

Response to CP26/9 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

- **Registration stage and professional representatives (Q1–Q3):** We support introducing a pre-registration/registration stage and a 'ready to investigate' test, provided minimum information requirements, service standards and decision reasons are clear, and FOS can require properly evidenced referrals (including from professional representatives) before registration/case fee triggers.
- **Dismissal grounds, conduct and finality (Q4–Q8, Q17):** We support stronger dismissal powers for frivolous/vexatious complaints and unreasonable/abusive conduct, and a clearer route to finality (including where firms have already conducted robust reviews in line with regulatory standards/guidance or a consumer redress scheme), with tight governance and transparent criteria (including for 'other compelling reasons').
- **Scope, facts and avoiding duplication (Q9–Q12):** We support clarifying that FOS may consider 'factual' matters and dismiss cases that duplicate court proceedings or other appropriate schemes/processes, but guidance should prevent early-stage triage becoming disproportionate fact-finding and should set clear boundaries for when another forum is more appropriate.
- **Reintroduced dismissal grounds and consent (Q13–Q16):** We support reinstating dismissal grounds for employment matters, pure investment performance complaints and will/trust discretion cases, and requiring consent where there is more than one eligible complainant, subject to clear boundary guidance and workable handling of edge cases (including time limits where consent is difficult to obtain).
- **Implementation, governance and 'fair and reasonable' (Q20–Q21):** We support the overall DISP 3 package and removing 'good industry practice' to improve predictability, but the FCA/FOS should confirm transitional arrangements and fee triggers, explain how oversight and internal review will operate given limited practical challenge routes other than Judicial Review,

and reduce the risk of 'decision-based regulation' through transparency on how FCA rules/guidance and regulatory intent will be applied.

Response

We welcome the opportunity to respond to *Consultation Paper 26/9: Modernising the Redress System*, including the proposals from the Financial Ombudsman Service (FOS) in Chapter 2 and the draft rule changes to DISP set out in the Appendix.

Q1. Do you agree with the proposed rules to introduce a registration stage (pre-registration and registration stages), as set out in the Appendix? If not, please give evidence or reasons as to why not.

BSA response: Broadly yes, in principle. A formal pre-registration and registration process should help ensure that only in-scope, properly framed complaints proceed to investigation and trigger case fees. However, the rules should be accompanied by (i) clear, published minimum information/evidence requirements; (ii) a defined process for addressing omissions (including time limits and a clear status for 'paused' cases); and (iii) transparency on when a complaint is treated as registered for fee and time-limit purposes. In particular, the FCA and FOS should ensure the new registration stage enables FOS to require professional representatives to submit properly evidenced complaints (and, where they do not, to stop the clock and/or decline to register until minimum requirements are met), to reduce delay and cost for all parties.

Q2. Do you agree with the proposal for the Financial Ombudsman to assess whether a case is ready to investigate within the registration stage, recognising that it will develop and publish further supporting guidance to support the rules in due course? If not, please give reasons or evidence as to why not.

BSA response: Yes, provided the 'ready to investigate' test is set out clearly and applied consistently. We would welcome early publication of supporting guidance, including worked examples (especially for cases submitted by professional representatives), standardised information requests, and clear decision-reason templates when a case is not ready. Guidance should also explain how FOS will treat vulnerable consumers and consumers without representation, to avoid the process unintentionally becoming a barrier to access. We also encourage FOS to use the supporting guidance to set clear expectations for professional representatives on evidencing and completeness (including authority to act and customer consent where relevant) so that cases are not progressed where the referral is materially deficient.

Q3. Do you have any other comments, data, evidence, or suggestions regarding the proposed registration stage?

BSA response: Suggestions for the registration stage include:

- (1) publishing service standards (e.g., target times for pre-registration triage and registration decisions);
- (2) requiring a concise 'statement of complaint' identifying the act/omission complained of, product/service, key dates, and remedy sought;
- (3) setting clear expectations of professional representatives (e.g., completeness, authority to act, consent where relevant);
- (4) reporting and governance metrics so stakeholders can assess whether the stage is reducing delays and costs overall; and

(5) specific monitoring and published metrics on professional representative cases (for example, the proportion not registered at first attempt, common deficiencies, time taken to reach registration, and outcomes) so stakeholders can assess whether the reforms are reducing poorly evidenced volume and improving timeliness.

Q4. Do you agree that the Financial Ombudsman should retain the ability to dismiss complaints that are frivolous or vexatious? If not, please give evidence or reasons as to why not.

BSA response: Yes. Retaining an express ability to dismiss frivolous or vexatious complaints is an important safeguard for the effective functioning of the redress system and helps protect resources for complainants with meritorious cases. We would, however, welcome clear published criteria and examples (including how this interacts with professional representatives) to support consistent decision-making and reduce the risk of disputes about the use of the power.

Q5. Do you agree that the Financial Ombudsman should be able to dismiss complaints where complainants have acted vexatiously, abusively or otherwise unreasonably? If not, please give evidence or reasons as to why not.

