



Response to HM Treasury's Financial Ombudsman Service Consultation

From the Transparency Task Force

https://assets.publishing.service.gov.uk/media/68752db039d0452326e28e23/20250709_FOS_review_consultation_document_-_FINAL_V4.pdf

Date of submission 8th October 2025

About the Transparency Task Force

[Transparency Task Force](#) (TTF) is a certified social enterprise, established in 2015, whose mission is 'to promote the ongoing reform of the financial sector so that it serves society better'.



We campaign for consumers and make sure the regulatory framework does its job. TTF works to positively shape regulation and redress organizations, while holding them accountable.

Executive Summary

We welcome HM Treasury's comprehensive review of the Financial Ombudsman Service (FOS) and acknowledge the important reforms proposed to address the service's evolution beyond its original remit. However, while the consultation addresses legitimate concerns about regulatory certainty and consistency, it fundamentally fails to tackle the consumer protection crisis at the heart of the current system.

The proposals, while well-intentioned, risk creating a framework that prioritizes industry convenience over consumer rights. More critically, they ignore systemic failures in accountability, transparency, and quality control that have left consumers vulnerable to institutional negligence and regulatory capture.

This response supports reforms that enhance clarity and efficiency but argues for fundamental safeguards to ensure that the pursuit of regulatory coherence does not come at the expense of consumer protection and access to justice.

Detailed Responses to Consultation Questions

Q1: Alignment of "fair and reasonable" test with FCA rules

We support alignment in principle but with essential consumer safeguards.

The proposal that FCA rule compliance should create a presumption of "fair and reasonable" conduct represents a significant shift in consumer protection. While regulatory coherence is desirable, this approach risks creating an impermeable shield for firms that comply with minimum regulatory standards while still causing consumer harm.

Key concerns:

1. **Regulatory capture risk:** FCA rules are often influenced by industry lobbying and may represent compromises rather than optimal consumer protection. Automatic exoneration for rule compliance could entrench inadequate standards.
2. **Evolution of standards:** Consumer expectations and market practices evolve faster than regulation. The "fair and reasonable" test has traditionally allowed the FOS to address emerging harms before formal rules catch up.
3. **Contextual fairness:** Rule compliance may be technically adequate but contextually unfair given individual circumstances, particularly for vulnerable consumers.

Proposed safeguards:

- Retain FOS discretion to find rule-compliant conduct unfair where it causes demonstrable consumer detriment
- Require FCA to demonstrate that rules are fit for purpose through regular consumer impact assessments

- Create explicit exceptions for vulnerable consumers and emerging market practices

Q2: Quick and simple role of FOS

The referral mechanisms must not become barriers to consumer access.

While streamlining processes is laudable, the proposed referral mechanisms risk creating new bureaucratic layers that could delay or deny consumer redress. The FOS's value lies in its accessibility and speed compared to court proceedings.

Critical requirements:

- Referrals should be exceptional, not routine
- Clear, published criteria for when referrals are necessary
- Strict time limits (maximum 30 days) for FCA responses
- Consumer right to proceed without referral after reasonable time limits
- Free professional support for consumers in complex referred cases

Q3: Role of relevant law

Consumer access to statutory and common law protections must be preserved.

The proposal to channel legal issues through FCA interpretation risks creating a regulatory monopoly on legal interpretation. This is particularly concerning given the FCA's track record of narrow interpretations that favour industry interests.

Essential protections:

- Consumers must retain direct access to statutory protections regardless of FCA guidance
- FOS must consider consumer rights under general law, not just financial services regulation
- Where FCA guidance conflicts with broader legal principles, consumers should benefit from the higher standard
- Independent legal opinions should be available for complex cases

Q4: Cases unsuitable for FOS

Consumer access to justice must not be compromised.

While some cases may be too complex for the FOS's simplified procedures, consumers must not be left without accessible remedies. The proposal to restore FOS dismissal powers risks creating access barriers.

Required safeguards:

- Clear, published criteria for unsuitable cases
- Mandatory legal aid or support for transferred cases
- Right of appeal against dismissal decisions

- Alternative dispute resolution options for complex cases
- Protection against tactical dismissal applications by firms

Q5: Mechanism for FOS to seek FCA view

Transparency and independence are essential.

We support formal consultation mechanisms but with critical safeguards against regulatory bias and delay.

Key requirements:

- All FCA views must be published to benefit future complainants
- Clear conflicts of interest procedures where FCA decisions are implicated
- Consumer right to independent review where FCA view appears biased
- Mandatory consultation with consumer representatives before FCA responds
- Time limits to prevent indefinite delays

Q6: Parties requesting FCA view

Consumer equality of arms must be ensured.

Allowing parties to request FCA views could be valuable but risks creating tactical advantages for well-resourced firms over individual consumers.

