



HM Treasury

Review of the Financial Ombudsman Service

Consultation response

March 2026

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Ombudsman Service
Consultation response



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Chapter 1

Executive summary

- 1.1 The Financial Ombudsman Service (FOS) was established by the Financial Services and Markets Act (FSMA) 2000 as a simple, impartial dispute resolution service which is intended to deal with complaints relating to financial services firms quickly and efficiently, as an alternative to the courts.
- 1.2 In July 2025, the Chancellor set out the conclusions of the government's review of the FOS, which found that the FOS plays an important role in the financial services regulatory environment, but changes were needed to the framework in which the FOS operates to prevent it acting as a quasi-regulator and provide greater regulatory coherence with the Financial Conduct Authority (FCA).
- 1.3 Between July and October 2025, the government consulted on proposals to reform the FOS, which broadly focused on changes to the following areas in the FOS's legislative framework:
 - The determination of complaints brought to the FOS
 - Time limits for referring complaints to the FOS
 - The approach to mass redress events
- 1.4 The consultation received 601 responses from a wide range of stakeholders, including financial services firms, trade associations, consumer groups, academics, individuals and other ombudsmen services. The government has considered the feedback to the consultation, and this document sets out its response and final plans for reform.
- 1.5 Overall, respondents were supportive of the government's core aims and proposed reforms - to provide greater certainty and predictability for consumers and firms who use the FOS, and to return the FOS to its original role, with greater collaboration between the FOS and the FCA and improved transparency about how they work together.
- 1.6 Having considered the feedback received, the government intends to legislate to:
 - **Adapt the 'Fair and Reasonable' test** used by the FOS to determine cases, to set out that where firms have met their obligations under relevant FCA Rules, firms must be found to have acted fairly and reasonably by the FOS.
 - **Introduce a referral mechanism between the FOS and the FCA** to require the FOS to seek a view from the FCA on matters of interpretation where the FOS considers there may be ambiguity in what FCA rules require, or where it considers

an issue raised may have wider implications across the financial services industry.

- **Introduce an absolute time limit of 10 years for bringing complaints to the FOS**, while giving the FCA the ability to make exceptions to this time limit.
- **Make structural changes to the FOS to provide greater consistency in decision making**, by giving the Chief Ombudsman overall responsibility for FOS determinations.
- **Make it easier for firms and consumers to understand and learn from FOS determinations** by introducing a requirement for the FOS and FCA to publish regular thematic reports which provide useful information and clarification on how the FOS will consider certain types of complaint, including types of complaint covered by FCA rules.
- **Ensuring the FCA, as part of its responsibility for setting the regulatory response to mass redress events, has the tools it needs to respond to these events quickly and effectively**, in the small number of cases where such an intervention is appropriate.

- 1.7 In addition to the proposals outlined in the consultation, HM Treasury also intends to legislate to make the government responsible for the appointment of the Chair of the FOS, and to make the appointment of the FOS Chief Ombudsman subject to government approval.
- 1.8 The consultation also asked for views on whether the FOS should be made a subsidiary of the FCA, to achieve greater regulatory alignment between the two organisations. Having considered the responses, the government has concluded that the wider package of reforms set out here are sufficient to achieve the government's objectives for reform, and it will not take this proposal forward.
- 1.9 Taken as a whole, this package of reforms will provide greater regulatory certainty for all users of the FOS by ensuring that there is consistency across FOS decisions and greater alignment with the FCA, as the conduct regulator for financial services. This will, in turn, boost confidence in both the financial services sector and the regulatory system.

Implementation of changes

- 1.10 Delivering these reforms to the FOS's legislative framework will require primary legislation, which the government will take forward when Parliamentary time allows.
- 1.11 However, some changes can be made by the FOS and FCA within the existing framework, without the need for legislative change, through changes to the rules they each make, currently set out in the Dispute Resolution: Complaints sourcebook (DISP).

- 1.12 The FCA and FOS have published a paper today¹, following consultation over the summer. This publication seeks views on proposals by the FOS to amend its rules at DISP 3 to:
- Amend the factors it considers as part of the ‘Fair and Reasonable’ test;
 - Introduce a registration phase for complaints; and
 - Amend its dismissal grounds.
- 1.13 The paper also finalises several rule or guidance changes consulted on in July 2025 and sets out appropriately flexible criteria the FCA intends to use to identify mass redress events (MREs). This will assist the FCA in identifying emerging issues at an early stage and complements the government’s reforms to section 404 of FSMA 2000 to enable the FCA to respond promptly and effectively when such issues begin to emerge.
- 1.14 Taking forward these changes in advance of legislation will allow consumers, firms and investors to begin to experience the benefits of reform in the short term, in advance of the wider changes being delivered.

