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Response to the Financial Ombudsman Service and Financial Conduct Authority call for input on modernising the redress system

About the Building Societies Association

The Building Societies Association (BSA) represents all 42 UK building societies, including both mutual-owned banks, as well as 7 of the largest credit unions. Building societies have total assets of almost £525 billion and, together with their subsidiaries, hold residential mortgages of over £395 billion, 24% of the total outstanding in the UK. They also hold £399 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 40% of all cash ISA balances. With all their headquarters outside London, building societies employ around 52,300 full and part-time staff. In addition to digital services, they operate through approximately 1,300 branches, holding a 30% share of branches across the UK.

The BSA welcomes the opportunity to respond to the Call for input on modernising the redress system (CFI).

Executive summary

We support the Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS) in their efforts to create greater certainty for consumers and businesses, manage mass complaint issues more effectively, and future-proof the redress framework.

We agree that if the UK redress framework does not operate effectively or hampers a stable and predictable trading environment, it will have a negative impact on the FCA's primary objective of consumer protection, market integrity and competition, as well as its secondary objective to facilitate the international competitiveness of the UK economy.

Much of the focus of the CFI is on addressing 'mass redress events'. While we acknowledge the significant impact on both consumers and businesses of mass redress events, we believe this focus is too narrow. There needs to be a greater focus on FOS's interpretation of regulatory expectations.

Frequently, redress liabilities or mass complaint exposures arise when FOS adopts an unforeseen interpretation of regulatory expectations on firms and applies these interpretations to the historic conduct being complained about.

Where common regulatory standards are being set or interpreted by the FOS and applied to a cohort of complaints, it is vital that:

- the FCA takes the lead in shaping expectations.
- the outcome reached by FOS, and expected to be applied by firms to other customers (both complainants and non-complainants), aligns with the FCA's expectations; and
- this is done prospectively, not reactively to a large volume of accumulated complaints.

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FOS, being an ADR service, is not subject to the same accountability as the FCA (including the secondary growth objective). It generally has a narrower perspective on issues, viewing them through the prism of dissatisfied customers and addressing them reactively, leading to firms being exposed to back-book remediation risks. This creates a lack of certainty for firms.

This lack of certainty, together with the poor behaviour of professional representatives and claims management companies (CMCs) over the years, has likely stifled growth and innovation in the financial sector. This will continue unless addressed by the CFI.

When applying the FCA's regulatory standards and expectations, both firms and FOS need to be clear on what these are and how they apply to common factual patterns, to prevent or minimise systemic complaint themes and events.

With regard to the proposals in the CFI and with the aim of improving certainty and consistency, we:

- agree that amendments to the DISP dismissal grounds should be considered when the Government repeals the 2015 Regulations.
- support reviewing and clarifying the current time limits for referring complaints to the FOS; and
- endorse an approach where DISP timescales are paused while regulatory input on rule interpretation is sought. However, we recommend making it obligatory for FOS to pause complaint decisions in these circumstances, rather than framing it merely as an entitlement.

We look forward to your response to this CFI and have provided more detailed responses to your questions below.

Our response

Question 1- Should we define what a mass redress event is? If yes, please explain how we should define it. If no, please explain how we could better identify and address mass redress events (without defining them).

We agree that defining mass redress events would be useful. We suggest referring to the existing definition of 'wider implications' in the WIF framework. The definition should take into account the number of consumers affected, the extent of redress or harm, the volume of complaints within a specific timeframe, and the financial impact on companies that must allocate additional resources to manage mass redress events.

Question 2 - Do you agree with our assessment of the difficulties that mass redress events can create for firms and consumers?

We largely agree with your assessment of the difficulties that mass redress events can create. In particular, the problematic behaviours of CMCs, such as speculative complaint submissions, highlighted in the CFI.

However, it's crucial to note that such events often indicate a misalignment between current regulatory guidelines and FOS expectations. This misalignment results in considerable back-book risks for firms and, subsequently, encourages the poor and speculative behaviours observed among CMCs. Additionally, the prolonged time required by the FOS to process mass redress complaints creates

uncertainty for both consumers and firms. Therefore, it is essential to establish rules and expectations proactively.

