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30 January 2025

By email: redressmodernisationCFI@fca.org.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to Modernising the Redress System call for input

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominately on the work of the FCA.

Thank you for the opportunity to respond to this important consultation. Access to effective redress is one of the Panel's priorities and is also a 'legitimate need' spelt out in the United Nations Guidelines for Consumer Protection.¹

The Panel considers that the current system for redress generally works well in terms of enabling consumers to seek redress where individual issues have arisen. However, the Panel agrees that the current system could be improved to deal more effectively with mass redress events by delivering better outcomes for the consumers affected. The Panel notes also that, currently under the redress system, a consumer who is adversely affected by a firm's act or omission, but is not a customer of that firm, cannot seek redress through the Financial Ombudsman service (FOS).² In modernising the redress system the FCA and the FOS should address this issue.

We have decided to respond to the Call for Input by setting out below some of the Panel's key initial views for improving a redress system for

¹ https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf, see Section III (General Principles).

² <https://www.theguardian.com/money/2025/jan/20/all-my-accounts-were-shut-down-when-tsb-labelled-me-a-fraudster-instead-of-the-victim>

mass redress events. In addition, we have also provided a response to some specific points raised in the consultation questions in the Annex.

Introduction

The Panel expects the FCA to ensure that the Consumer Duty (the Duty) leads to an improvement of firm practices and a reduction in the number of mass redress events going forward. However, this requires demonstrable, rigorous, consistent and effective supervision and enforcement of the Duty by the FCA, which the Panel expects the FCA to deliver.

That said, there is a risk that there will still be mass events causing significant harm to consumers. It is essential that when firms do not meet the standards expected of them and, as a result, cause harm to consumers, that consumers will be compensated for their losses. In such situations, it is imperative that consumers have access to the mechanisms they need to obtain prompt and commensurate redress. This is especially important where consumers have been harmed despite taking all reasonable steps to guard themselves against that harm.

An efficient and effective redress system supports the development of well-functioning markets. It ensures access to justice and confidence in the system as a whole – and is an important adjunct to the public enforcement and regulatory regime. The existence of an efficient mass redress system for consumers should not be viewed as a regulatory burden on business. On the contrary, the Panel considers it is good for good businesses, it is pro-competition and pro-growth.

The Panel accepts that an inefficient redress system can place undue burdens on regulated firms. However, it notes that in many cases, firms can take proactive action to reduce the risk that the redress process spirals into something that becomes uncontrolled, unmanageable and ultimately more costly.

The Panel believes that in looking to reform the system relating to mass redress events, the FCA should adopt a consumer-first approach. Its decision making should be focused on delivering an effective redress system that is able to undo the harm caused to consumers when things go wrong, and that it is able to undo the harm promptly. The Panel acknowledges there is evidence of some poor practices by Claims Management Companies and/or other paid representatives (collectively referred to as PRs in the rest of our response). While such behaviours need to be discouraged, their current existence should not be driving the development of an effective system for consumer redress following a mass redress event.

We also note the timing of this Call for Input coincides with considerable concerns regarding the potential redress liabilities regarding motor finance agreements and other commission-based sales practices. While these issues may make for useful case studies and/or examples to check any future mass redress policy proposals, the Panel would respectfully remind the FCA that the motor finance agreements issue is simply one example of a mass redress event and so should not be used to unduly influence any proposed reform of current redress procedures.

It is also important to note that in developing a system dealing with mass redress events (and indeed, making changes more generally to the existing redress systems), the FCA must ensure that SMEs have appropriate access to redress. This is particularly important in relation to micro businesses whose challenges are more closely aligned to individual consumers.

The Panel believes that the redress system could be strengthened, and deliver better outcomes for consumers, if the Duty was enshrined in primary legislation. This would give consumers a private right of action (PROA), which could be applied as a last resort in the redress system for the most egregious harms. A PROA does not currently apply to FCA principles – the Panel believes that the lack of PROA critically undermines incentives for firms to do the right thing.

