

## MODERNISING THE UK'S REDRESS SYSTEM

Recent developments in motor finance commission cases have highlighted the need to modernise the UK's redress system, with potential costs to financial institutions exceeding £16bn. In response, the Financial Conduct Authority (FCA) and the Financial Ombudsman Service (FOS) have issued a "Call for Input" to seek feedback on improving the redress framework. The potential scale of redress related to motor finance can be appreciated from other previous mass redress events referred to in the Call for Input, for example, redress for mis-sold Payment Protection Insurance resulted in 34.4m consumers receiving £38.3bn. These eye-watering amounts demonstrate the scale and effect of such schemes.

The focus of the Call for Input is on handling large-scale consumer redress events, the role of professional representatives, and creating a more predictable regulatory environment. Proposed short-term changes include providing additional guidance for firms, reinstating a two-stage complaint process, and amending case fees for mass redress events. Long-term changes may involve enhancing cooperation between the FCA and FOS and adjusting rules for mass redress events. The consultation period concludes on 30 January 2025, with feedback expected in the first half of 2025. Additionally, other mechanisms like Schemes of Arrangement may be utilised to efficiently handle high volumes of claims in for example the home credit space, ensuring timely and fair outcomes for consumers and firms.

Redress schemes relating to motor finance commissions have featured in the headlines over the last few weeks, with the costs to the industry provisionally estimated to exceed £16bn<sup>1</sup> (See our [briefing](#) on the recent Motor finance

### Key issues

Call for Input seeks views on:

- Modernising the redress framework
- Identifying challenges posed by mass redress events
- Suggesting potential changes to the framework to improve outcomes for consumers and firms
- Ensuring consistent application of regulatory requirements

Views sought by 30 January 2025

<sup>1</sup> Thomas Reuters, 'Santander UK sets aside \$375 million to cover possible motor finance claims' (<https://www.reuters.com/business/finance/santander-uk-makes-provision-against-possible-motor-finance-redress-claims-2024-11-20/>)

commission and the recent Court of Appeal decision, *Johnson v FirstRand Bank Limited, Wrench v FirstRand Bank Limited and Hopcraft v Close Brothers* [2024] EWCA Civ 1282). This current case has highlighted the potential impact that significant redress claims can have on the market. It is therefore no coincidence that, in November 2024, the Financial Conduct Authority (FCA) and the Financial Ombudsman Service (FOS) published a document entitled the "Call for Input: Modernising the Redress System", seeking feedback from stakeholders on modernising the UK's redress framework. The Call for Input emphasises the importance of improving the redress system, particularly in handling and defining large numbers of consumer complaints across a range of firms about the same issue (often termed 'mass redress events'), the role of complaints management companies and other professional representatives (PRs) in submitting complaints, and potential improvements in the redress framework to create a more predictable regulatory environment. The Call for Input recognises the importance of an efficient and effective redress system, both from the consumer perspective in terms of resolution of their complaints, but also in terms of firms themselves, where such events might present risks of failure or contagion to the market more generally. Having a redress system that works is essential in promoting confidence in the financial services sector and is therefore integral to ensuring stability and facilitating further innovation, growth and investment in the sector.

#### **Plans to Modernise Redress Schemes**

The Call for Input places its central focus on improving the system's efficiency and effectiveness to deal with high volumes of claims and significant levels of redress.

The Call for Input proposes both short- and long-term changes to address the challenges the current framework presents. Immediate steps may involve:

1. **Guidance for Firms:** Provide additional guidance under the Dispute Resolution: Complaints (DISP) rules to help firms identify and address harm proactively.
2. **Two-Stage Complaint Process:** Consider reinstating a two-stage complaints process to allow firms more opportunities to resolve complaints before referral to the Financial Ombudsman.
3. **FOS Decision Criteria:** Limit requests for final ombudsman decisions to specific circumstances.
4. **Professional Representative (PR) Complaints:** Differentiate rules for complaints brought by PRs and ensure they are properly evidenced and substantiated.
5. **Case Fee Amendments:** Consider changes to FOS case fees for mass redress events.
6. **Fair and Reasonable Assessment:** Review considerations the financial ombudsman should take into account when deciding what is fair and reasonable.
7. **Dismissal Grounds:** Expand the scope of grounds for the FOS to be able to dismiss complaints without considering their merits, including collectively dismissing poorly-evidenced complaints brought in bulk by

PRs, or collectively dismissing complaints by referral to other agencies for regulatory action or law enforcement.

