StepChange Debt Charity

StepChange response to HMT consultation on its review of the Financial Ombudsman Service

October 2025

Introduction

StepChange Debt Charity is a specialist not-for-profit provider of debt advice and debt solutions supporting people across the UK. In 2024, over 660,000 people contacted StepChange seeking debt advice or guidance with their problem debt and over 170,000 people completed full debt advice through our online and telephone service.

We welcome this consultation on HM Treasury's review of the Financial Ombudsman Service (FOS). Poor conduct in financial service is a significant driver of financial difficulty and problem debt, alongside other factors like low financial resilience and negative life events. FOS's role as an impartial and accessible alternative to court proceedings for consumers is essential to put things right for consumers that have cause for complaint and consumer trust in financial services, and to a regulatory framework that holds firms accountable and prevents and addresses poor conduct that drives social and economic harms including problem debt.

Significant redress events in recent years are the result of poor conduct. FOS redress in the high-cost, short-term credit market followed clear evidence of misconduct in that market and was preceded by significant policy interventions by the government of the day and the Financial Conduct Authority (FCA) widely seen as essential. StepChange itself raised concerns publicly about breaches of FCA affordability rules by subprime credit card providers that in subsequent years have become a source of a high volume of complaints and redress.[1] In the case of motor finance, courts upheld FOS's judgement that motor finance brokers acted unfairly, highlighting the ongoing importance of the CCA unfair credit relationship provisions, and the FCA revised its rules to ban the practice giving rise to redress.

If FOS had not acted in line with its statutory remit in these instances, widesread poor conduct causing serious harm to consumers would remain far more common than is the case now and the financial services redress framework would lack credibility with consumers. FOS is not isolated in dealing with misconduct in financial services: a key driver of the introduction by the FCA of the Consumer Duty was to end the 'detriment-intervention' cycle in which serious widespread consumer detriment emerges repeatedly, requiring reactive, after-the-event, interventions by the regulator.

We are disappointed the Government has adopted industry language that FOS has acted as a 'quasi-regulator'. It has not put forward evidence to justify that statement. FOS's remit, given to it by Parliament, requires it to reach judgements independently of the FCA. Moreover, the FCA's rules often set out high level requirements, or are

[1] StepChange Debt Charity (2019) *Red card: Subprime credit cards and problem debt*

principles and, increasingly, outcomes-based. This means FOS must use judgement to apply those rules to the complaints about firms' practices it adjudicates. Some of the language used in this consultation creates the appearance of injustice against firms where there has been clear misconduct by firms. Moral hazard is created where poor conduct by regulated firms that causes harm to consumers is not recognised as such by government.

The unbalanced nature of the proposals is evident in the absence of considerations of measures to support consumers to make complaints. StepChange advisers hear every day from advice clients who have experienced poor conduct by firms but face a number of barriers to raise concerns with firms and FOS including knowledge, capability and health problems, the latter including serious mental health problems associated with financial difficulty. At present, there is little support for consumers to raise complaints in contrast, for example, to support for consumers who have poor experiences in the energy market who can access advice and support from several funded sources. As a result, consumers in vulnerable situations are most likely to miss out and poor conduct affecting them is most likely to go unaddressed. Free to client support for people who need help to complain would be an important step forward to address the significant imbalance in power between firms and consumers who experience poor conduct.

Professional representatives (PRs) drive activity in a narrow range of issues, charge fees and do not represent an alternative to impartial advice and support for consumers. FOS has presented evidence of poor practice by PRs driving up firms' costs with poorly made complaints not upheld by FOS. Working with regulators to address the issue of poor PR practices may deliver more benefits to firms at lower risk to consumer protection than the proposals set out in this consultation.

We recognise the high volume of complaints driven by PRs in recent years has put strain on some firms and FOS. We also recognise that in the case of motor finance, redress has given rise to a systemic market risk. These high volumes of complaints are a consequence, however, of real misconduct and were avoidable through more effective regulation and enforcement, and by responsible conduct by firms.

We support steps to stop an unacceptable volume of poorly evidenced and incomplete complaints causing disruption for firms and FOS and ensure the redress framework is sustainable. We are also broadly supportive of the proposals set out in this paper and the parallel consultation by FOS and the FCA to improve handling of mass redress events, and in the latter to improve arrangements for monitoring, reporting and responding to complaints to prevent and address sources of poor outcomes as effectively and early as possible.