1. Consumer challenges caused by an ineffective redress system

- 1.1. Where a redress system is not easy for consumers to understand and use, access to justice is inhibited and legitimate claims are likely to be deterred. Such concerns are amplified where an issue is portrayed as complex, where any redress payments are likely to be subject to considerable delays and/or where an issue has attracted significant interest from PRs.
- 1.2. In such situations, some consumers may be particularly unsure whether they could (or should) make a claim themselves, or whether they should really use a PR. Some may be deterred from making legitimate claims because:
 - the perceived complexities lead them to question whether the outcome will be worth the time, stress and inconvenience of pursuing a complaint; or
 - they do not fully understand how PRs operate and/or are sceptical or distrustful of such organisations.

- 1.3. In addition to suffering the direct financial harm as a result of not pursuing redress where they have legitimately lost money and are entitled to compensation, consumers may:
- Suffer further financial harm beyond the original loss, for example:
 - due to the knock-on effects of suffering the initial loss, such as missed mortgage payments, impacted credit score; cutting back on other financial products leaving them insufficiently protected.
 - Due to not understanding the full implications (in terms of costs/fees) of using a PR.
 - Suffer psychological harm e.g. anxiety, distress which flows directly from the above, particularly where delays are lengthy, processes are cumbersome and/or the primary loss was significant.
 - Lose confidence in the market and financial products and services, which leads to a lack of engagement and participation in financial services markets, which in turn has a negative impact on competition and growth.
 - Lose access to well-functioning products and services (both while the business is distracted with large volumes of complaints and in the longer term).
- 1.4. It is important to note that consumers in vulnerable circumstances are disproportionately affected, and less likely to receive good outcomes, as they may struggle to access redress or pursue claims through a system that is challenging to navigate.

2. Principles for a well-functioning redress system that meets consumers' needs

- 2.1. The Panel believes that a well-functioning redress system (whether for individual or mass redress events) should adhere to the following principles. Redress systems should be:
- Accessible – systems are designed inclusively; consumers know how and where to access redress and are able to do so themselves without unfair/unnecessary barriers or complications.
 - Timely - consumers can access redress systems, and remedies can be provided within a reasonable timeframe.
 - Fair – outcomes should be fair and consistent i.e. the same harm leads to the same approach to redress.
 - Free - redress mechanisms should be free to access for all consumers. We do not oppose the use of PRs, providing that

consumers have been provided with clear, timely and relevant information to enable them to make informed decisions.

- Transparent - the redress system should be transparent so consumers understand the process they are in e.g. what will happen, when and why, how redress will be assessed, who is making the assessment, when any redress is likely to be paid etc.
- Equitable - consumers should always have recourse to the courts, through a private right of action, in the event they are not satisfied with any redress outcome sanctioned by a regulatory or Alternative Dispute Resolution (ADR) based system.

3. An effective mass redress system that delivers good outcomes for consumers

- 3.1. A mechanism for delivering mass consumer redress should be a matter of last resort. The primary focus should be on preventing mass redress events arising in the first place, and where something goes wrong, there should be a clear focus on the firms putting things right proactively without the need for large numbers of consumer claims.
- 3.2. That said, the Panel believes that it would be beneficial for consumers if there was a specific system for the FCA and FOS to manage mass redress events, rather than leaving consumers in the current situation. Properly implemented, the Panel believes such a regime could deliver significant benefits for firms and consumers. In addition to factoring in the principles set out in the previous section, the Panel would encourage the FCA to be aspirational when considering what such a system should look like. While developing the perfect system may not be feasible in the short term, we would encourage the FCA to adopt a holistic approach and to have such an end-destination in mind. This is to help ensure that interim steps are moving towards that end goal.
- 3.3. As further discussed below, an efficient and effective mass redress system will involve collaboration between a range of stakeholders, with firms, the FCA and FOS all having particularly important roles to play. All stakeholders will need a clear understanding of what a 'mass redress event' looks like. Their respective roles and responsibilities – especially regarding monitoring for, flagging and resolving mass redress events – will all need to be appropriate and clearly set out. In particular, existing MoUs and the Wider Implications Framework will need to be amended to support and give effect to any new mass redress framework, to ensure such a framework works efficiently and effectively alongside the existing regulatory landscape.