BSA response: Yes. We support an explicit dismissal ground where complainants (or their representatives) behave abusively, harass staff, or otherwise act unreasonably. This should improve fairness for all parties and discourage poor conduct. Guidance should clarify what evidence FOS will rely on, how it will take account of vulnerability (including where behaviour is linked to circumstances), and what procedural steps will apply before dismissal (for example, warnings and opportunities to reset behaviour where appropriate). We would also welcome clarity on expectations for professional representatives and the consequences of repeated poor conduct, to support deterrence and consistency.

Q6. Do you agree that the Financial Ombudsman should be able to dismiss complaints where the respondent has reviewed the subject matter of the complaint in accordance with (a) the regulatory standards for the review of such transactions prevailing at the time of the review; or (b) any formal regulatory requirement, standard or guidance published by the FCA or other regulator in respect of that type of complaint? If not, please give evidence or reasons as to why not.

BSA response: Broadly yes, provided the evidential and governance expectations are set out clearly. A dismissal ground recognising a firm's prior review in line with the regulatory standards (and related regulatory guidance) that applied at the time should improve predictability and incentivise timely, robust firm-led remediation. To avoid unintended consequences, we think it should be accompanied by clear guidance on what constitutes an adequate 'review' (for example, independence, audit trail, customer communications, approach to vulnerable customers, quality assurance and redress calculation methodology), and how FOS will test whether the review was conducted in accordance with the relevant standards.

Q7. Do you agree that the Financial Ombudsman should be able to dismiss complaints where, the Financial Ombudsman is satisfied, having considered its responsibilities under s. 404B FSMA, the respondent has reviewed the subject matter of the complaint in accordance with a consumer redress scheme? If not, please give evidence or reasons as to why not.

BSA response: Yes, in principle. Where a complaint falls within the scope of a statutory consumer redress scheme and a firm has complied with its obligations (including under s.404B FSMA where relevant), it is reasonable for FOS to have a route to dismiss duplicative complaints and support finality. This should be underpinned by transparent criteria (including what documentation a firm must provide to evidence compliance with the scheme) and clarity on how FOS will treat disputes about eligibility, calculation, or customer-specific circumstances.

Q8. Do you agree that the Financial Ombudsman should be able to bring finality by dismissing complaints where the subject matter of the complaint has previously been considered or excluded under the Financial Ombudsman Service? If not, please give evidence or reasons as to why not.

BSA response: Yes. We support measures that improve finality and reduce repeat consideration of the same underlying subject matter, particularly in high-volume environments. Guidance should clarify what constitutes the same 'subject matter' (including where there are new facts, additional losses, or changes in law/rules) and how FOS will evidence that a matter has been previously considered or excluded, so that dismissal decisions are transparent and capable of being understood by complainants.

Q9. Do you agree with the addition of 'factual' into the existing rule? If not, please give evidence or reasons as to why not.

BSA response: Yes. Clarifying that FOS may take account of 'factual' matters should help reduce disputes about the scope of information it can reasonably consider when deciding whether a dismissal ground applies and when assessing readiness. We would welcome guidance on how FOS will approach contested factual issues at an early stage (including what level of fact-finding it will undertake before deciding to dismiss or proceed), to avoid creating delay or a mini-trial at the triage stage.

Q10. Do you agree that the Financial Ombudsman should be able to dismiss complaints where the subject matter of the complaint has been dealt with, or is being dealt with, by a comparable complaints scheme, regulatory or law enforcement body or dispute resolution process? If not, please give evidence or reasons as to why not.

BSA response: Yes, in principle. Duplication across comparable schemes/processes can create inconsistent outcomes and unnecessary cost. FOS should have a clear ability to dismiss where another appropriate process is dealing with the same matter. Guidance should define what 'comparable' means (including relevant UK ombudsman schemes and other statutory routes), and should ensure the approach remains consumer-friendly where the other process is not genuinely accessible or appropriate for the complainant.

Q11. Do you agree that the Financial Ombudsman should be able to dismiss complaints where the complaint has been or is the subject of court proceedings? If not, please give evidence or reasons as to why not.

BSA response: Yes. Where the same complaint is (or has been) the subject of court proceedings, it is reasonable for FOS to have a clear dismissal route to avoid parallel litigation and conflicting determinations. We would welcome clarity on how this interacts with discontinued proceedings, settlements, and situations where only part of the dispute has been before the court.

Q12. Do you agree that the Financial Ombudsman should be able to dismiss complaints that are more appropriate for court, arbitration or another complaint scheme or dispute resolution process? If not, please give evidence or reasons as to why not.

BSA response: Broadly yes. Maintaining appropriate boundaries between FOS and courts/arbitration/other dispute resolution routes should reduce complexity and ensure cases are dealt with in the forum best suited to them. Guidance should set out factors FOS will consider when deciding whether a complaint is 'more appropriate' elsewhere (including complexity, need for witness evidence/cross-examination, urgency, and whether other remedies are realistically available and affordable to consumers).

Q13. Do you agree with reintroducing a dismissal ground for complaints about employment matters from an employee, or employees, of a respondent? If not, please give evidence or reasons as to why not.