We do not agree, however, that the proposal in this consultation to limit the scope of the 'fair and reasonable' test can be taken forward in a way that is compatible with FOS's role as a fair and impartial complaints adjudicator. The proposal to create a right

for the parties to a complaint to request a referral to the FCA also risks undermining FOS's credibility and effectiveness as an impartial complaints adjudicator, deepening the imbalance of power between consumers and firms, and delaying and frustrating the complaints process.

FOS's role in supporting a responsible financial services market with high standards of conduct is essential to the Government's growth agenda. Consumer confidence and trust is vital to the demand side of any market. (This may be particularly true for new initiatives like targeted support, where a strong and effective redress framework gives consumers the confidence to increase their appetite to investment risk that the Government has called for.) Financially resilient consumers create a resilient economy.

In contrast, poor conduct undermines growth through the drag on household resilience and the wider social costs of financial difficulty and problem debt. Moreover, tolerance of poor conduct creates unsustainable financial services markets and undermines economically healthy competition and the confidence of responsible firms that they can compete and innovate without being undercut by less responsible competitors.

While there is room for improvement in the redress framework, a number of proposals in this consultation have not fully engaged with the risks and challenges for consumers that would arise from implementing them. As a package, the proposals largely overlook the key challenge of preventing poor conduct from emerging in financial services in the first place. The Government should not take forward steps that lower consumer protection and create the conditions for future misconduct. It should also work with the FCA to address the root causes of redress through better designed financial services regulation, a more effective early warning system and proactive enforcement.

Response to consultation questions

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?

The 'fair and reasonable' test was carefully designed by Parliament. It first of all requires FOS to consider 'what is fair and reasonable in all the circumstances of the case' (our underlining). The DISP rules further articulate factors (law and regulations; regulators' rules, guidance and standards; codes of practice; and good industry practice) that FOS will take into account. That is a clear, balanced and appropriately flexible framework for adjudicating complaints. The scope and flexibility of the test is essential for FOS to decide cases in a manner that is objectively fair.

The consultation states:

> *As now, the FOS will be able to use the Fair and Reasonable test to determine what is fair and reasonable conduct in the individual circumstances of the case.* (2.8)

It also states:

> *The government will legislate to make clear that, where conduct complained of is in scope of FCA rules, compliance with those rules, consistent with the FCA's intention for what those rules should achieve, will mean that a firm has acted fairly and reasonably.* (2.9)

Those two statements are not compatible while maintaining FOS's ability to decide cases in a way that is objectively fair and reasonable, since a range of factors beyond FCA rules are often relevant to complaints. The outcome of implementing the proposal would be an undue narrowing of the test that undermines FOS's ability to operate effectively and credibly as an impartial disputes resolution body.

The consultation puts forward limited details but appears to propose that aside from matters of law the other elements of the fair and reasonable test (codes of practice and good industry practice) would become null if firms had acted 'in scope' of the FCA's rules. In reality, the existence of codes of practice and good practice is an important influence on how the FCA drafts its rules—the two cannot be isolated from one another. The FCA itself produces guidance and standards to supplement its rules (one prominent example is the FCA's vulnerability guidance). Put simply, firms can follow FCA rules in a way that results in a bad outcome for consumers. Whether a firm has acted 'in scope' of FCA rules is therefore not a clear or sufficient test of whether it has acted fairly and reasonably.

We would also note here that codes of conduct often set a higher standard than FCA rules and firms sign up to them voluntarily, and in doing so use that commitment to set expectations for their customers. It is important to both objectivity and fairness that such codes of practice are taken into account where appropriate in FOS determinations.

The proposal risks introducing an unclear standard in legislation. FCA rules are often high level and permissive, while FCA principles like the Consumer Duty require firms to make a judgment about how they act fairly. The FCA is clear that is does not want 'tick box' compliance for good reason that it can lead to firms acting within a sense of the scope of FCA rules but delivering unfair outcomes for consumers. The consultation characterises this as firms not having certainty, but this can also be described as firms interpreting permissive FCA rules and principles in a way that is not aligned with good consumer outcomes which are then unhappy that the regulator or FOS has found their approach to be unacceptable. We do not agree there is uncertainty about the FCA's expectations or the outcome in these situations.