Defining a 'mass redress event'

- 3.4. The Panel believes that a clear definition of 'a mass redress event' is fundamental to a successful scheme and to enable shared understanding and effective collaboration between stakeholders. The ability for all relevant stakeholders to act swiftly should be the driving force behind the definition.
- 3.5. Clear metrics/criteria will need to be agreed to decide at what point multiple complaints officially become a 'mass redress event'. We consider the existence of a mass redress event should be determined by factors such as the number of consumers potentially affected, the similarity of the harm and the similarity of the circumstances leading to that harm. The size of any financial loss suffered should not be relevant for determining whether a mass redress event has arisen (though it would be relevant to how the event is dealt with).
- 3.6. The definition needs to be flexible enough to ensure the FOS and/or firms flag to the FCA appropriate situations of multiple complaints with them – but allows the FCA to act where there is sufficient commonality between complaints involving a number of different firms.

Early identification of 'issues with wider implications'

- 3.7. To deliver good consumer outcomes, mass redress events must be identified early, and appropriate incentives need to be built into the regime to facilitate this. The earlier mass redress events are identified, the less likely they are to develop into overly burdensome and unmanageable issues for firms, and consumers are more likely to obtain prompt and fair redress.
- 3.8. Accordingly, the Panel considers it is important there is a focus on flagging 'potential mass redress events' as opposed to the reporting of an actual mass redress event.
- 3.9. Although all relevant stakeholders should be able to flag the potential existence of a mass redress event, the system should be designed to ensure those best placed to identify a potential mass redress event are charged with the primary responsibility for doing so. For example, where a single firm receives multiple complaints about the same business practice, there should be a clear obligation on that firm to flag the issue promptly with the FCA. While firms may be well placed to predict a potential market wide mass redress event, we would expect the FCA and/or FOS to play a more central

role in identifying such issues (e.g. through upheld FOS decisions or upheld FOS decisions in combination with the number of cases being brought to FOS on similar issues).

3.10. Obligations on firms to monitor and report on potential mass redress events should be clearly set out, and we would also expect to see clear duties and powers for the FCA and FOS to monitor and report on potential mass redress events (presently paragraph 23c of the MoU between the FCA and the FOS simply requires the parties to meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest, which “may include” emerging redress events). The FCA and FOS should have mutually agreed well-defined data sharing and operational mechanisms in place to assess for the possibility of a mass redress event occurring in a particular firm, across a wider financial services sector or the industry as a whole. The Panel would also urge the FCA to consider whether new rules and incentives should be introduced to help ensure firms report potential mass redress events promptly. This could include, for example:

- Introducing shorter timeframes for responding to complaints (e.g. reduce the current 8-week limit to 4 weeks) which can be extended to a reasonable degree with consent of the FCA in appropriate circumstances. In the Panel’s view, 4 weeks should be more than enough for firms to respond to consumer complaints on individual issues, and is likely to be more in keeping with consumer expectations in a more digital economy. The Panel appreciates that in some other sectors (notably water, energy and telecoms) suppliers/providers are given an 8-week period to respond to a customer complaint³. However, the Panel believes that this should not prevent the FCA from stepping up to set a shorter period.
- FCA guidance ensuring clarity as to when a Principle 11 notification is required from a firm (including PRs), followed by FCA action when such firms do not comply.
- Increased and targeted FCA Supervision over firms experiencing increasing complaints.
- Mandating the inclusion of interest on sums owed to consumers from the date the loss arose.

3.11. The Panel will continue to raise concerns directly with the FCA, in meetings with relevant teams. However, other consumer stakeholder organisations will need to be given adequate opportunity to raise concerns about issues with wider implications that could lead to mass redress events. For example, the FCA could

³ We note that the Government is considering a shorter period in the energy sector: <https://www.gov.uk/government/calls-for-evidence/review-of-ofgem-call-for-evidence>

establish a standing consumer representative liaison working group that it proactively consults on such matters and/or send relevant and directed communications to a full list of not-for-profit organisations that are within its scope.

- 3.12. There needs to be a clear notification pathway for persons other than (as well as) regulated firms to use to report a potential mass redress event, and a clear process for the FCA to follow to review and rule on any notifications.