BSA response: Yes. Reintroducing an employment-matters dismissal ground provides helpful clarity and avoids FOS being drawn into disputes better handled through employment tribunals or internal HR processes. We support maintaining a clear distinction between customer complaints and staff employment disputes, while recognising that there may be limited edge cases (for example whistleblowing-related detriment) where other protections already exist in law.

Q14. Do you agree with reintroducing a dismissal ground for complaints purely about investment performance? If not, please give evidence or reasons as to why not.

BSA response: Yes, in principle. Complaints purely about investment performance (absent an allegation of mis-sale, unsuitable advice, misleading information, or maladministration) are not well suited to FOS and risk inconsistent outcomes. Guidance should make clear that the dismissal ground does not prevent consideration of cases where the substance of the complaint is about advice, disclosure, governance, or administration—rather than performance alone.

Q15. Do you agree with reintroducing a dismissal ground for complaints relating to a respondent's discretion under a will or private trust. If not, please give evidence or reasons as to why not.

BSA response: Yes. Matters involving a respondent's discretion under a will or private trust are typically fact-specific, can involve multiple parties and fiduciary duties, and may require court directions. A clear dismissal ground supports appropriate forum allocation.)

Q16. Do you agree that Financial Ombudsman should be able to dismiss complaints where there is more than one eligible complainant, but they have not all consented to the complaint? If not, please give evidence or reasons as to why not.

BSA response: Yes. Where there is more than one eligible complainant, requiring appropriate consent helps protect privacy and ensures decisions bind the relevant parties. Guidance should clarify what constitutes valid consent (including for attorneys/executors/representatives), what happens where consent cannot reasonably be obtained (for example, where a co-complainant is uncontactable), and how FOS will handle time limits in such circumstances.

Q17. Do you agree that the Financial Ombudsman should be able to dismiss complaints for other compelling reasons? If not, please give evidence or reasons as to why not.

BSA response: Yes, but with safeguards. A residual 'other compelling reasons' ground is valuable to deal with atypical situations and prevent the framework becoming overly rigid. However, because of its breadth, it should be tightly governed through (i) clear published guidance and illustrative examples, (ii) internal oversight and quality assurance at FOS, and (iii) transparent reporting on how often it is used and on what basis, to support predictability and trust in decision-making.

Q18. Do you agree with the examples that are proposed for DISP 3.3.4D G? If not, please give evidence or reasons as to why not.

BSA response: Yes we agree with the proposed examples for DISP 3.3.4D G.

Q19. Do you think the six examples that are proposed as guidance for other compelling reasons in DISP 3.3.4D G should instead be separate rules in their own right?

BSA response: We do not have a strong preference in principle. If the examples are intended to be inherently fact-specific and illustrative, guidance is appropriate and offers flexibility. If, however, an example reflects a policy position that should apply consistently and predictably across cases, then turning that example into a separate rule may be preferable. We would therefore suggest the FCA/FOS assess each example against criteria such as: frequency of expected use, potential consumer impact, and the level of discretion intended.

Q20. Do you agree with Financial Ombudsman's proposed changes to DISP 3 (as set out in the Appendix)? If not, please give evidence or reasons as to why not.

BSA response: Broadly yes, subject to the detailed drafting delivering the intended outcomes. Overall, the proposed DISP 3 changes (registration stage, revised dismissal grounds and supporting guidance) should improve operational efficiency and predictability if implemented with clear criteria, transparent decision reasons and published service standards. We would welcome confirmation of transitional arrangements for existing caseloads and clarity on when case fees are triggered under the new process, to ensure there are no perverse incentives or unintended cost-shifting.

Earlier BSA responses on redress reform have highlighted the limited practical routes available for firms to challenge FOS outcomes other than Judicial Review; while that is largely outside the scope of DISP 3 changes, we would welcome clarity on what additional governance, oversight and internal review will apply to the use of the new registration and dismissal powers (including "other compelling reasons") to support confidence, consistency and accountability.

Q21. Do you agree with the proposed changes to DISP 3.6.4R? If not, please give reasons or evidence as to why not.

BSA response: Yes, in principle. Removing 'good industry practice' should help anchor decisions more clearly to the standards (rules, formal requirements and regulatory guidance) that applied at the time of the relevant act or omission and improve predictability for firms and consumers. To support consistent outcomes, we would welcome clarity on how FOS will determine the purpose/intent of relevant

FCA rules (including the role of FCA guidance and policy statements) and how it will handle situations where standards changed materially during the period covered by a complaint.

We also reiterate our longstanding concern that, in high-volume or “wider implications” contexts, FOS can in practice operate in a quasi-regulatory way, with firms feeling pressure to treat FOS approaches as de facto precedent even where the underlying issues may be better addressed through FCA policy, rules or formal redress schemes. As the FCA and FOS take forward these reforms, we would welcome steps that improve alignment and reduce the risk of “decision-based regulation”, including transparency on how FCA rules, guidance and stated regulatory intent will be applied in the fair and reasonable assessment and how consistency will be ensured across cases.