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## Consultation Response

### Which? response to the joint FCA/FOS consultation on Modernising the Redress System (CP 25/22)

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### Summary

- This joint consultation paper was designed to be read alongside the HM Treasury consultation on a Review of the Financial Ombudsman Service (FOS). It should be noted that we responded to HM Treasury's consultation with the following high-level concerns:
  - We support HM Treasury's stated goal to preserve the FOS's intended purpose but believe that this aim is undermined by some of the proposed reforms.
  - We are not convinced that the evidence presented sufficiently justifies some of the structural and legislative reforms proposed in the reform package.
  - Some of the proposed structural and legal changes would detrimentally affect consumers' access to simple, fair, impartial dispute resolution.
  - The existing redress framework also already enables the aim of several proposed legislative changes.
- In that consultation response, we also set out that we do not believe major structural or legislative change is required to substantially address concerns identified and to ensure consumers' continued access to simple, impartial and timely dispute resolution.
- We ask that our attached response to the HM Treasury consultation be read alongside this response. In addition, where we support the changes in this consultation paper, we do so providing that they are not introduced in concert with those specific proposed structural and legislative changes.
- In terms of this joint consultation paper:
  - Registration stage: We are supportive, in principle, of the proposal to introduce a registration phase for complaints, as long as steps are taken to ensure it does not affect consumers' access to dispute resolution, particularly vulnerable consumers.

- Lead complaints: We have some concerns around the potential impact of a lead complaints process on a consumer's access to timely dispute resolution, and in particular the potential for such a process to be confusing and frustrating for affected consumers. If this proposal is pursued, we need to see sufficient safeguards that ensure timely dispute resolution is not compromised.
- FSCS amendments: We are supportive of most of the changes to the FSCS but do have some questions about the proposed drafting of the changes to the payment of compensation and calculating compensation. We would need clarity on these questions before considering whether we support the changes.

## General response

As a successful statutory ADR scheme, the Financial Ombudsman Service provides a vital option for consumers to access simple, timely and impartial dispute resolution. The Review of the FOS identified that the FOS is working well in the majority of cases. This view is shared by consumer groups and some industry stakeholders.<sup>1</sup> Our work on consumer protection and redress across different markets has consistently shown that the system of redress in financial services functions better than in other sectors.<sup>2</sup>

We understand that it is only in a 'small, but impactful' minority of FOS cases that some stakeholders have concerns that the FOS is going beyond its initial remit. With this context in mind, we feel that a moderate approach to reform, without major structural or legislative change, would be sufficient to substantially address identified concerns and to ensure consumers' continued access to simple, impartial and timely dispute resolution.

In our response to the concurrent HM Treasury consultation on a Review of the FOS, we separately outlined a few concerns with some of the proposed structural and legislative changes:

- We support HM Treasury's stated goal to preserve the FOS's intended purpose but believe that this aim is undermined by some of the proposed reforms.
- We do not believe that the evidence presented to date justifies the level of structural reform proposed in the HM Treasury consultation.
- We believe that implementing some of these proposed structural reforms could, in fact, affect consumers' access to simple, fair, impartial dispute resolution. Relevant to this consultation paper, we had concerns with the proposed amendments to the fair and reasonable test; the absolute time limit on complaints; the ability for the FCA to direct the FOS to determine cases in line with existing FCA guidance, firm redress schemes or s404 schemes; and the removal of the consumer protections that form part of the FOS's ability to dismiss a case directly.

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<sup>1</sup> In particular, FCA/FOS joint CP 25/22, July 2025, Chapter 2, at para. 2.4 highlights that some firms agree on the value of the fair and reasonable test to allow individual circumstances to be considered (p. 9)

<sup>2</sup> For an assessment on the effectiveness of consumer dispute resolution across a number of sectors, please see our [2021 research report on ADR schemes](#).

- The existing redress framework can already achieve the goals of some of the reforms proposed in that consultation. Relevant to this consultation paper, these include the proposed mechanisms obliging the FOS to refer questions of rule interpretation to the FCA and to refer wider implications issues to the FCA.

As the proposals in these two consultation papers are designed to be complementary, we ask that our response to that consultation be read alongside this response. In addition, where we are supportive of proposals in this consultation paper, this is provided that they are not introduced in concert with the proposed HMT changes above.

Within this consultation paper, we are supportive of the proposed introduction of a registration phase for complaints, in principle, and the majority of proposed amendments to the FSCS. We do, however, have some concerns about the introduction of a lead complaints process and its potential negative impact on the timely resolution of consumer complaints. We explore each of these proposals in more detail below.

## Introduction of a new registration stage

*Answering questions 8 - 12.*

- *Question 8: Do you agree in principle with the introduction of a new registration stage before a complaint is investigated by the Financial Ombudsman?*
- *Question 9: Do you agree that the registration stage will help complainants preparing and submitting complaints to the Financial Ombudsman?*
- *Question 10: What safeguards should there be to ensure the registration stage does not limit access to justice, particularly for vulnerable consumers?*
- *Question 11: Do you agree that the Financial Ombudsman being able to pause or pass back cases at the new registration stage would improve respondent firms' ability to manage mass redress events or emerging regulatory issues?*
- *Question 12: Do you agree that the Financial Ombudsman should consider differential case fees for cases in the registration stage?*

We support, in principle, the introduction of a registration phase for complaints. We see that it could be a useful way to streamline the dispute resolution at the FOS and reduce wasted effort by the FOS used to investigate complaints that, for example, do not have sufficient levels of evidence available or that do not meet the existing eligibility requirements (e.g. the 8-week deadline for providing a Final Response Letter hasn't yet passed). It may also support more efficient identification and monitoring of claims with common issues.