For more on this point, please refer to our response to question 7.

Question 3 - What other issues should we consider as part of this review?

Please see our response to question 2.

Question 4 - Are there any changes to the regime that we ought to consider to ensure it remains appropriate, given the shift to outcomes focused regulation?

We do not believe it would be appropriate for the FOS to define expectations regarding Consumer Duty. This approach would result in the regime being uncertain, reactive, and misaligned with the FCA's secondary growth objective. Firms would remain exposed to back-book risks and complaint volumes, which hinder investment and innovation.

We propose establishing a mechanism for firms to escalate issues to the FCA, to prevent the FOS from issuing Final Decisions where firms believe they have strayed into mass redress determination. The regime should also create a more formal role for relevant trade associations to provide a route of appeal and input when issues extend beyond individual firms to industry-wide concerns.

For more on this point, please refer to our response to question 7.

Question 5 - Do you agree that our proposals to better manage mass redress events can help ensure that the FCA acts in a way which is compatible with its statutory objectives, including the secondary international competitiveness and growth objective? Please explain why you agree or disagree.

We agree the proposals will help, but would argue the issues prompting this CFI extend beyond just mass redress events. As stated in our executive summary, problems arise when the FOS adopts an unforeseen interpretation of regulatory expectations on firms and seeks to apply it to historical conduct. This needs to be addressed.

It is unclear what additional obligations and accountability would fall on the FOS to seek and adhere to guidance from the FCA on regulatory expectations. Effective and consistent management of mass redress events by the FOS, in line with the FCA's regulatory expectations, is essential for maintaining confidence in the regulatory framework. This is also critical for consumer protection and the international competitiveness of the UK financial sector.

Question 6 - What, if any, further information or guidance is needed in DISP to help firms identify and proactively address harm, given the Consumer Duty?

We believe that DISP already clearly mandates that firms must learn from FOS decisions and apply these lessons to both pre-FOS complaints and, where applicable, non-complaints. We do not think that the 'mass redress events' referenced in this CFI have been caused or significantly impacted by a lack of guidance for firms in DISP. This is particularly true now that the Consumer Duty guidance is in place, which holds firms accountable for identifying poor outcomes (PRIN 2A.9.9) and taking appropriate actions, including remediation (PRIN 2A.10).

That said, we would advocate for changes to DISP that would set out steps firms can take to escalate matters to the FCA when a FOS decision has the potential to become a mass redress event. Providing clear guidelines on how and when to escalate issues to the FCA would help ensure that potential problems are addressed promptly and effectively.

Question 7 - What options should we consider to ensure firms are given an appropriate opportunity to resolve complaints fairly before cases are referred to the Financial Ombudsman?

To prevent systemic complaint themes and mass redress events, it's essential that both firms and the FOS understand and apply FCA's regulatory expectations. To achieve this, the following is needed:

- Enhanced Engagement: Increase the frequency, transparency, and depth of interactions between the FCA and FOS on emerging complaint issues, going beyond the current provisions of the Wider Implications Framework.

- Stricter Requirements for FOS: Impose more stringent requirements and accountability on FOS to engage with the FCA when formulating its views on regulatory expectations.

- Real-Time Firm Involvement: Involve firms in the dialogue, allowing them to observe and contribute to the discussions in real-time.

- Clear Escalation Route: Provide firms with a clear mechanism to escalate concerns to the FCA if they believe FOS is exceeding its remit on systemic complaint issues.

Implementing these steps will help ensure that potential issues are addressed promptly and effectively - both increasing firms' confidence in the regulatory framework, while also safeguarding consumer protection.

Question 8 - Would a 2 stage process be appropriate in light of the Consumer Duty, and if implemented, how could it be effectively monitored to ensure good outcomes for consumers?

We oppose the re-introduction of the two-stage process, as it would unnecessarily extend the complaint journey for both consumers and firms for little benefit. Efficient and timely resolution is crucial to maintaining confidence in the complaint handling process.

