

Redress & CMC Policy Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

By email

29 January 2025

Dear Sir/Madam,

Call for input: Modernising the redress system

The Panel welcomes the opportunity to respond to this Call for Input and broadly supports the proposals. The Call for input highlights a range of issues with the current system which require immediate attention, recognising that some may take time to implement should change to primary legislation be needed.

Firstly, we recognise the critical importance of having a strong, objective "adjudicator" in place for consumers where they have a dispute with a financial institution which requires resolution. Given the imbalance of 'power' between institutions and individuals, this provides a vital service to consumers who may feel as though they cannot legitimately resolve their dispute directly.

Our primary concern is that the complexity of the UK redress system, involving multiple agencies with differing bases of interpretation of the same laws and rules, has created an environment of regulatory uncertainty, for both businesses and consumers. This is affecting the cost and availability of capital for UK financial services firms to enable them to innovate, take risks and grow, and having flow on effects for growth in the wider economy due to constraints on lending and the provision of equity.

Given the severity of the issues and importance of resolving them against the FCA's secondary objective, if legislation is needed to bring about necessary changes, we encourage this to be progressed at the earliest opportunity. Within this "Stage 2" legislative work, it will also be vital to reset expectations - of consumers; of market participants; of consumer representatives. There is need for clarity and alignment on the role of the FOS, how the FOS makes decisions, how that relates to the law, how it relates to regulations in force and how issues that go beyond simple dispute resolution between an individual and a firm will be picked up, reviewed and progressed by the FCA (or other appropriate regulator), not the FOS.

Alongside the passage of any changes to primary legislation, it will be important to progress "Stage 1" measures both to stem existing problems as much as and as early as possible and in demonstrating clear commitment to getting the issues resolved. Within the range of potential work identified for stage 1, priority should be given to addressing areas which limit retrospectivity, and to measures which adjust the basis of decisions:

- **Limitation for FOS complaints** – The Panel strongly supports introducing a 'hard' longstop date to prevent complaints being made about events long in the past. Retrospective application is one of the critical issues affecting investor confidence and risk appetite within firms.
- **Basis of decisions** – We would welcome the FOS providing more detailed explanations of the rationale for its decisions to ensure all stakeholders have a clear understanding of those considerations. Even better, more pre-engagement with the FCA before the FOS makes any determinations that may run counter to existing law, regulation or technical guidance would ensure that all potential wider impacts are understood by the FOS and FCA (or other appropriate regulator) before the FOS formally decides to change its

approach. Any such changes would otherwise be subject to cost-benefit analysis before being made, and there should be no lower standard for consideration through the FOS.

- **Escalation to the FOS for final decision** – We welcome the intention of this proposed change. Given the FOS' final decision runs the biggest risk of setting unintended precedent, finding ways to limit that risk is important. However, that needs to be done very carefully so as not to limit consumers and firms' ability to challenge the FOS, especially given the basis on which their decisions are reached. The "fair and reasonable" test that the FOS applies is inherently subjective, and often requires delicate judgement based on the specific factors of the individual case. Consumers and firms need a mechanism through which to refer cases to a more senior member of the FOS team to test that the judgements being applied to decisions are truly "fair and reasonable". It would be ideal to enable that without triggering a "final decision" that risks setting precedent unless the latter is absolutely necessary, based on very limited considerations.

More broadly, we welcome proposed enhancements to the Wider Implications Framework aimed at ensuring views on regulatory requirements are consistent, including more formalised regular engagement with the FCA's Independent Panels.

The changes the FCA is anticipating making must remove the risk that the FOS inadvertently sets or is perceived to be setting (both are important) new regulatory standards. Absent a legislative change to the remit of the FOS, or the relationship between the FCA and FOS, the Wider Implications Framework must become the vehicle through which the FCA is able to perform either a consultation and /or an effective cost-benefit analysis on any decision by the FOS that could be regarded by industry or industry observers as a different interpretation of existing rules.

Given the importance of these changes to the cost of capital of UK firms, and their own responsibilities with respect to competitiveness and growth, we would go so far as to suggest that the PRA should be part of the Wider Implications Framework to make sure that the secondary consequences are borne fully in mind as early as possible in any decision-making process.

We would be happy to discuss any of these points further.

Yours faithfully,

[signed]

Matt Hammerstein
Chair, FCA Practitioner Panel