However, we only support the introduction of the registration phase as a standalone reform. We do not agree that it should be introduced alongside other proposed HM Treasury reforms, such as the proposed legislative mechanism obliging the FOS to refer cases to the FCA on matters of rule interpretation or the proposed removal of the consumer protections that form part of the FOS's ability to dismiss a case directly. We discuss our detailed concerns with these proposals in our response to the HM Treasury consultation on a Review of the FOS.

We also think there need to be specific safeguards put in place to ensure consumers, particularly vulnerable consumers, are not prevented from accessing dispute resolution because of the introduction of this stage. We see that this could occur if complaints are denied based on insufficient evidence from the consumer, but the consumer has not been appropriately supported to try to gather the relevant information. To help ensure the registration phase does not prevent consumers' access to dispute resolution we would recommend considering:

- Measures that ensure it remains viable for good-practice PRs to submit complaints on behalf of consumers. PRs represent a critical avenue to support consumers to access the dispute resolution process.
- Measures that provide accessible and relevant support to consumers making direct complaints to the FOS, to help prevent cases being denied inappropriately at the registration stage.

## Introduction of a lead complaints process

*Answering questions 4 - 7:*

- *Question 4: Do you support the introduction of a 'lead complaints' process to address novel and significant complaint issues?*
- *Question 5: Do you think that the lead complaints process will achieve its intended benefits?*
- *Question 6: Do you agree that firms should be allowed to pause related complaints while lead cases are under investigation in the lead complaints test process?*
- *Question 7: What safeguards should there be to ensure the lead complaints process is not used to delay or avoid complaint resolution?*

We have some concerns with the proposed introduction of a lead complaints process and the impact it could have on the average UK consumers' access to timely dispute resolution. If a consumer becomes part of the lead complaints process, we see a risk that this may add unnecessary time and complexity to the resolution of their individual complaint, and be confusing and frustrating for affected consumers. Given the purpose of the FOS is to provide simple, impartial and timely dispute resolution of complaints against financial services firms, we feel that a lead complaints process could risk undermining this purpose. In addition, we see a risk that this could make consumers more wary about engaging with novel and innovative products, if they know it may increase the potential of a lengthy dispute resolution process if something goes wrong.

To better address potential wider implication issues, we would suggest the FCA and the FOS undertake the steps agreed to in their July 2025 Memorandum of Understanding (MoU) that detail how the two organisations will collaborate to respond to potential wider implications issues. We see that this process set out in the MoU similarly enables the early collaboration between the two organisations, without compromising individual dispute resolution.

We may be more supportive of this proposal if the detail can ensure that the lead complaints process will not undermine consumers' access to timely redress for their

individual cases. Therefore, if this proposal is pursued, we would like to see the development of strong safeguards that seek to achieve this. For example, this could include:

- Clear avenues for consumers to opt-out of a lead complaints process.
- Formal requirements for lead complaints to be resolved within specific timeframes.

## Proposed changes to FSCS

*Answering questions 14 - 17.*

- *Question 14: Do you agree with the proposed amendments to COMP 4 and COMP 12A to simplify the list setting out who is and is not eligible to make a claim to the FSCS?*
- *Question 15: Do you agree with the proposed amendments to COMP 6.3.4R to enable the FSCS to determine a relevant person in default, where they are not co-operating with the FSCS, or where personal circumstances prevent them from co-operating?*
- *Question 16: Do you agree with the proposed amendments to COMP 11.2 to give the FSCS greater discretion over where compensation is paid under specific circumstances as described in that provision?*
- *Question 17: Do you agree with the proposed amendments to COMP 12.2.10R and the additional factors listed in COMP 12.2.11R that FSCS must take into account, when considering if a claimant is eligible?*

We support, in principle, the proposed amendments to COMP 4 and COMP 12A, on the condition that they do not inadvertently change who is or is not eligible to claim compensation from FSCS within the new drafting. We also support the proposed amendments to COMP 6.3.4R. We agree that these changes will make it simpler for the FSCS to make compensation payments to claimants in a timely way.

We have some concern that the proposed amendments to COMP 11.2 could potentially have negative consequences for claimants, if a payment being made to someone other than the claimant is not truly in a claimant's best interest. As these changes may apply to 20% of cases<sup>3</sup>, the safeguards must be strong enough to ensure this does not happen. We are not fully convinced that the safeguards are strong enough yet. As a first step, we would like greater clarity on what 'reasonable steps to ensure that any amount paid benefits the eligible claimant'<sup>4</sup> look like in practice. In addition, we believe that the discretion to pay to someone other than the claimant must remain conditional on the direction of the claimant, where they are able to express a view.

Similarly, before we can take a firm view on the proposed amendments to COMP 12 we would first like to understand the cases that indicated a need to lower the evidentiary burden. We see the potential benefit to consumers in increasing FSCS's discretion to pay compensation to a claimant without undertaking a full investigation, in terms of quicker access to compensation. However, we want to ensure that a claim not being investigated

<sup>3</sup> As outlined in the CBA included in the consultation paper.

<sup>4</sup> As outlined in the proposed drafting of COMP 11.2.1 B.

under this revised discretion would not lead to cases where a consumer receives a lower compensation payout than they would have received if it had been fully investigated. We are currently unsure that this certainty is given by the existing and proposed drafting of COMP 12.

## About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

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