1. <https://www.fca.org.uk/publication/consultation/cp26-9.pdf>
<https://www.fca.org.uk/publication/finalised-guidance/fq26-2.pdf>

Chapter 2

Feedback and government response

The Fair and Reasonable test

- 2.1 Under FSMA 2000, the FOS must determine complaints “by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case” (the Fair and Reasonable test). Through its review and the consultation, the government has heard concerns that this allows the FOS significant discretion in its decision making, and that the test is insufficiently linked to the regulatory standards set by the FCA – this can create uncertainty for consumers and firms.
- 2.2 The government therefore proposed to amend the test to align it more closely with FCA rules. The consultation proposed that, where FCA rules are relevant to a complaint, compliance with those rules, consistent with the FCA’s intention for what those rules should achieve, would mean that the FOS would be required to find a firm has acted fairly and reasonably. The government also proposed to make clear that there can be no retrospective application by the FOS of contemporary FCA rules – i.e. the FOS must apply the rules that applied at the time of the act or omission complained about.
- 2.3 In some cases, provisions in law, which the FCA does not make, may be relevant to a complaint - such as protections for consumers set out in the Consumer Credit Act. The government’s consultation therefore proposed that where FCA rules reflect provisions in law, the adapted Fair and Reasonable test will ensure that fair and reasonable conduct should be determined by reference to the FCA’s rules. For example, Consumer Credit Act requirements on pre-contractual information will be applied in accordance with the FCA rules which set out how a lender must provide an adequate pre-contractual explanation.
- 2.4 The consultation also proposed that, where relevant law is not addressed by FCA rules or guidance, the FOS, as now, will be able to take that law into account when assessing what is fair and reasonable in all the circumstances of the case. If a complaint raises a matter of law which has the potential to result in wider implications for consumers or firms, or matters about the consistency of FCA rules and the law, the FOS will be required to refer the matter to the FCA for consideration.

- 2.5 As well as adapting the Fair and Reasonable test, the government consulted on ensuring the FOS has sufficient flexibility to decline to consider individual complaints which would be more appropriately dealt with by an alternative route for dispute resolution. This would mean, for example, that the FOS would be able to dismiss very complex cases that would be more appropriately dealt with by the courts. The consultation set out the government's intention to ensure the FOS has this flexibility by excluding the FOS from the new Alternative Dispute Resolution regime being established under the Digital Markets, Competition and Consumers Act 2024.

Summary of consultation responses

Question 1: 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?

- 2.6 Most respondents were broadly supportive of aligning the Fair and Reasonable test more closely with the FCA's rules and agreed that this would provide greater regulatory certainty and consistency in FOS determinations, reinforcing confidence in the redress framework.
- 2.7 Some feedback noted a need for careful consideration of how the FOS should understand and apply the intent of high-level, principles-based rules made by the FCA, in the context of a broader move away from rules-based regulation to outcomes-based. This is particularly relevant for the FCA's Principles for Business, which are high-level, cross-cutting standards intended to capture general approaches to conduct that should inform the activities of regulated firms in general, with the aim of achieving certain outcomes. The Consumer Duty is a key example of this type of high-level rule.
- 2.8 Some consumer groups questioned whether the impact of the existing Fair and Reasonable test was enough of a concern to warrant the proposed changes. These respondents were focused on ensuring that the FOS works to provide good outcomes for consumers that may have been treated unfairly and argued that the existing Fair and Reasonable test provides the FOS with broad discretion and flexibility to deliver good consumer outcomes. For these respondents, there was concern that the proposed changes to the Fair and Reasonable test could limit the ability of the FOS to tailor its determinations to the circumstances of individual cases.

Question 2: 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?

- 2.9 Most respondents recognised that the Fair and Reasonable test is, on the whole, a suitable way for the FOS to determine complaints, consistent with the FOS's role in the regulatory framework as a quick and simple service for resolving disputes.

- 2.10 Most respondents also agreed that the current application of the test could result in determinations which were insufficiently aligned with FCA standards and which undermined regulatory certainty for consumers and firms. There was therefore broad agreement with the government's proposal to retain and adapt the Fair and Reasonable test, allowing the FOS to preserve its quick and simple approach to dispute resolution, whilst ensuring greater consistency and predictability across FOS determinations.
- 2.11 For the minority of respondents that disagreed with the proposal, concerns were largely centred on two potential impacts on the FOS's ability to deal with complaints effectively. Firstly, that the proposal could cause delays to decision-making at the FOS, with the FOS having to spend more time and resource on applying a precise understanding of FCA rules, which can be complex, rather than focusing on what is the right outcome for the individual consumer. Secondly, that the proposal would limit the ability of the FOS to look at all the circumstances of an individual complaint before reaching a determination.