There will almost always be a degree of interpretation needed to apply the FCA's rules in individual cases. That means FOS must apply its judgement, applying the lens of the 'fair and reasonable' test and wider considerations like codes of practice to draw conclusions about firms' conduct in regard to FCA regulation in individual complaints. The consultation uses several different phrases to articulate a standard of compliance with FCA rules (for example, 'in scope of' FCA rules or 'consistent with the FCA's intent'), indicating the challenge of relying on FCA rules alone to guide FOS decision-making. The 'fair and reasonable'' test by necessity balances a breadth of factors with a clear and simple standard.

FOS already has a clear responsibility to take account of FCA rules. From a consumer perspective, we do not object to steps by FOS and the FCA to ensure that FOS is able to reach decisions with an informed understanding of the FCA's intentions in its regulatory framework. The Government's proposal, however, would be a blunt intervention that would undermine FOS's ability to decide cases in line with an objective fair and reasonable test. This risks a significant erosion of FOS' ability to act as, and be seen by consumers as, an impartial dispute resolution service.

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?

We note in our response to question 1 the problems we see with the proposal that will undermine FOS's ability to act as an impartial adjudicator. The problems that would arise for the speed and simplicity of FOS's role seem more likely to arise from the proposals below for a referral mechanism would introduce new delays where cases, and presumably groups of cases, are held up. New stages and delays in decision-making will clearly slow down some complaints and make FOS resolution less simple and quick. While we can see some usefulness in a structured dialogue between FOS and the FCA, this must be established within a framework that prevents delays wherever possible. We note below that only FOS itself should be able to refer cases to the FCA and should do so only where there is a clear gap in understanding of the FCA's intent in the latter's rules.

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

Without more detailed proposals and draft legislation it is not fully clear that the Government is proposing. Aspects of consumer credit law like the unfair relationships provision in the Consumer Credit Act underpin, and were taken into account, in the development of the present regulatory framework.

The consultation states:

> *Where FCA rules reflect the law, or where the FCA has issued guidance on how relevant law applies to regulated firms (such as FCA guidance on the duty to*

> *give information under the Consumer Credit Act 1974), the adaptation of the Fair and Reasonable test will mean that fair and reasonable conduct should be determined by reference to the FCA's rules and/or guidance.* (2.10)

It also states:

> *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 conduct in the circumstances of the case.* (2.11)

As we note above, the delineation between, and separateness of, law and regulations, FCA rules, and codes of practice is far from straightforward. The distinction between between law and FCA rules is sometimes clear, like CCA information requirements, but is often not. FCA 'reflection' of the law in its rules may also only partly pick up issues covered by the law where there is overlap but not full correspondence.

Taking into account these factors, the Government's proposal is likely to give rise to an unclear and unduly narrow approach not compatible with maintaining FOS's role as an objecitve, fair and impartial adjudicator. FCA rules 'reflecting' the law is not the same as interpreting it against the facts and circumstances of a particular case. Where the distrinction is not always clear, like the unfair relationships test, the proposal to prioritise FCA rules could only be applied by excluding a vital element of consumer credit law from FOS consideration. That would be an undue narrowing of the 'fair and reasonable' test incompatible with enabling FOS to 'determine what is fair and reasonable conduct in the individual circumstances of the case' (which the Government in this consultation states it commitment to). It is also likely to lead to a greater reliance by consumers on the courts for redress, which would undermine the purpose and benefits of FOS for both consumers and courts.

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?

We have no comment at this time.

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?

A formal mechanism for FOS to seek a view from the FCA on interpretation of its rules could be helpful in some circumstances but must not undermine the fairness and impartiality of FOS's role and judgements. There are risks to introducing a new mechanism as well as potential benefits:

- FOS's credibility as an impartial resolution service rests on its independence from the parties to a complaint and interested stakeholders, which includes the FCA – if the FCA is perceived to 'mark its own homework' (as significant redress

events can reflect failures of regulatory design, supervision, market intelligence work and enforcement), FOS's practical independence and credibility will be undermined; and
- it will further imbalance power between consumers and firms, because the latter have access to far greater expertise and resources to seek a referral to the FCA when it is commercially beneficial.