Question 9 - What options should be considered to ensure firms and complainants resolve complaints fairly at the earliest opportunity before a final Ombudsman decision is taken?

We firmly oppose the notion that the ability of firms and consumers to escalate cases to an Ombudsman should be restricted to specified circumstances. When a case is escalated, it typically reflects that either the consumer or the firm believes that the FOS investigator has wrongly adjudicated the decision. There are numerous instances where such escalations have resulted in changes to the original decision. For greater transparency in the decision-making process of investigators, it would be beneficial for the FOS to publish its internal overturn rate.

Question 10 - Should the rules in DISP provide different routes to redress for represented and non represented complainants with different expectations? If so, what factors should be considered?

The CMCOB requirements for CMCs to investigate the existence and merits of each element of a potential claim before making or pursuing the claim should be strengthened and more rigorously enforced. This would ensure that CMC-led complaints submitted to firms and the FOS:

- Clearly articulate the specific facts of the complaint (rather than using templates).
- Only relate to products confirmed to be held with the firm.
- Reflect prior FOS decisions and guidance (and are not speculative).

CMCs should also be required to thoroughly consider the firm's response before escalating the complaint to the FOS and explain why, and to what extent, the response did not address the complaint. DISP rules should be updated to allow the FOS to dismiss CMC complaints without considering their substance (or charging the firm) if these minimum requirements are not met. This approach would:

- Increase CMC complaint uphold rates.
- Reduce the overall volume of CMC-led complaints.
- Enable customers to retain more of their redress, as observed in the CFI.
- Ease the operational burden on both FOS and firms in handling numerous, templated, and meritless CMC complaints and information requests.

In addition, for certain 'mass redress events,' the role of CMCs could be further limited by DISP rules, encouraging firms to manage complaints directly with consumers when there is a high probability of reimbursement being provided.

Question 11 - What amendments, if any, to the Financial Ombudsman case fee rules should be considered for mass redress events?

The case fee paid by respondent firms (currently £650) should be reduced or modified to include a reduction or rebate if the complaint is rejected. This aligns with the principle recently proposed by the FOS for CMC complaints. We are confident this change will help incentivize firms to properly address complaints and reward those with lower uphold rates compared to those with higher rates.

The FOS currently proposes to make CMCs liable to pay case fees of £250 (the first 10 cases are free of charge). We argue in our response to the FOS consultation *Charging claims management companies and other professional representatives* and their recent consultation *Our 2025/26 Plans and Budget* that CMCs should pay the same case fee as firms and that they should not benefit for any free cases. Rather than repeat our arguments here, we would refer you to our responses to both FOS consultations (linked above).

Question 12 - Are there additional or different considerations that the Financial Ombudsman should take into account when deciding what is fair and reasonable in all the circumstances of the case?

It is correct that the FOS places the individual consumer at the forefront of their assessment, but they must also be mindful of the impact of their decisions on the firms, industry and, by extension, other non-complaining consumers. It is not always clear that the FOS considers the practicality and feasibility of the approach it advocates through its decisions. It is left to firms to demonstrate the costs and operational challenges of the FOS's views on a matter and often these considerations have no bearing on the ultimate decision. The costs of implementing any industry changes as a result of FOS decisions is ultimately borne by consumers.

In addition, we believe when considering a complaint, the FOS should be required to put greater emphasis on the law and regulations firms were required to abide by at the time a product or service was provided or an issue arose, not merely have regard to them. This would make FOS's decisions more predictable for firms, CMCs, and consumers, aligning with the precedent-based decision-making system of the English legal system. It is important to note, FOS would still have the ability to grant alternative or supplementary outcomes and remedies in cases with unique facts not addressed by the relevant law or regulation.

Question 13 - What amendments to the dismissal grounds should be considered when the Government repeals the 2015 Regulations?