Question 3: Do you agree with the proposed approach for dealing with law which may be relevant to a complaint before the FOS?

- 2.12 Most responses supported the approach outlined by the government, whereby the FOS would continue to take into account wider law as relevant, but in a way which was better coordinated with the FCA. Respondents agreed that this approach would enable FOS complainants to continue to benefit from important consumer protections provided by the law, while ensuring that FOS determinations are consistent and effectively coordinated with the regulatory approach of the FCA.

Question 4: Do you consider that there are some cases that are not appropriate for the FOS to determine, bearing in mind its purpose as a simple and quick dispute resolution service? How should such cases be dealt with?

- 2.13 Some respondents asserted that the FOS should consider all complaints that fall within its jurisdiction, regardless of complexity. However, many responses noted that cases concerning fraud can be particularly complex (including, for example, instances where criminal charges may be considered), and the large majority of unique respondents recognised limitations in the FOS's relatively informal role; they therefore supported the proposal that the FOS should have more flexibility to provide that very complex cases could be dealt with by an alternative resolution route to the FOS, for example by the courts.

Government response

- 2.14 The government will legislate to adapt the Fair and Reasonable test as consulted on: so that, for any element of a complaint where firms have met their obligations under relevant FCA Rules, the

FOS will be required to find that a firm has acted fairly and reasonably in relation to that element of the complaint.

- 2.15 The FOS will need to consider FCA rules, where they are relevant to a complaint, consistent with the FCA's purpose for what that those rules should achieve. The FOS will use relevant materials issued by the FCA, such as any relevant FCA guidance or policy statements, to ensure it understands the FCA's purpose for the rules. The government's view is that the outcome of complaints brought to the FOS should be consistent and aligned with the regulatory standards set by the FCA, and that these changes will deliver that outcome.
- 2.16 In practice, this will mean that:
- Where there are FCA rules relevant to a complaint, the FOS should consider these rules to determine whether the firm has met its obligations under the rules when looking at all the circumstances of the case.
 - In complaints brought to the FOS which are not covered by FCA rules, such as some more straightforward maladministration complaints, the FOS will continue to make its determinations according to what is fair and reasonable in all the circumstances of the case.
- 2.17 The government has given careful consideration to concerns expressed about the impact that these changes might have on the ability of the FOS to deal with complaints quickly and to ensure its determinations consider all the circumstances of individual complaints. The government has designed the complete package of reforms to facilitate effective and ongoing collaboration between the FCA and the FOS, to ensure that the FOS is routinely working with a thorough understanding of what the FCA wants its rules to achieve. This will help ensure that the modified test does not result in delays to complaint handling.
- 2.18 Additionally, it is important to note that the reforms in no way alter the role of the FOS in looking at all the circumstances of an individual complaint in order to arrive at an appropriate determination. While it is for the FCA to set, through its rules, the obligations that firms have to their customers, it will be for the FOS to establish whether or not a firm has met those obligations by examining all the circumstances of an individual complaint.
- 2.19 Recognising that the FCA rulebook is extensive and will change over time, the government also intends to take a power that would allow it to specify that particular rules are not to be included in the adapted Fair and Reasonable test or should be dealt with in a different way. This is particularly relevant when considering the application of the high-level obligations contained in the FCA's Principles for Business, including the Consumer Duty. The government recognises that it will be important to appropriately balance the need for clarity on what the FOS must consider under

the adapted Fair and Reasonable test, while also adequately recognising the different nature of these types of rules.

- 2.20 The government views this approach as the most pragmatic way of ensuring FOS determinations are aligned with FCA rules.

Referrals to the FCA on the interpretation of FCA rules

- 2.21 In order to ensure that FOS determinations, made under the adapted Fair and Reasonable test, align with FCA standards, the government proposed strengthening existing FCA and FOS collaboration by introducing a formal mechanism to support the FOS in applying FCA rules in accordance with the FCA's regulatory intent. The proposal set out that, where the FOS considers there may be ambiguity in what FCA rules require, the FOS will be required to request a view from the FCA on the interpretation of its rules, and an obligation on the FCA to provide its view.
- 2.22 The government proposed that the referrals mechanism also be used to improve early detection of emerging issues which have the potential to affect consumers or firms more broadly. These are known as "wider implications issues" and it is solely for the FCA to assess such issues and consider whether a regulatory response is required. The proposed referral mechanism would include an obligation on the FOS to refer to the FCA an issue raised by one or more complaints where the FOS considers that the issue may raise wider implications. The FCA would be obliged to assess the issue which has been referred.
- 2.23 The proposal included the opportunity for parties to a complaint to request that the FOS makes a referral to the FCA, either to seek clarification on the interpretation of FCA rules or to request that the FCA assesses whether there is a potential wider implications issue.
- 2.24 Use of referrals to the FCA would be governed by criteria designed to ensure the mechanism is used appropriately and proportionately. The FOS would be responsible for determining whether the criteria for a referral are met and for making a referral to the FCA where they are met.

