FOS to publish quarterly thematic guidance documents on how particular types of cases are investigated and how the FOS would expect to see the relevant FCA standards applied to such cases.

However, we do not believe it is necessary for the FOS to publish the details of individual decisions it makes, which can, on occasion, provide opportunities for professional representatives to develop case management propositions. Where cases are based on an FCA interpretation of its rules, the FOS guidance documents would be a helpful way of disseminating information.

We suggest that the FCA uses its Market Watch publication to refer to FOS publications and to publish any determinations on its rules made in the process of responding to a FOS referral.

Mass redress events (MRE)

We agree it is helpful to define MRE as outlined by the FCA and FOS consultation. Further, we welcome the proposal that the FOS refer a potential wider implications - including the potential to be a MRE - to the FCA, which in turn must consult its statutory consumer and industry panels.

This consultation will be useful in informing whether the FCA should then pause firms' complaint-handling until it delivers a regulatory interpretation, or takes another form of action.

Members suggested that the FCA should have put forward proposals on what it deems the 'more proportionate tests' that would need to be satisfied before it could use its powers to implement a redress scheme under section 404 of the Financial Services & Markets Act (FSMA). The lack of such proposals means it is difficult to support this element from a position of detail, while recognising there is broad support for consistent and orderly responses to MRE. We recommend that the FCA be obliged to consult its statutory consumer and industry panels on these tests as part of its process of assessing whether it implements a redress scheme under section 404 of FSMA.

MRE can signify a lack of clarity in the regulatory framework. Enhancing regulatory certainty and clarity should be a key area of focus for all regulators to minimise the risks of MRE developing. Such certainty and clarity would also inform the registration stage assessment and help to reduce the number of poorly prepared and low-quality complaints submitted by professional representatives. In summary, there is a need for collaboration to prevent MRE from occurring and to achieve the FCA's Chief Executive's goal that the motor finance redress scheme is the last UK banking sector mass redress scheme.

Complaints process proposals

There are several welcome proposals on the reform of the complaints process. These include:

- **FOS ability to dismiss cases:** we agree with the proposal to enable the FOS to dismiss a case without considering it on the merits, if it would be more suitably dealt with by a court, arbitration or another complaints scheme.
- **Longstop:** we support the introduction of a longstop to set an absolute time limit for bringing complaints to the FOS. This will help address uncertainty about the FOS's application of the referral time limits. However, we believe it should be set at six years rather than 10 years. This would align with existing DISP rules, legal precedent, and data retention obligations, thereby providing greater certainty for all parties to complaints. We recognise that in exceptional cases - for example, long-term products - there should be a clearly defined exception category with a maximum limit of 15 years (consistent with the Limitation Act 1980).

- **Registration stage:** this is a welcome addition to the FOS's toolkit and must be consistently applied to cases. Ensuring a robust process is applied will prevent poorly prepared and low-quality complaints from moving forward and becoming chargeable, thereby bolstering the FOS's effectiveness and ability to limit the influence of professional representatives.
- **Lead complaint process:** this is a sensible proposal which will further bolster the way in which the FCA and FOS must work together to anticipate and respond to novel and significant complaint issues as they emerge. It has the potential to expedite cases following the investigation of a sample of complaints, reduce case fees, and allow for greater consistency in outcomes between similar complaints.
- **FOS case fee structure:** we support the principle of aligning FOS case fees more closely with the resources required for complaint handling, including differentiating fees based on the stage at which a case is resolved. However, fees should be set in a way that does not give rise to unintended consequences, for example, high volumes of speculative complaints from professional representatives, or where firms disproportionately settle a larger volume of cases than they otherwise might to avoid paying additional fees at the next stage or point of fee differentiation. We recommend that the FOS monitors the behaviours of professional representatives and firms following the introduction of the new case fee structure, and reports to HM Treasury a year after this to enable a fuller assessment of whether and how the case fee structure is driving behaviour.

Finally, we believe the FOS should retain its current billing model. For most firms, this is based on billing for closed cases only, which members believe is simple, transparent and effective. The FOS's proposed expansion of quarterly billing in advance to a greater number of firms has resulted in feedback that this model is unnecessarily complex, as it would require firms and the FOS to undertake repeated forecasting, invoicing, and reconciliation. This proposal does not support the government's commitment to cut administrative costs for business by 25% by the end of the Parliament.

FOS institutional arrangements

In the absence of a cost benefit analysis to inform a discussion on the possibility of making the FOS a subsidiary of the FCA, it is difficult to fully assess the question posed by HM Treasury. However, we note that other ombudsman services are independent, and as the HM Treasury review notes, there is a risk of such a move being perceived as compromising the operational independence and impartiality of the FOS and the FCA.

More broadly, we agree that this proposal would result in significant implementation challenges, incur costs and potentially create uncertainty, thereby distracting attention from addressing the challenges outlined by HM Treasury. It is unclear how this proposal would support the government's commitment to cut administrative costs for business by 25% by the end of the Parliament.

We recommend that HM Treasury focus on its overarching goal of preventing the FOS from acting as a quasi-regulator and ensure that the key issues outlined in its review (and the FCA and FOS consultation) are addressed as soon as possible to deliver better outcomes for consumers and enhance the competitiveness and investability of UK-based financial and related professional services.