

Response to Financial Conduct Authority and Financial Ombudsman Service Consultation Paper 25/22: 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 and mutual-owned banks have total assets of almost £650 billion. They hold residential mortgages of over £485 billion, 29% of the total outstanding in the UK. They are also helping 23 million people build their financial resilience, holding over £485 billion of retail deposits, accounting for 23% of all such deposits in the UK. Building societies and mutual-owned banks account for 47% 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.

Executive summary

We welcome the opportunity to respond to the Financial Ombudsman Service (FOS) and Financial Conduct Authority (FCA) consultation paper 25/22: *Modernising the Redress System*. Our response to this consultation should be read alongside our response to HM Treasury's review of the FOS, as both consultations are linked.

We support many of the proposals in CP25/22 and we look forward to hearing more detail in due course. That said, there are a number of other important issues that we think would be prudent for the government to address at this juncture. These include concerns about the validity of the "fair and reasonable" test, the ability to challenge FOS decisions, remaining concerns about the FOS acting as a quasi-regulator and issues related to professional representatives/CMCs. These issues are covered in more detail in our response to HM Treasury's review of the FOS.

Response

Question 1: Do you agree with the proposed criteria for considering whether an issue is a mass redress event?

Yes. The proposed criteria are appropriate and well-targeted. They provide a clear framework for identifying systemic issues that warrant coordinated redress. We support their adoption. We understand why the FCA does not think it appropriate to set rigid targets against the criteria. However, we would welcome further guidance on how these criteria will be applied in practice, particularly in cases involving smaller firms or niche markets.

Question 2: Do you agree with the guidance provided in Annex 4 of this consultation paper, for how firms can proactively identify and rectify potential issues?

We agree with the purpose of the guidance in Annex 4. The guidance is largely constructive and aligns with the sector's commitment to early intervention and fair

outcomes. However, we note some of the examples of good practice seem more relevant to large firms with considerable complaint handling resources. For example, paragraph 27 setting out “good” examples of systems firms have in place to identify issues includes having a central complaints forum, a central data team and using external assistance/consultants. We would not want smaller firms with fewer resources to be penalised for not having the staff available to set up new internal teams or the finances to employ, often expensive, external consultants. More examples showing good practice for smaller firms would be welcome.

Question 3: Do you agree with the additional guidance proposed at SUP 15.3.8G for when firms are expected to report serious redress risks or issues to the FCA?

We agree additional guidance is necessary and should help firms better understand their reporting obligations and promote timely engagement with the regulator. However, we have concerns over some of the proposed criteria thresholds. For example, criteria (a) *Affects a high number of consumers (>40% of the firm's consumers from the affected product line or service)* – why 40% and not 30% or a lower figure? 40% is a very high threshold. It would be helpful to have an explanation for selecting the 40% figure and other criteria thresholds. The consultation is silent on the rationale used for selecting the thresholds.

Question 4: Do you support the introduction of a ‘lead complaints’ process to address novel and significant complaint issues?

Yes, in theory. The lead complaints process is a welcome innovation which should hopefully support consistent resolution of complex or novel issues. It should also reduce duplication and improve regulatory coordination. That said, this is a new step and it remains to be seen how it will operate in practice or whether it will lead to unintended consequences. Other than a flow chart at 5.14, the consultation paper is light on details as to how the new step will operate.

The definition of “novel”, i.e. *new products or services or potential new interpretations of regulations*, is broad and a little vague. However, we assume it will potentially impact other firms with similar ‘novel’ products or who are subject to the same regulation and not just the firm which initially raised the issue with the FOS. If this is the case, we would appreciate feedback on some of the following queries.

We note that firms will be able to pause the consideration of related complaints at the FOS. Does this include all firms with similar products and services or who are subject to the same regulation? How will the lead complaint be communicated to the wider industry, so that they can also pause similar complaints? Will there be co-ordinated communication to the public to explain the pause? How would communication around the lead case avoid “tipping off” of a potential MRE which might result in a flood of additional complaints? More guidance on how the lead complaints process will operate would be welcome.

Question 5: Do you think that the lead complaints process will achieve its intended benefits?

This will depend on how it operates in practice (see response to question 4). We believe the process has the potential to deliver improved consistency, efficiency, and fairness. Its success will depend on clear governance, transparency, and effective communication with affected parties.

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?