Summary of consultation responses

Question 5: 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?

- 2.25 Most respondents were in agreement that, by introducing a formal mechanism to refer issues to the FCA, there would be greater certainty and predictability in how FCA rules apply and that it would promote consistent determinations which are aligned with the FCA's regulatory approach.

2.26 Similar to the views that some respondents raised in relation to the proposed Fair and Reasonable test changes, there were some concerns about the potential for delays to the resolution of complaints where the mechanism was used and the risk that this could disproportionately affect consumers while the FCA considers its position. Respondents raising this concern therefore emphasised the importance of the mechanism operating to a clear and proportionate deadline for the FCA to respond.

Question 6: 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?

2.27 Responses were generally supportive of providing the option for parties to request that the FOS considers seeking a view on interpretation of rules from the FCA, to help the FOS identify questions about interpretation which are appropriate for the FCA to resolve. Some respondents argued that parties should be able to request a view from the FCA directly, regardless of whether the FOS thought it necessary.

2.28 Other feedback noted the potential for knowledge imbalances between consumers and firms which could put consumers at a disadvantage. Respondents highlighted that firms are much more likely to have an understanding of relevant FCA rules and be better placed to raise questions of rule interpretation which would merit a referral to the FCA.

Question 7: 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?

2.29 The consultation responses were in broad agreement that the FCA is the appropriate body to consider issues with wider implications and suggested that the referral mechanism should be linked to the existing Wider Implications Framework (WIF). The WIF, which is used by the FCA, the FOS and the Financial Services Compensation Scheme (FSCS) to comply with the duty of cooperation set out at section 415C of FSMA 2000, provides a structure to identify and respond to issues that could have wider implications across the financial services industry. It aims to improve outcomes for consumers and financial services providers when such issues emerge. These respondents also thought that, when considering a potential wider implications issue, the FCA should consult its consumer and industry panels.

2.30 A minority of responses that disagreed with the government's proposal expressed a similar concern to that set out in response to question 6: that consumers would have less of an understanding of FCA rules, and that this would make it more difficult for them to utilise the mechanism, so it would be more of an advantage for firms than to consumers.

2.31 A minority of responses argued that parties should be able to make their own requests for a referral directly to the FCA, without the FOS having a role in deciding whether a referral is necessary.

Question 8: 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?

2.32 Many respondents called for appropriate levels of transparency and safeguards to mitigate against over-use of the mechanism, based on a concern that this could result in unnecessary delay to the handling of complaints. Feedback emphasised that the criteria for using the mechanism should be developed to ensure that referrals are only made when necessary and to prevent misuse (for example, requesting a FCA view as a delaying tactic or as a means of challenging the decision of the FOS).

2.33 Some respondents argued that clear criteria on when it is appropriate to use the mechanism could help address the concern about imbalances in regulatory knowledge between consumers and firms.

2.34 A number of industry respondents answered this question by calling for a formal appeals mechanism which could be used by parties wishing to challenge a final determination made by the FOS. In contrast, responses from consumer groups emphasised that the referral mechanism should not act as a de facto appeals mechanism for firms.

Government response

2.35 The government will legislate to introduce a formal referral mechanism to require the FOS to seek a view from the FCA where the FOS considers there is ambiguity in FCA rules which needs to be resolved in order for the FOS to deal with relevant complaints effectively. As reflected in many of the responses, the government views this mechanism as an important tool for the FOS to deploy to help ensure its determinations are aligned with FCA rules.

2.36 The government will also legislate to oblige the FOS to refer an issue to the FCA for consideration where the FOS considers the issue has potential to result in wider implications for consumers and firms. The FCA will be obliged to assess such an issue and to consider whether its assessment would be aided by seeking the views of its statutory consumer and industry panels.

2.37 Recognising concerns raised about whether the mechanism could cause delays to the resolution of complaints, the government will proceed with the proposed 30-day limit for the FCA to provide a response to the FOS, which will support the FOS's ability to provide swift resolution to consumer disputes. For more complicated issues, the FCA's initial response may indicate that it is investigating the issue further and considering appropriate next steps.