8. **Time Limits for Complaints:** Review current time limits for referring complaints to the FOS.

In the longer term, steps might involve:

1. **Cooperation on Wider Implications:** Enhance engagement under the Wider Implications Framework between FCA and FOS on cases with significant implications.
2. **Pause Timescales in DISP:** Allow FOS to pause DISP rules timescales while awaiting regulatory input.
3. **DISP Rule Changes for Mass Redress Events:** Consider pausing complaints handling requirements during mass redress events while the FCA assesses the situation.

### Timing

The consultation period ends on 30 January 2025, and responses will inform future actions, with a summary of feedback and next steps expected in the first half of 2025.

### Challenges

The Call for Input identifies some of the challenges facing the current consumer redress framework and raises issues to be considered in adapting the existing redress framework, which – given it requires FOS to consider every complaint individually – was not designed to operate for large volumes of claims, so that it is able to manage '*mass redress events*'.

The changes suggested by the FCA and FOS will likely be well-scrutinised by stakeholders. Given that many of the issues under the current framework relate to the need to alleviate the pressure on FOS to scale up resources to deal with mass redress events and the need to create efficiencies, it is sensible to suggest the most important proposed changes are a better complaints process at a firm level and a more efficient and consistent approach to decisions by FOS. It is also recognised that early identification of potential mass redress events and their notification to the FCA, FOS and firms will be key to manage risks at a firm and industry level.

### Changes

Firms will also be alert to the changes the FOS and FCA propose to put forward to make the Wider Implications Framework more effective and to mitigate the risk of misaligned interpretations of regulatory requirements. While the FCA cannot direct the independent FOS, it will be crucially important that the FCA keep the FOS apprised of its expectations on firms, so that regulatory uncertainty is not compounded as the FCA moves further towards a more principles-based and outcomes-focused approach under the Consumer Duty. This is doubly important given the expectation is that the outcome of the FCA's recent Call for Input<sup>2</sup> on potential Handbook rationalisation to reflect the Consumer Duty is that we will see at least some of the Handbook's retail conduct rules deleted.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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<sup>2</sup> <https://www.fca.org.uk/publication/call-for-input/call-for-input-review-retail-conduct-rules.pdf>

### **Other mechanisms for implementing redress: schemes of arrangement**

It may be worth noting that other mechanisms to settle group litigation and implement consumer redress are already available and may also be considered as part of the solution to handling high volumes of claims. Whilst not considered in the Call for Input, as we've seen in practice, a well-established statutory process known as a Scheme of Arrangement may offer a solution for individual companies facing a high volume of claims, where the impact of the redress claims has the potential to result in firm failure and it becomes necessary to wind down that business. Even within such cases, coordination and timely engagement with the FCA and FOS is key to avoid delays and ensure a prompt and fair distribution to consumers in relation to their claims. It may be worth noting that integral to such schemes is a streamlined adjudication procedure, and the scheme itself is promoted to ensure consumer redress claims are dealt with efficiently and are designed to promote timely returns to consumers avoiding unnecessary costs and delays. To this end the FCA has issued a useful [guidance note](#) on how firms can communicate and ensure timely engagement with that procedure. So, for firms where the potential risks and impact of mass redress claims is so significant as to precipitate its exit or failure, the scheme of arrangement may offer a better outcome for consumers and firms alike.

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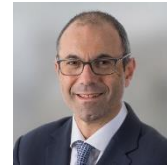
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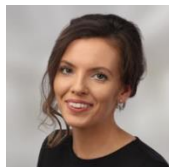
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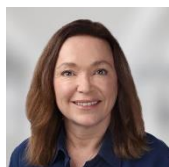
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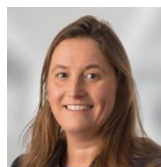
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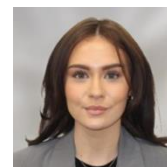
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