Determining whether a mass redress event has arisen

- 3.13. Where a potential mass redress event has been identified (whether by a firm, the FCA or the FOS or otherwise), the Panel would expect the FCA to formally determine whether a mass redress event has occurred. Any such determination would need to be by reference to a set of pre-determined criteria, as discussed in paragraphs 3.4-3.6 above. It is important that any such determination is made swiftly and that the regime is designed to facilitate such an outcome by, for example, limiting the scope for such determinations to be subject to lengthy legal challenges.

Managing issues in relation to mass redress events

- 3.14. Where a mass redress event has occurred (for example, where this has been accepted by a firm and/or determined by the FCA), the system should facilitate the fast and efficient flow of redress to consumers. Ideally, consumers should be compensated proactively and without the need for them to navigate the standard complaints procedure. And it is fundamental that consumers should not be any worse off than they would have been had their individual complaint been resolved by the FOS.
- 3.15. The Panel believes that in the majority of mass redress events, it would be appropriate for the firms to take responsibility for delivering the mass redress scheme i.e. identifying the affected consumers, determining the amount of redress required, and ensuring this is provided promptly to the relevant consumers. However, the Panel considers the FCA should have a clear oversight role to help ensure the redress scheme is fair and effective. We also consider there would be considerable merit in the FCA involving the FOS in this process (see further below).
- 3.16. However, where the firm is unwilling to implement a fair redress scheme in a suitable timeframe, the FCA should have a clear power to specify how the relevant firm(s) should meet their redress obligations. While such a power may not be dissimilar to the FCA's current s404 powers, we consider a new power would be preferable

to ensure the FCA is able to act promptly and with the appropriate flexibility to specify what it considers to be a fair and reasonable redress settlement. Again, we think there would be considerable merit in the FCA involving the FOS when exercising such a power (see further below).

- 3.17. In either case, we are conscious the FCA would need to act without undue delay to provide certainty for affected firms and to limit further harm to consumers, particularly if firms are liable to consumers for interest on any redress payments owed. Accordingly, we would invite the FCA to consider whether it would benefit from a new statutory obligation to act expeditiously when specifying or approving a mass redress scheme.
- 3.18. Finally, we note that the involvement of consumer organisations, the Panel and other consumer representative groups will often be important to help deliver an effective and efficient redress scheme. The Panel would encourage the FCA to consider how effective collaboration with relevant stakeholders can be built into the system, for example to help identify and/or reach out to affected consumers, or to be consulted on the proposed resolution of complaints (to help ensure this lands well with consumers).

4. The important role played by FOS should not be lost

- 4.1. The Panel believes that FOS plays an important role in the current redress system, which must be maintained. The FOS offers an objective and independent view of the regulatory rules and regime, meaning that:
- Unlike the FCA, it is not 'marking its own homework' in relation to widespread issues that arise;
 - FOS is more immune to accusations of confirmation bias and regulatory capture; and
 - FOS can arguably offer a better consumer perspective as it is not legally bound to weigh up competing statutory objectives.
- 4.2. Further, the Panel notes the FOS has more freedom to determine a set of outcomes for any individual consumer complaint (given its broader fair and reasonable test) than the FCA does.
- 4.3. Consequently, we consider the FOS could score more highly on consumer trust measures than the FCA when issues of mass consumer redress issues are being resolved, not least because the FOS has not been involved in setting the initial rules or policing them in the intervening period. We would urge the FCA to carefully

consider this point and, as a result, consider how the FOS could have a central and clearly defined role with respect to resolving mass redress events. Such a role should involve the clear ability to influence consumer outcomes but without:

- the risk of FOS losing its independence (or the perception of its independence); and
 - disruption of, or distraction from, its primary function of resolving individual complaints quickly and effectively.
- 4.4. The Panel would encourage the FCA and FOS to consider what would be needed to ensure stakeholder confidence in the process. For example, it might be appropriate for a specific oversight panel to be established in relation to any given mass redress event, which is formally convened and involves relevant regulatory stakeholders (in addition to the FOS and FCA), potentially building on the work of the Wider Implications Framework. Any new oversight function would, however, need to be established by reference to clear and specific responsibilities and obligations to ensure that it enhances the system and does not become an additional administrative layer/process.
- 4.5. In the CFI, the point is made about consistency between the FCA and FOS on the interpretation of FCA rules being important. While consistency is to be welcomed, the Panel notes that there is also considerable value in the FOS providing a different perspective, especially in situations where the market/practices have developed in a way that was not expected and which has led to consumer detriment. We do not consider it is right to say consumers shouldn't be compensated because it's not what everyone had expected at the outset. This is even more important now with the Consumer Duty given the focus on outcomes.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex

Some further specific points in response to the questions posed in the Call for Input

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?