- 2.38 The criteria for the FOS to make referrals to the FCA will be set out clearly in secondary legislation. As well as providing transparency around the operation of the mechanism, the criteria are intended to ensure it is only used where necessary and to avoid unmanageable volumes of repeated referrals on the same issue.
- 2.39 Recognising the feedback about the importance for parties to a complaint to be able to highlight matters they consider may benefit from being referred to the FCA, the legislation will provide that one or more parties will be able to make a request to the FOS for a view to be sought from the FCA on the interpretation of its rules. However, it will be for the FOS to consider whether to approve such requests to ensure that referrals to the FCA are only made where necessary, in accordance with the referral criteria which will be set out in legislation.
- 2.40 The government gave careful consideration to those responses which called for FOS decisions on whether to make a referral to the FCA, or FOS determinations in general, to be subject to a formal appeals mechanism. However, the government was not persuaded to alter its policy on this as set out in the consultation. The government's view remains that any form of appeals mechanism (whether involving the FCA or the courts) would fundamentally be at odds with the role of the FOS as a quick, simple and cost-effective means of resolving disputes between consumers and firms. There will therefore be no mechanism for parties to appeal or circumvent the FOS's decision on whether a matter should be referred to the FCA, and there will be no means to appeal FOS determinations in general to the courts.
- 2.41 The introduction of the referral mechanism will ensure it is clear that the FCA, as the UK's conduct regulator for financial services, is setting the standards to which firms are held. This will be reinforced by the new joint thematic reports (see para 2.55 onwards for more details), which will provide for the learning of appropriate lessons from FOS casework. The placing of greater emphasis on alignment with FCA rules under the adapted Fair and Reasonable test may lead to an initial period in which a high volume of referrals are made, however, the government expects this to decrease over time as areas of ambiguity are identified and resolved.
- 2.42 Noting respondents' request for reforms to be implemented quickly, the FOS and the FCA have updated their Memorandum of Understanding to set out further commitment to cooperation between the organisations when an issue with wider implications is suspected or identified (including a possible MRE), to signify the direction of travel ahead of legislative change.

Consistency across FOS determinations

- 2.43 The consultation proposed that the function for determining complaints should be conferred on the Chief Ombudsman, to

ensure that there is a point of overall responsibility within the FOS, able to effectively coordinate a consistent approach to determinations that is aligned with the regulatory standards set by FCA rules.

Summary of consultation responses

Question 9: 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.

- 2.44 Most respondents to the consultation agreed that this measure would improve the consistency of FOS determinations.
- 2.45 Some respondents asked questions about how this would work in practice, for example cautioning that it would not be possible for the Chief Ombudsman to be involved in each individual determination that the FOS makes.
- 2.46 Some responses noted the high level of responsibility that would sit with one person within the FOS if this change was made and observed that such a function should be subject to appropriate accountability and transparency arrangements.

Government response

- 2.47 The government will proceed with the approach set out in its consultation to provide the Chief Ombudsman with overall responsibility for FOS determinations. Having a lead function coordinating the approach to determinations across the FOS will support the government's aim of providing greater regulatory certainty through a system of dispute resolution which is aligned with the standards set by the regulator.
- 2.48 The government agrees with those respondents who viewed the new function being conferred on the Chief Ombudsman as a crucial one which requires appropriate scrutiny and accountability of the post holder.
- 2.49 The government will therefore legislate to make the appointment of the FOS Chief Ombudsman subject to approval by HM Treasury. The Chief Ombudsman will continue to be accountable to, and performance managed by, the FOS Board.
- 2.50 In order to help ensure that the FOS Board provides strong leadership in delivering against the objectives set for the FOS, including the effective oversight it will need to provide for the enhanced Chief Ombudsman function, the government will legislate to make the Chair of the FOS a government appointment. This will align the appointment of the FOS Chair with other significant appointments in financial services, such as the Chair and CEO of the FCA, and help to ensure appropriate oversight and accountability.

Transparency around the approach to FOS determinations

2.51 Recognising the importance of meaningful transparency arrangements, the government sought views on the best way for the FOS to help consumers and firms understand what to expect from the FOS's approach to determining complaints, particularly in relation to how relevant FCA rules are considered in relation to complaints. The consultation proposed introducing regular thematic reports on how particular types of case are dealt with and how the FOS would expect to see the relevant FCA standards applied to such cases.

Summary of consultation responses

Question 10: 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 FOS deals with?