FOS can already seek a view from the FCA on interpretation of its rules where appropriate so the potential benefits and risks of a new mechanism must be weighed carefully. The intention of FCA rules is typically clear because the FCA has engaged and consulted extensively in developing them and set out detailed commentary and guidance.

The broad proposed grounds (broadly that the rules must be material to a complaint, there must be ambiguity in how the rules apply to the complaint, and the FCA must not previously have provided a view on interpretation of those rules) mean that it would be difficult to establish a sufficiently narrow test that is not open to gaming.

Finally, we would highlight that it is unlikely that referring complaints to the FCA will in many cases provide greater clarity since the FCA will not wish to make excessively prescriptive interpretations of its rules. As such, the totality of the impact of a new mechanism risks being to delay complaints and dampen FOS's ability to reach impartial judgements. As a result of these factors, our view is that only FOS should be able to seek a view from the FCA on interpretation of the latter's rules, and should do so only where necessary.

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?

No, we do not 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. We agree that it can be useful for FOS to seek a view from the FCA, but only FOS should be able to do so.

There are several problems with the proposal from a consumer perspective. First, it fundamentally undermines the impartiality and independence of FOS by sending the signal FOS is not capable of applying the FCA's rules in line with the FCA's intention, or not capable of seeking a view from the FCA when it is needed. We do not believe either is the case so the existence of the mechanism itself would be disproportionate and damaging to FOS.

Second, it is likely to lead to firms 'playing off' the FCA against FOS by seeking a more favourable answer where they are unhappy with a FOS determination (or one they expect). In turn, FOS may become more cautious in interpreting FCA rules to avoid the risk of being 'second guessed' by the regulator. (The ability for FOS alone to seek a

view from the FCA does not carry this risk because it would presumably do so before applying that view to a complaint or group of complaints.)

Third, as we have noted, the FCA is not an impartial party to interpretation of its rules. The regulator has incentives to interpret its rules in a way that protects its reputation regardless of the original intent or reasonable objective interpretation of those rules. If a gap opens up between FOS's interpretation and the FCA's view, FOS would likely be obliged to apply the latter but that may not represent an impartial or fair and reasonable determination of a complaint.

Finally, the proposed mechanism would deepen the imbalance of power between consumers and firms. The vast majority of consumers will not be in a position to identify where there is an issue at stake in FCA rules where it may benefit them to ask FOS to seek a view from the FCA. As such, only firms are likely to benefit from a referral mechanism available to the parties to a complaint, and it is highly likely firms will use the mechanism strategically wherever possible to minimise redress on commercial grounds. It is also highly likely that some firms, even if a minority, will act in bad faith and use any mechanism to frustrate and delay the resolution of complaints.

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?

No, we do not agree that the 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. The wider implications framework is not, and should not be, a consideration in the determination of individual complaints, which would turn the framework into a process geared towards delaying and restraining FOS. Providing individual parties to a complaint with the ability to will further dampen FOS's willingness and ability to act impartially.

We note the FCA is consulting separately on new guidance that will require firms to tell it when patterns of complaints emerge. Alongside the wider implications framework and steps to improve early identification that is a proportionate step to better identify issues with potential wider implications at an early stage. We would also like to see greater clarity around the FCA's responsibility to consider whether a regulatory intervention is needed in response to issues raised through the framework, and to publish findings and reasons for its approach.

There are limitations in the present wider implications framework in gathering intelligence from consumer advice providers. Advice providers and consumer advocates have valuable insight into potential early warning signals because they see issues playing out in a more real time basis and are able to connect complaints within and across different firms and spot when problems are significant or widespread. The regulatory framework, however, has struggled to systematically gather and act on this

intelligence. Consumer organisations also face resource constraints that mean the absence of a framework may hinder their willingness and ability to justify investing resources in gathering, organising and sharing information. Establishing a formal consumer forum as one element of the wider implications framework (or as a complementary activity) is therefore likely to be valuable.

Finally, we would reiterate here that the regulator and industry have far greater control than is implied by this consultation over steps to prevent the emergence of significant redress. The priority and most constructive step forward for all parties should be to focus on preventing the drivers of redress in poor conduct from emerging in the first place.

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?