We support broadening the dismissal grounds to include:

- Scenarios where complaints will be addressed through a proactive redress scheme, including both industry-wide and firm-specific schemes, which firms can inform the FOS about when relevant.
- Empowering FOS to dismiss complaints collectively based on a lead decision issued by the Ombudsman, without charging the respondent firm for the dismissed complaints. Moreover, these dismissal grounds should be positioned in DISP as 'default outcomes', barring exceptional circumstances, rather than merely giving FOS the option to dismiss.

Question 14 - Should the current time limits for referring complaints to the Financial Ombudsman be reviewed? If so, what alternative approaches should we consider that would provide an appropriate level of protection for consumers?

The timeframe for consumers to refer complaints to the FOS should be reduced from six months to three months. Revisiting a complaint six months after it was made is not beneficial for consumers or firms.

We also support introducing a longstop date for bringing complaints that aligns with the 15-year longstop date under the Limitation Act 1980. The arguments for introducing a long stop gap mirror the reasons why a longstop gap exists in law. The long stop gap should be subject to the same caveats and controls around concealment.

Currently, DISP stipulates that a complaint must be brought within six years of the event being complained about. However, FOS has increasingly adopted new interpretations of what constitutes the "event" being complained about. This has led to investigations and determinations on events significantly older than six years, even when contemporaneous records and data have been destroyed based on data retention policies. For example, in FOS's recent consideration of Standard Variable Rate (SVR) complaints against various firms, firms were asked in 2022 to provide

rationales and supporting evidence for mortgage rate changes dating back to 2007. A similar approach has been observed in affordability complaints on unsecured lending, both of which have been the subject of Judicial Review challenges.

By implementing these changes, we aim to create a more predictable and fair complaint resolution process that aligns with legal standards and reduces undue burdens on firms. That said, we recognise the potential for unintended consequences as a result of this measure and would advocate for a separate consultation before any long stop date is introduced.

Question 15 - Are there any other short to medium term changes you think should be made to the framework? Please tell us:

There should be more regular tri-partite engagement between the FOS, FCA, and industry representatives on emerging complaint issues. This would facilitate more prompt and consistent complaint resolution, benefiting consumers with quicker outcomes and reducing the operational burden and costs on firms.

In addition, we believe the 8% annual interest rate is outdated and inconsistent with current market conditions and court practices. The blanket application of 8% interest can impose significant costs on firms, particularly when delays are beyond their control, such as with claims related to historical practices. A more discretionary approach would ensure consumers receive compensation for actual financial loss while reducing the financial burden on firms.

Question 16 - Should we do more to consult each other on cases, and make our views more widely known publicly, when significant numbers of complaints on a similar issue are being made and/or interpretation of FCA rules is a key issue in the complaint?

The WIF should include more regular, substantive, and transparent engagement between the FCA and the FOS. As previously mentioned, regulatory requirements and expectations fall under the FCA's jurisdiction. While we fully recognise and respect that the FOS operates independently of the FCA, it is crucial that its decisions align with the FCA's requirements and expectations, where applicable, to the case in question. If firms are required under DISP to adopt and implement learnings from FOS decisions (including for non-complainants), it is imperative that FOS decisions are consistent with FCA expectations. Consistency will provide firms with the necessary certainty and confidence to apply these learnings effectively.

Question 17 - Should the Financial Ombudsman be able to pause the timescales in the DISP rules while it awaits regulatory input on the interpretation of rules?

Yes, we support this approach as it would help firms provide accurate complaint resolutions for consumers, by eliminating the need for firms to revisit complaints due to evolving understandings or positions. This, in turn, would reduce the pressure on the FOS from complaint responses that are inconsistent with their expectations.

However, rather than granting FOS the option to pause complaints while the regulator considers these issues, FOS must be required to do so if this proposal is to be effective. This requirement would ensure accountability and give firms the ability to escalate issues directly to the FCA if there is a disagreement between the firm and FOS over the pausing of timescales.

Question 18 - What changes to the current rules should be considered for mass redress events? Please tell us:

No comment.

Question 19 - Are there any other longer term changes you think should be made to the framework, including potential legislative changes?

