

Financial Services Strategy
HM Treasury
1 Horse Guards Road
SW1A 2HQ

8 October 2025

Dear Sir / Madam,

Review of the Financial Ombudsman Service

Thank you for the opportunity to respond to the Review of the Financial Ombudsman Service. We have focused our comments on the questions where we believe further reflection is required.

Summary

1. Favourable conditions for financial firms to invest and innovate is one important aspect of the conditions required for economic growth; consumer confidence is just as crucial to the growth of the UK economy.
2. The Financial Ombudsman Service's (FOS) purpose, to resolve complaints on a fair and reasonable basis, as a quick and informal alternative to the courts, is a key element in underpinning consumer confidence by providing the reassurance that consumers will receive timely redress if something goes wrong.
3. The potential risk that FOS might not take FCA rules into account, despite already being required to, should be successfully mitigated by the proposals to strengthen liaison with the FCA and to ensure greater consistency in FOS's determinations. Therefore, we do not agree that the proposed changes to FOS's 'Fair and Reasonable' test are either necessary or desirable.
4. It is fundamental to the concept of an ombudsman, both in the UK and internationally, that they make decisions based on what is fair; changing that approach would leave FOS out of step with other ombudsman schemes in the UK and risk losing the benefit that the ombudsman model brings.
5. We support the principle of strengthening liaison between FOS and FCA and the ability for FOS to request a view from the FCA on the interpretation of their rules. We are however concerned that the proposal to duplicate that process by also allowing parties to the complaint to request a referral to the FCA will, contrary to the intention, be perceived and treated as an 'appeal' route, likely resulting in delay and frustration for both parties.
6. Making FOS a subsidiary of the FCA would reduce consumer confidence in the redress system.

Background

7. The Ombudsman Association (OA) is the professional association for ombudsman schemes and complaint handling bodies in the UK, Ireland, the British Crown Dependencies, and the British Overseas Territories.
8. The OA's membership criteria¹ are recognised both in the UK and internationally as representing best practice. This is reflected in the UK Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*,² which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'.³
9. The Vision of the OA is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.

Q1: Do you agree that, where conduct complained of is in scope of FCA rules, compliance with those rules will mean that the FOS is required to find a firm has acted fairly and reasonably?

Q2: Will the aligning of the Fair and Reasonable test with FCA rules still allow the FOS to continue to play its relatively quick and simple role resolving complaints between consumers and businesses?

10. We do not agree that the proposed changes to FOS's 'Fair and Reasonable' test are either necessary or desirable. The potential risk that FOS might not take FCA rules into account, despite already being required to, should be successfully mitigated by the other proposals in the Review.
11. In any case, it is fundamental to the concept of an ombudsman, both in the UK and internationally, that they make decisions based on what is fair; changing that approach would leave FOS out of step with other ombudsman schemes in the UK and risk losing the benefit that the ombudsman model brings.
12. As the Lady Chief Justice for England and Wales set out,⁴ the civil justice system plays three key roles in society: (1) it prevents disputes by guiding behaviour; (2) it resolves disputes without the need to resort to the courts; and (3) in the last resort, the courts determine disputes by adjudication.
13. Whereas 'simple' complaint handling focuses solely on part (2) of that model, an ombudsman aims to deliver both (1) and (2), providing an independent redress model, free at the point of

¹ www.ombudsmanassociation.org/about-us/join-ombudsman-association

² www.gov.uk/government/publications/new-ombudsman-schemes-guidance

³ www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

⁴ [Speech by the Lady Chief Justice: Civil Justice Council's 12th National Forum - Courts and Tribunals Judiciary](#)

use, that can drive systemic change, tackle injustice, and help organisations to perform more efficiently and effectively.