A referral mechanism accessible to all parties to a complaint fundamentally disadvantages consumers because they will rarely be a position to identify or act where using it may be in their interests. We have noted our view that only FOS should be able to seek a view from the FCA. However, if the Government proceeds to introduce a formal referral mechanism, it should also introduce a duty on FOS to identify where it is in the interests of a consumer for a matter to be referred to the FCA. It should also introduce oversight and reporting arrangements to monitor and review the impact of the mechanism on FOS outcomes, including an independent evaluation after a reasonable period with recommendations to protect FOS's role and credibilty as an impartial body.

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?

We have no comment at this time.

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 the FOS deals with?

It is critical for consumer transparency that FOS continues to publish individual determinations. We would welcome regular thematic reports from FOS, which can help spread good practice and drive changes in bad practices causing consumer detriment. While it may be helpful to strengthen FOS' responsibilities to provide transparent insight and feedback for consumers and firms, we do not think the Government should be overly prescriptive as FOS is best-placed to determine the specific frequency and content of these outputs and publications in response to the evolving nature of complaints.

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?

We welcome steps to improve FOS's ability to meet its essential function as an impartial and fair adjudicator and recognise that over time there will always be opportunities to do so. However, we do not agree with the review's conclusion that FOS has departed from its original purpose, and do not consider that the review has evidenced a clear set of problems. We are therefore unable to comment on the extent to which those problems have been addressed. We welcome steps to improve FOS's working arrangements with the FCA and transparency but are concerned by the language used by the Government and the potential impact of a number of its proposals.

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?

No, we do not think FOS should be made a subsidiary of the FCA. From a consumer perspective, FOS's impartiality rests on its independence, including from the regulator. The FCA is not a neutral party to complaints since its reputation as an effective regulator is affected by FOS decisions. There would be few practical benefits to making FOS a subsidiary of the FCA that cannot otherwise be realised and an unacceptable cost in compromising its independence and impartiality.

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

No, we do not agree that 10 years is an appropriate absolute time limit:

- The principle that consumers should have access to redress once they become aware of cause for complaint is essential to a credible redress framework. An absolute time limit is not compatible with that principle.
- There are long-term products for which a 10 year limit would not be practical. This will give rise to the need for multiple exceptions to a 10 year rule and, as such, it will lack credibility as a consistent limit and be perceived to be arbitrary and unfair.
- A 10 year absolute limit on FOS complaints would likely lead to a higher volume of complaints being pursued through the courts because the six year court limitation period only runs from where the material facts are known to a complainant. Greater reliance on redress through the courts would not be a step forward for consumers or industry.
- A 10 year limit would incentivise firms to run down the clock on complaints, particularly those closer to the limit. While exemptions could be made where firms abuse the limit, that would put an additional onus on consumers to

challenge poor behaviour. It is far preferable to apply the existing approach that avoids that hazard.

Credible time periods in which to make complaints are essential to fairness and public confidence in the financial services regulation and the redress system. The Government should stick with the present approach to limitation periods including the right for consumers to make a complaint within three years of becoming aware that they have cause to complain.

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

Yes, we agree the FCA should have the ability to make exceptions to any time limit. We note that the FCA expects to consult on a motor finance redress scheme including financing agreements going back to 2007, reflecting the need to provide clarity for consumers and industry and avoid complaints going to court.

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?

We agree with the proposals to remove barriers to the FCA managing mass redress. It is vital for the fairness and credibility of the regulatory and redress framework that mass redress is handled in a manner that enhances consumer outcomes. Any perception that the regulator is unduly protecting markets that have caused harm to consumers is corrosive of public trust in financial services, regulation and government.

The Government should also be mindful of not allowing motor finance redress, which is an exceptional and preventable example of systemic risk, to unduly affect the design of the redress framework in a manner than introduces moral hazard by shielding firms from the consequences of their own poor conduct. The consultation sets out 'minimising market disruption' as an outcome of the good handling of redress but sometimes that disruption is essential to prevent unsustainable and predatory markets from emerging and being sustained.

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?

We agree that it could be useful to provide the FCA with more flexibility to establish a section 404 redress scheme where appropriate.

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

While we broadly agree with the principle that it makes sense to handle complaints consistently with any redress scheme, there may be multi-faceted cases that best sit with FOS outside any scheme. Consumers may also find that their complaints are passed back and forth between FOS and firms in a way that is frustrating and causes unnecessary delays. As such, care must be taken not to put in place arrangements that lead to unfair handling of complaints or undue delays in resolution.

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