As noted in the main body of our response, the Panel considers that the 8-week deadline for firms to consider consumer complaints is longer than needed in most circumstances and can often represent a significant delay for consumers which causes further economic loss and/or unnecessary distress and inconvenience. Instead, the Panel would support the introduction of a standard 4-week deadline.

However, the Panel recognises that where a firm receives significant volumes of complaints, it may not be able to meet a 4-week deadline (or, in extreme circumstances, the current 8-week requirement). Where this is the case, it may be appropriate for firms to seek approval from the FCA to extend the complaint resolution deadline in respect of some or all of their complaints on a particular issue. For example, it may be appropriate for the FCA to extend the deadline in relation to PR-led complaints where a firm has received a significant volume of such complaints on an issue, but require the firm to meet its standard deadline for individual complaints. In any event, any such mechanism to extend complaint handling deadline should not be used by firms to circumvent their obligations to have effective complaint handling processes in place.

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?

The Panel does not support a return to a 2-stage process for complaint handling. We do not consider such an approach is necessary if complaints are handled properly. While the Consumer Duty does place clearer obligations on firms in terms of complaint handling, the Panel notes that some firms previously abused the 2-stage process, despite their regulatory obligations to treat customers fairly. We are concerned that some firms would do the same again. As noted in the response to Question 7, as a better alternative, the Panel would prefer that firms are required to request an extension of the complaints handling period from the FCA in advance of the complaints handling deadline.

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?

While the Panel recognises the operational impact of poorly evidenced complaints by PRs and agrees that speculative/unmerited complaints should be discouraged, the Panel urges the FCA to adopt extreme care when proposing any changes in this area. The Panel notes that often a consumer will utilise a PR because they are unable to pursue a claim themselves. As such, it is not reasonable to assume that the consumer can influence how a PR operates or submits a claim to the extent it would be appropriate for the consumer to be penalised for a poor complaint (as they would be if the complaint can be rejected by FOS or if time limits continue to run until FOS formally accepts a complaint).

If the policy objective is to deter poor practice by PRs, the Panel considers the policy response should be to penalise the relevant PRs, for example through regulatory action or higher case fees (which cannot be passed onto consumers).

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

If the regime dealing with mass redress events is set up appropriately, there should not be large numbers of claims going to FOS and as such, the Panel is not convinced any further changes to case fee rules specifically in relation to mass redress events are necessary.

However, more generally, the Panel believes consideration should be given to whether there should be higher case fees imposed on firms who experience a high uphold rate before the FOS. As mentioned above, we also think consideration should be given to whether higher case fees should be imposed on PRs who have a significant number of their complaints rejected (with a requirement that such fees should not be borne by consumers). Furthermore, we would expect to see regulatory action (e.g. by the FCA or SRA) taken against PRs that repeatedly fall below the standards expected of them (e.g. by filing claims that are obviously without merit).

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?

The Panel considers that the current approach works well and is unconvinced there is any need for change in this regard.

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

The Panel agrees that where it has been determined that a mass redress event has occurred, the FOS should, where appropriate, be able to (i) pause or dismiss complaints and (ii) refer those complaints to a centrally organised redress scheme that has been established by the FCA or with appropriate oversight by the FCA. However, it remains important that consumers have recourse to the FOS if, due to their own particular circumstances, any such centrally organised redress scheme is not appropriate for them.

The Panel remains to be convinced that a power to pause/reject and refer complaints should exist for the FOS in relation to individual complaints or in relation to groups of claims where no mass redress event has been determined to have occurred.

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?

We do not consider there is any need to change these. As we understand it, the current time-limits reflect the legal position and the time-limits that would apply in court. Accordingly, there would be no substantive benefit to firms in terms of their potential liabilities through making such a change, but it would lead to unnecessary costs to consumers in bringing cases and ultimately lead to fewer consumers seeking redress (which in turn leads to weaker disincentives for poor behaviour by firms).