While not necessarily something that would require legislative change, we would like to see greater scrutiny of CMCs. It is startling that the majority of CMC assisted complaints are not upheld in the consumer's favour, particularly when compared to complaints made direct by the consumer. This is due to poor CMC behaviour, which not only negatively impacts on the consumers they purport to assist, but also has a stifling impact on growth and innovation in the financial sector. At the very least, there needs to be a publicity campaign to remind consumers they do not require a CMC to take a complaint to the FOS and the poor success rates associated with using CMCs.

Question 20 - What proportionate approaches could the FCA use to collect better data on emerging redress events?

We believe that the emphasis should shift away from data, as it tends to be reactive, and instead focus more on firm-led insights gathered through engagement channels. This proactive approach allows for a more nuanced understanding of emerging issues and fosters a collaborative environment between firms and regulators, ultimately leading to more effective and timely resolutions.

Question 21 - In what circumstances should the FCA expect firms, including PRs, to notify it of emerging redress events?

We believe the FCA notification expectations under the PRIN are clear. Ultimately, the FCA should determine whether an issue is, or may become, a 'mass redress event'.

We reiterate that the primary goal of this CFI should be to prevent such events by:

- Ensuring that regulatory expectations are clear to firms, both when offering/administering a product and when handling complaints.
- Ensuring that the FOS decisions align with those expectations.

Creating rules that require PR/CMCs to notify the FCA of what they consider to be emerging redress events could result in speculative behaviours by PRs/CMCs, aimed at creating business for themselves. This would undermine the objective of this CFI, which is to create more certainty for consumers and businesses while encouraging growth and innovation.

Question 22 – What other factors should be taken into account when determining if an issue has wider implications or the potential to become a mass redress event?

The FCA should avoid an overly prescriptive definition of a 'mass redress event.' As we stated earlier in this response, the existing definition of 'wider implications' in the WIF should be used as a reference. Ultimately, the FCA should initially be guided by the FOS and firms regarding the perceived significance of an issue. That said, we believe the key determining factors should include:

- An assessment of what the regulatory requirement or expectation is, or was at a particular time, in situations where this has not previously been articulated by the FCA.
- Applicability to a broader range of complainants/customers across the firm and/or industry, rather than being specific to the individual facts of the complaint.

This approach provides flexibility and ensures the FCA can address issues effectively without being constrained by a rigid definition.

Question 23 - Are there any other changes needed to make the WIF more effective?

We believe that the WIF should be conducted more frequently and with greater transparency. Currently, there is a significant delay between meetings and the publication of minutes, which are often not very informative. Involving firms in these discussions will ensure that they are aware of the issues under consideration and can quickly respond to them.

Additionally, we recommend updating paragraph 23(c) of the Memorandum of Understanding between the FCA and the FOS. Instead of simply "discussing matters of mutual interest," the meeting's role should align with the WIF terms to "agree on the most appropriate approach to managing these risks and issues." This change will enhance the effectiveness of the engagement and ensure a more coordinated approach to addressing emerging concerns.

Question 24 - How effective has the WIF been in facilitating early collaboration between its members and industry on matters with wider implications?

See response to question 23

Question 25 - What improvements could be made to how we work under the current framework to ensure effective co operation on matters with wider implications?

See response to question 23

Question 26 – Do you believe that the amendments made to the WIF ToRs will improve the ability for external stakeholders to provide input on issues where wider implications are identified, and if not, why not?

The amendments to the Terms of Reference for the WIF acknowledge the issues outlined in our response to question 23. However, without substantial improvements in transparency, regularity, and industry engagement, the WIF cannot realistically address the concerns this CFI aims to resolve.

To effectively tackle these issues, it is essential to ensure that the WIF operates with increased transparency and regularity. Additionally, involving industry representatives more actively will help address the challenges and concerns raised, ultimately leading to better outcomes for consumers and the financial services sector as a whole.

Question 27 - What other improvements could be made to how we engage and communicate with stakeholders when considering issues with wider implications

See response to question 26