14. Ombudsman schemes, which were described by the Master of the Rolls (at the launch of the Online Procedure Rules Committee) as *“the unsung heroes of the justice system”*, are different to the basic transactional complaint handling which simply picks a ‘winner’ in a dispute. Resolving an individual dispute is of course key to those individuals involved, but the real value in the ombudsman model is their role in feeding back the lessons from their work in order to help secure redress for others in a similar situation, and to improve service delivery and complaints management for the future; all based on what is ‘fair’.
15. As the consultation paper sets out, the FOS is already required to take into account FCA ‘rules, guidance and standards’; *“In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account: (1) relevant: (a) law and regulations; (b) regulators’ rules, guidance and standards; (c) codes of practice; and (2) (where appropriate) what he considers to have been good industry practice at the relevant time”*.
16. The Review rightly identified that there is a small risk that, regardless of that requirement, FOS might still make decisions that do not fully take into account FCA rules, particularly in the scenario of a mass redress event if there is a lack of clarity in what the FCA intended in rules that have not yet been tested. Whilst the Courts provide the ultimate ‘backstop’ to address such an error, it is clear that the proposed process changes and stronger liaison between FOS and the FCA can mitigate that further.
17. Those proposals to ensure greater consistency in FOS’s determinations, referrals to the FCA on interpretation of FCA rules, and the approach to mass redress events, should successfully mitigate that risk, reducing the reliance on the Courts to address any potential deviation. As such, the proposed changes to the ‘fair and reasonable’ test to ensure alignment with FCA rules are, at best, redundant. Worse, they risk downgrading the ombudsman to a basic redress scheme.
18. The evidence that is being relied upon to support such a significant change, in terms of when, and how often, FOS have repeatedly deviated from FCA rules, was not set out in the consultation paper. It is therefore difficult to assess the impact of the proposed change on consumers in terms of what previous determinations were ‘wrong’ and therefore would’ve been different.
19. What is clear, is that the growing popularity of ombudsman schemes across different sectors demonstrates that the UK public value and trust the ombudsman model of making decisions based on what is ‘fair’. Existing ombudsman schemes across the UK have seen significant increases in casework; 33% for the Scottish Public Services Ombudsman,⁵ 54% for the Communications Ombudsman,⁶ and 70% for the UK Financial Ombudsman Service⁷. At the same time the UK Government is increasingly embracing the ombudsman model to provide effective redress, drive improvements, and reinforce consumer confidence, as seen in the

⁵ [Public service complaints statistics 2023-24 published | SPSO](#)

⁶ [Communications Ombudsman releases updated... | Communications Ombudsman \(commsombudsman.org\)](#)

⁷ [New data reveals 70% jump in financial complaints – Financial Ombudsman service \(financial-ombudsman.org.uk\)](#)

proposals to establish ombudsman schemes in the private rented sector, the water sector, and the gambling industry, and in both strengthening the powers and extending the jurisdiction of the Energy Ombudsman.

20. Fundamentally changing the nature of FOS's approach, despite it generally being held in high regard by consumer groups,⁸ therefore presents several risks, including reducing consumer confidence in the redress system, and by extension financial services more broadly, and potentially having a significant impact on the Courts if consumers conclude that FOS's ability to provide fair and reasonable redress has been downgraded and is no longer a viable alternative to the Courts.
21. Before any change is progressed further it would therefore be helpful to see both the evidence that has prompted such a significant change to the purpose and approach of an ombudsman and the corresponding impact assessment.

Q5: Do you agree that there should be a mechanism for the FOS to seek a view from the FCA when it is making an interpretation of what is required by the FCA's rules?

22. In principle, we welcome the proposed strengthening of the liaison between FOS and FCA, and formalising a route by which FOS can seek clarification from the FCA on the intention and interpretation of their rules – particularly where those rules have potentially not been tested to date, or where there might be wider implications or a potential mass redress event. It is particularly important that the process around that is clearly understood, otherwise it risks introducing a bottleneck into the redress system.

Q6: Do you agree that parties to a complaint should have the ability to request that the FOS seeks a view from the FCA on interpretation of FCA rules where the FCA has not previously given a view?

Q7: Do you agree that parties to a complaint should have the ability to request that the FCA considers whether the issues raised by a case have wider implications for consumers and firms?

Q8: As part of implementing the proposed referral mechanism, do you think there are any issues which should be considered in order to ensure the mechanism works in the interests of all parties to a complaint?

23. We have concerns about the additional proposal that the parties to the complaint can request a referral to the FCA. Whilst it has been stated that this is not *intended* to be treated as an 'appeal', it is highly likely that both parties will consider and treat it as such when they are unhappy with FOS's provisional decision.
24. If a firm treats it as such, the minimum impact will likely be delaying the resolution that a consumer is rightfully due by a further 30 days. If the consumer does so frivolously, it will unnecessarily increase the time and resource a firm has to assign to a complaint. If the FCA are overloaded by requests, and backlogs form as a result, the delay will be even longer. Such a scenario will damage confidence in the redress system.