- 2.52 There was broad support for introducing regular thematic reports to be published jointly by the FOS and the FCA. In general, this was seen as a positive step forward in helping to promote better understanding of the FOS's approach to dealing with complaints, which would also demonstrate that the FOS and FCA are aligned on how FCA rules should be considered in dealing with complaints.
- 2.53 The current requirement for the FOS to publish reports of individual determinations was widely recognised as an important means of providing transparency. A combination of consumer groups and most industry respondents noted that individual determinations are a useful tool for understanding FOS decision-making. Some industry respondents, in particular, explained that these decisions were the key tool which they used to learn lessons for their internal approach to complaint handling.
- 2.54 The minority of respondents that called for removal of the requirement argued that analysing a multitude of individual decisions was a very burdensome and inefficient way of learning lessons on the approach used by the FOS. On the whole, however, respondents were in favour of maintaining the existing approach for individual determinations.

Government response

- 2.55 Considering the feedback received, the government will, as proposed, introduce a requirement for the FCA and the FOS to produce regular thematic reports which explain the FOS's approach to types of complaints it receives, using illustrative examples from cases the FOS has dealt with.
- 2.56 Recognising that many respondents saw value in preserving the publication of reports of individual determinations, the government has decided not to alter this arrangement for the

time being, to support transparency. However, it is important to stress that individual FOS determinations are not intended to have any precedent setting effect and the database of final determinations should not be used by firms or consumers as a guide to the approach of the FOS in dealing with types of complaints. Firms and consumers should instead focus on the new thematic reports, which will be specifically designed to provide the information needed to understand the approach the FOS will take when considering certain types of complaint.

- 2.57 The government will keep the overall approach to transparency under review to ensure it is achieving the aims set out in the consultation document – providing clear and accessible information which gives greater certainty on the approach used by the FOS to resolve disputes, and which demonstrates how that approach is aligned with the FCA’s regulatory standards.
- 2.58 In the joint FCA-FOS publication², the FCA notes that it received feedback from firms that the DISP guidance on factors firms may take into account when considering complaints (sometimes referred to as the “read-across rules”) can, in practice, result in individual Ombudsman decisions being perceived as setting binding expectations. Firms have raised concerns that this can effectively create de facto standards without going through the FCA’s formal policymaking and consultation processes. In response, the FCA recognises the need to consider the operation of the “read across rules”. Ahead of any legislative change, the FOS and the FCA will work with the government to consider how greater clarity could be provided, including the role of thematic reports in helping firms understand the FOS’s approach, rather than relying on individual decisions, and consider how soon this clarity could be provided.

FOS Reform package

Summary of consultation responses

Question 11: Do you think the package of reforms outlined above, taken together, will be sufficient to address the problems identified by the review and ensure the FOS fulfils its original purpose?

- 2.59 There was broad support for the reforms proposed in the government’s consultation when considered in the round. It was notable that many responses emphasised the importance of the reforms being implemented as a package, but nevertheless requested early implementation of individual reforms that could be operationalised before changes are made to legislation.

2. <https://www.fca.org.uk/publication/consultation/cp26-9.pdf>
<https://www.fca.org.uk/publication/finalised-guidance/fq26-2.pdf>

Government response

- 2.60 In response to the broad support expressed for the government's aim to return the FOS to its original role and the package of reforms set out to achieve that aim, the government will proceed largely as proposed in the consultation, as set out above.
- 2.61 The government is also working closely with the FCA and FOS to implement reforms ahead of legislation where possible.

Institutional arrangements for the FOS

- 2.62 The consultation asked whether, taking into account the other reforms, the FOS should be made a subsidiary of the FCA, considering HM Treasury's aim of setting clearer roles for the FOS and FCA and the government's wider agenda to simplify the regulatory environment, as set out in the Regulation Action Plan³.

Summary of consultation responses

Question 12: 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?

- 2.63 The large majority of respondents did not support the FOS being made a subsidiary of the FCA. Both consumer and industry stakeholders raised concerns about the negative consequences that might flow from subsidiarisation. The potential negative consequences identified were the undermining of the FOS's independence and impartiality, which could dilute trust in the ability of the FOS to deal with complaints in a fair and impartial way. Additionally, concerns were raised that this would lead to the blurring of responsibilities between the FCA as regulator and the FOS as dispute resolution scheme, a consequence that would run counter to the government's aim to prevent the FOS from acting as a quasi-regulator.
- 2.64 There was a widely held view amongst industry respondents that the other proposals for reform would be effective in achieving the aims set out by the government and, therefore, that subsidiarisation of the FOS was not required to achieve those aims. Those responses expressed some concern that an institutional change of that nature would shift FOS and FCA resource and attention away from the core package of reforms which they supported.
- 2.65 Of the small proportion of responses that did support the FOS being made a subsidiary, the respondents highlighted the benefits of clearer governance links to, and closer collaboration with, the

3. <https://www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/new-approach-to-ensure-regulators-and-regulation-support-growth-html>

FCA, whilst emphasising the need for sufficient safeguards to preserve the FOS's operational independence.