Yes, all firms with similar “novel” products or services (not just the firm that initially raised the issue with the FOS) should be permitted to pause processing related complaints. Pausing related complaints is a pragmatic approach that will prevent premature or inconsistent decisions. We support this proposal, subject to appropriate safeguards, particularly around communication to both the industry and consumers.

Question 7: What safeguards should there be to ensure the lead complaints process is not used to delay or avoid complaint resolution?

The consultation is silent on proposals for safeguards. We expect safeguards may vary depending on the nature of the lead case and what is being considered. However, potential safeguards could include:

- Time limits on complaint pauses (with extensions permitted following review by the FOS).
- Regular updates to complainants.
- Specific protections for vulnerable consumers (again, depending on the nature of the lead case and the impact of any delay on vulnerable customers).

Question 8: Do you agree in principle with the introduction of a new registration stage before a complaint is investigated by the Financial Ombudsman?

Yes, in principle. The registration stage should help ensure complaints are appropriately prepared and triaged, improving efficiency and outcomes. We agree it will enhance the FOS's operational agility and will provide an early opportunity for the FOS to temporarily pause cases which may be MRE's or are “novel” and would benefit from the lead case process.

We note the FOS would assess each complaint against two criteria before it can be registered. One of the tests is that there must be “*No Fundamental Challenges*”. This is defined as “*There must be no fundamental objections to the complaint's admissibility or jurisdiction*”. While jurisdiction should be fairly straight forward to establish, it would be helpful to have more information/examples of objections based on a complaint's admissibility. Is this linked to the regulatory or legal status of the complaint or is it something separate?

Question 9: Do you agree that the registration stage will help complainants preparing and submitting complaints to the Financial Ombudsman?

Yes. The registration stage will provide structure and support for complainants, particularly those unfamiliar with the process. It may also reduce delays and improve the quality of submissions.

Question 10: What safeguards should there be to ensure the registration stage does not limit access to justice, particularly for vulnerable consumers?

The consultation paper is silent on potential safeguards related to the registration stage. We believe safeguards could include:

- Clear and accessible guidance for complainants about the registration process and what is required.

- FOS monitoring of outcomes to ensure fairness and that vulnerable customers are not disproportionately impacted

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?

Yes, in principle. The registration step will provide an opportunity for the FOS to identify potential MRE's or novel issues which would benefit from the lead case process early in the complaint process. Pausing complaints, particularly potential MRE's, is vital to ensure cases are dealt with consistently by allowing the FCA (or courts for matters of legal interpretation) the time and opportunity to give a view on a materially relevant regulatory matters.

This flexibility will help firms manage workloads and respond effectively to systemic issues. It will also support better coordination between firms and the Ombudsman.

Question 12: Do you agree that the Financial Ombudsman should consider differential case fees for cases in the registration stage?

Yes. Differential fees should reflect the reduced resource requirements at the registration stage. Firms should not be charged a case fee where the complaint fails to meet the registration criteria. This should incentivise complainants, particularly those represented by professional representatives, to ensure that their complaint is properly evidenced and has a decent chance of success, which should avoid unnecessary delays further down the line.

We note the FOS is currently consulting on case fees, including differentiated case fees. We will respond to the FOS consultation separately.

Question 13: Do you agree with the proposed changes to DISP to improve the Financial Ombudsman's operational efficiency?

Yes. The proposed changes are sensible and will streamline processes, benefiting both consumers and firms.

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?

Yes. Simplifying eligibility criteria (without changing who is and is not eligible) should reduce confusion and improve access to compensation.

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?

Yes. These amendments will enable the FSCS to act more decisively and ensure consumers are not disadvantaged by non-cooperation. We support the proposal.

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?

Yes. Greater discretion will allow the FSCS to respond more flexibly to complex cases.

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 understand the reasons for the amendments and support the proposal in principle. In the rationale section of the proposal, it states that discretion could be used in appropriate circumstances, such as cases that have already undergone a full investigation by another appropriate body and that investigation indicates protected claims exist. Further guidance on the types of circumstances where discretion would be used may be helpful.

Question 18: Do you agree with our assumptions about the sizes of the compliance and legal teams involved in familiarisation and gap analysis, and with our treatment of costs associated with changes to firms' complaint acknowledgment letters?

Yes. The assumptions appear reasonable and proportionate. We support the FCA's approach to cost estimation.

Question 19: Do you agree with our analysis of the costs and benefits of these proposals?

Yes. The analysis is balanced and demonstrates that the long-term benefits of the proposals outweigh the initial implementation costs. We support the conclusions drawn.