⁸ For example: [20250130-fscf-response-to-fca-fos-modernising-the-redress-system-final.pdf](https://www.fscf.co.uk/media/20250130-fscf-response-to-fca-fos-modernising-the-redress-system-final.pdf)

25. Whilst, in theory, that could be addressed with clear criteria and an agreed 'bar' for meeting the conditions for a referral if it is adopted, in applying that agreed criteria it is likely that FOS will be perceived as acting as a 'gatekeeper' by both firms and consumers, supposedly unfairly 'blocking' access to the FCA. Whilst this should not be the case, it will likely create a point of tension, with a perception potentially developing that the redress system is not effective.
26. The solution already proposed of formalising a mechanism for FOS to seek a view from the FCA when it is making an interpretation of their rules should address the potential problem identified in the Review. Trying to duplicate that same process for the parties to the complaint will likely have unintended consequences, raising unrealistic expectations amongst both parties, introducing delay to the process, and as a result damaging the perception of the efficiency and fairness of the redress system.

Q9: Do you agree that the Chief Ombudsman should have overall authority for determinations made by FOS ombudsmen, and through that authority, should be responsible for ensuring consistent FOS determinations?

27. We support the proposal to clarify authority and responsibility for determinations. As well as supporting consistency in decision making, sharing the delegation scheme will also support transparency.

Q10: What approach to transparency arrangements would provide the most accessible way for consumers and firms to understand what outcomes to expect for particular types of cases that the FOS deals with?

28. Transparency, and sharing learning from complaints to drive improvements, is a key element of the OA's Criteria. Over the years, it has become accepted best practice amongst academics and consumer groups that ombudsman schemes should publish summaries of individual decisions. It is also a common view that whilst that raw information can be useful, even greater value can be found when insight is applied to that data.
29. It is therefore best practice for ombudsman schemes to publish 'case digests' and thematic reports, drawing together insights to inform consumers, the industry, and policy makers. It is common for ombudsman schemes to have the *power* to produce thematic reports, and common for stakeholders to expect them. We do not therefore think it is necessary to *require* FOS to produce thematic reports. Even if it was felt necessary to have a formal requirement, flexibility should be maintained around frequency to ensure the requirement does not become outdated; it is plausible that on occasion it would be helpful for them to be either more or less frequent.
30. As an independent organisation, FOS should not need to seek *approval* from the FCA before publishing documents. With certain content it would of course be appropriate for FOS to liaise with the FCA in advance, as they would with other stakeholders when appropriate.

Q12: Taking into account the other reforms proposed in this consultation, do you think that the FOS should be made a subsidiary of the FCA? If so, what are your views on the appropriate institutional arrangements?

31. We welcome the importance placed on FOS and the FCA working closely together on matters of common interest. A regulator and an ombudsman are however deliberately different organisations with deliberately different objectives.
32. Separating the regulatory function from the complaint handling function is commonly accepted as good institutional design and is replicated across regulated sectors. One of the benefits this provides is that the ombudsman's inquisitorial approach makes it more a doctor than a police officer, diagnosing what is wrong and making recommendations to improve. And it is in that guise, as an 'agent of change', that an ombudsman plays a role in rebuilding trust and consumer confidence.
33. Merging the two would likely result in FOS's purpose to resolve complaints on a fair and reasonable basis, as a quick and informal alternative to the courts, being considered subservient to the FCA's statutory competitiveness objectives. The reputational damage that perceived (and actual) weakening of consumer protections would have could be particularly damaging to a financial sector that is operating in a highly competitive market, considering that there would then be stronger consumer protections in other nearby jurisdictions, such as the Channel Islands.
34. As mentioned above, any perceived (or actual) weakening of the FOS as a trusted alternative to the Courts also presents a risk that consumers will be advised by consumer bodies to access redress through an already over-stretched Court system instead.

We are happy to provide any further information if that would be helpful.

Yours sincerely



Donal Galligan
Chief Executive