Government response

2.66 The government recognises that the independence and impartiality of the FOS when dealing with individual complaints is vital to its role. The wide package of reforms to the FOS being taken forward, as set out in this consultation response, will return the FOS to its original role and prevent it acting as a quasi-regulator, and will ensure that it is the role of the FCA, as the conduct regulator, to set out how firms must treat their customers. These reforms will deliver high alignment and greater regulatory coherence between the FOS and the FCA, as well as providing a more straightforward and accessible approach to transparency around FOS determinations. The government has therefore concluded that it will not proceed with making the FOS a subsidiary of the FCA.

Time limits for referring complaints to the FOS

2.67 The consultation proposed that, in line with the FOS's role as a simple and cost-effective alternative to the courts, a legislative time limit should be introduced so that complaints concerning acts or omissions of a firm which took place more than 10 years ago would not be eligible to be considered by the FOS. The proposal also included giving the FCA responsibility for setting out specific financial services products which would need to be excepted from the 10-year time limit for complaints.

Summary of consultation responses

Question 13: Do you agree that 10 years is an appropriate absolute time limit for complainants to bring a complaint to the FOS?

2.68 Feedback on the time limit was mixed. Some industry respondents stated that a 10-year limit was too long. Other respondents, particularly consumer representatives, suggested any time limit should be longer than 10 years, and some consumer representatives disagreed that there should be an absolute time limit, of any length.

2.69 Some respondents were in agreement with the government's proposal, viewing the 10-year time limit as striking an appropriate balance between allowing consumers to complain about acts or omissions which may take some time to come to light and avoiding the FOS having to deal with very old cases which are likely to be more complex or where records are incomplete or unavailable.

Question 14: Do you agree that the FCA should have the ability to make limited exceptions to this time limit?

2.70 Views were also mixed in response to this question. Some respondents were concerned that exceptions would result in

complexity and uncertainty, undermining the value of having a clear time limit to avoid the FOS handling very old complaints. Others recognised that in some situations this would be appropriate, provided the exceptions are set out clearly and transparently.

Government response

- 2.71 The government has considered feedback to the consultation and is content that a 10-year time limit will strike the right balance of maintaining a high level of consumer protection provided through the FOS, while providing greater certainty to consumers and firms on complaints which are appropriate for the FOS to handle, avoiding the FOS having to deal with very old complaints which can be challenging for a quick and simple dispute resolution scheme like the FOS. The government will legislate to introduce this.
- 2.72 As proposed in the consultation, the FCA will be given the responsibility to determine limited exceptions to the time limit. Exceptions would be focused on particular features of products (expected to be longer-term products such as pensions) in relation to which a consumer's cause for complaint may take longer to come to light. The exceptions will be clearly defined to ensure that there is transparency around how the new time limit will operate. The FCA will set out its proposals on exceptions to the time limit in due course.

Mass redress events

- 2.73 Mass redress events (MREs) are those where a particular issue, or set of issues, result in a large number of complaints with the potential for a significant amount of compensation to be owed, and which therefore have significant impact on consumers or firms. In the consultation, the government set out its intention to ensure that arrangements for handling MREs clearly reflect and support the FCA's responsibility for setting the regulatory response to such events. The consultation proposals are intended to ensure that consumers affected by MREs are fairly and consistently protected with minimal disruption to firms and markets.
- 2.74 The government consulted on simplifying, and in some cases expanding, the tools that are available to the FCA for addressing MREs, as follows:
- The FCA would be given the ability to direct firms and the FOS to pause complaints which are potentially part of an MRE – this would allow the FCA to investigate and, if necessary, set the regulatory response to the MRE.
 - Where an MRE has been declared and a redress scheme has been put in place, the FCA would be able to direct the FOS to redirect all relevant complaints back to firms to be dealt with

in accordance the terms of the redress scheme. The FCA would also be able to direct the FOS to deal with any subsequent complaints in accordance with the terms of the redress scheme.

- The test that the FCA must satisfy to implement a statutory consumer redress scheme, under section 404 of FSMA (which requires the FCA to consider (i) if there has been widespread or regular failure by firms, (ii) if consumers have or may suffer loss for which there would be a remedy available in court proceedings and (iii) whether it would be desirable to make rules for a scheme to secure redress for affected consumers) would be simplified to enable the FCA to respond quickly where the FCA considers such a scheme is necessary.

Summary of consultation responses

Question 15: Do you agree that the FCA should have more flexibility, when investigating a potential MRE, to take steps that are designed to avoid disruption and uncertainty for consumers and firms? In addition to the proposals made above, do you think there are other tools for the FCA which should be considered?

2.75 There was broad support for giving the FCA greater flexibility to intervene when it considers it necessary to do so, and respondents agreed that the FCA is the appropriate body to address issues with potential market-wide impacts. In general, respondents agreed that quicker and more effective intervention by the FCA could help to limit the damaging consequences of mass redress events.

2.76 Several respondents noted concerns about ensuring the FCA uses any power to pause the handling of complaints appropriately and noted the potential risk that use of such a power may cause delay to cases that would otherwise be resolved by the FOS. They were keen to ensure that any changes did not result in higher numbers of MREs.

Question 16: Do you agree that there should be a simpler legal test for the FCA to satisfy in deciding that a section 404 redress scheme is needed to respond quickly and effectively to an MRE?

2.77 Most respondents were supportive of a simpler and more proportionate test to allow for quicker intervention by the FCA to establish a statutory redress scheme, once the FCA has established that an MRE has taken place and that such a scheme may be needed.

2.78 Some respondents argued for caution in providing a simpler test for the FCA to work through when establishing the need for a statutory redress scheme. These respondents were concerned to ensure that the very serious step of imposing a statutory scheme was only taken where absolutely necessary, and that any test should maintain safeguards for the proportionate use of this power by the FCA. Responses which expressed this concern did

not want a simpler test to result in section 404 redress schemes being used more frequently.

Question 17: Do you agree that the FCA should be able to direct the FOS to handle complaints consistently with relevant redress schemes, or direct the FOS to pass related complaints back to firms, to be dealt with by those redress schemes?

2.79 The majority of respondents supported this proposal and agreed with the government that it would ensure that complaints related to MREs were treated consistently. A small number of respondents raised concerns that mandating the FOS to act in accordance with the terms of a redress scheme would be inconsistent with the FOS's independence and ability to make its own impartial determinations.

Government response

2.80 The government will legislate so that the FCA can act quickly to prevent disruption and uncertainty while it investigates potential MREs and can assess the need for a regulatory response more efficiently and appropriately by:

- Removing the requirement on the FCA to consult in order to pause complaints handling deadlines, applicable to firms and consumers, before a complaint can be referred to the FOS, and introducing a power for the FCA to direct that relevant complaints that are with firms, or have reached the FOS, are paused.
- Ensuring that unresolved FOS complaints that are in scope of a redress scheme established with the involvement of the FCA, including those complaints that have been paused or held in the FOS's registration phase, are returned to the relevant firm to consider under the terms of that redress scheme, by requiring the FOS to redirect relevant complaints back to the respondent firm.
- Consumers will retain the ability to bring a complaint to the FOS where they have a complaint about a firm's compliance with a redress scheme and the FOS will be required to deal with any such complaints in accordance with the terms of the redress scheme.
- Revising the approach to establishing a consumer redress scheme under section 404(1) of FSMA, making the FCA's task of assessing the need for a statutory redress scheme more straightforward and more appropriate. By linking the test for a section 404 scheme to the FCA's operational objectives, the FCA's use of such schemes will be made more coherent with the overall regulatory framework for financial services. The FCA will be required to assess the need for such a scheme in accordance with the overarching objectives that Parliament has set for the FCA as the consumer and conduct regulator.

- 2.81 The changes will provide the FCA with the ability to intervene quickly to ensure an orderly and consistent approach to the handling of such issues with minimal disruption for consumers and firms.
- 2.82 The government has carefully considered feedback on the risks that may flow from empowering the FCA to intervene more quickly and decisively, whether when investigating an MRE or when considering the need for a statutory redress scheme. The government recognises that such interventions are serious steps for the regulator to take and that the FCA's powers to make these interventions should be used proportionately.
- 2.83 As such, the proposals are not intended to increase the frequency of the identification or regulatory response to MREs, but are intended to make it easier for the FCA to act once it has identified a potential issue. The overall effect is that these changes should minimise the damaging impact of MREs to both the sector and consumers by reducing delays and uncertainty, while maintaining a high bar for the use of a regulatory response to address an MRE.
- 2.84 The government recognises the concern raised by some respondents about the risk of increasing the number of schemes established by the FCA under section 404. These reforms are not intended to increase the use section 404 schemes, rather they are intended to make the FCA's assessment of the need for such schemes more efficient and appropriate. When they are appropriate, quicker implementation of section 404 schemes will help to minimise disruption and uncertainty for consumers and firms affected by an MRE.

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This document can be downloaded from www.gov.uk

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