Essential protections:

- Free access for consumers (no fees or legal representation requirements)
- Clear criteria to prevent frivolous requests
- Sanctions against firms making tactical requests to delay proceedings
- Consumer support and advocacy services for complex requests
- Right to independent review of request decisions

Q7: Parties requesting wider implications referrals

Consumer voice must be strengthened, not weakened.

While identifying systemic issues is important, this mechanism must not become a tool for firms to escape individual accountability.

Required safeguards:

- Consumer organizations must have equal standing to request referrals
- Clear definitions of "wider implications" to prevent abuse
- Individual complaints must proceed unless clear consumer benefit from delay
- Regular review of referral decisions with consumer input
- Public reporting on referral outcomes and industry impact

Q8: Issues to ensure referrals work fairly

Fundamental fairness principles must govern all referral mechanisms:

1. **Transparency:** All referral decisions, criteria, and outcomes must be published
2. **Timeliness:** Strict time limits with automatic progression if deadlines missed
3. **Equality:** Consumers must have equal access to referral mechanisms and support
4. **Accountability:** Independent oversight of referral decisions and outcomes
5. **Consumer benefit:** Referrals must demonstrably benefit consumers, not just industry
6. **No discrimination:** Vulnerable consumers must not face additional barriers

Q9: Chief Ombudsman's authority

Quality control and accountability are long overdue.

The current system, where over 500 individuals can issue determinations under the banner of "The Ombudsman," represents a fundamental failure of quality control and consumer protection. The proposal for Chief Ombudsman authority is essential but insufficient without broader reforms.

We are concerned about "clearly inadequate decisions" and "negligent or vindictive determinations" but recognise that there must be an "end point" within the FOS process. If everyone is allowed to "appeal" an Ombudsman Final Decision, where does it end?

Although not an entirely satisfactory way forward, although it should be OK if subject to Independent Auditing, we propose that if an Ombudsman's Decision goes against the Investigator's Decision and it is a high value complaint (over £10,000?) their Final Decision should be reviewed internally by a panel of three Ombudsmen before it is sent out, and their review, rationale for the decision and their decision itself should be recorded for the Independent Auditor.

Critical requirements:

1. **End misleading branding:** FOS must stop presenting decisions as from "The Ombudsman" when they come from hundreds of different officials
2. **Implement professional standards:**
 - ISO 9001 quality management systems
 - Systematic training and competency frameworks
 - Regular performance monitoring and review
 - Independent auditing of decision quality
3. **Consumer protection measures:**
 - Right to request review of clearly inadequate decisions
 - Protection against negligent or vindictive determinations
 - Clear appeals process for procedural failures
 - Compensation for institutional mistakes
4. **Transparency requirements:**
 - Publication of quality control measures
 - Annual reporting on decision consistency

- Independent evaluation of ombudsman performance
- Consumer feedback mechanisms with published responses

Q10: Transparency arrangements

Transparency must start from day one of each complaint.

The current system often leaves consumers unclear about their rights, the FOS process, and even the nature of their own complaint. Fundamental transparency reforms are essential.

"Access to all firm responses and evidence" is vital. We are aware that in high value cases the FOS has asked if they could send the case to the bank for comment, and when a claimant has agreed, the bank responded to the FOS but stated their response was "commercially confidential" and that the claimant could not see it. So how can the claimant have comfort that the response from the bank was factually and technically correct, and honest, if the claimant does not have sight of such a response?

This is a very important issue and one of the reasons there is so much distrust in the system at this time; there is a complete lack of transparency.

Mandatory transparency requirements:

- 1. Initial consumer briefing:**
 - Plain English explanation of FOS role and powers
 - Clear statement of consumer rights and options
 - Written confirmation of complaint definition and scope
 - Timeline and process explanation
- 2. Process transparency:**
 - Access to all firm responses and evidence
 - Right to comment before investigation proceeds
 - Clear explanation of decision-making criteria
 - Regular updates on case progress
- 3. Decision transparency:**
 - Plain English summaries of legal and regulatory reasoning
 - Clear explanation of any FCA input or guidance applied
 - Publication of anonymized decisions with searchable database
 - Thematic guidance based on decision patterns
- 4. System transparency:**
 - Annual quality control reports
 - Publication of FCA-FOS cooperation agreements
 - Statistics on referrals, delays, and outcomes
 - Independent evaluation of consumer satisfaction

Q11: Sufficiency of reforms

The reforms are fundamentally insufficient without addressing regulatory accountability.

While the proposed reforms address some industry concerns about consistency, they fail to tackle the consumer protection crisis that undermines public confidence in the system.

Critical gaps that must be addressed:

1. **Regulator-caused harm:** No mechanism for consumers harmed by FCA decisions
2. **Institutional accountability:** No oversight of FOS compliance with its own rules
3. **Quality control:** No protection against incompetent or biased decisions
4. **Consumer rights:** No safeguards against complaint manipulation or process failures
5. **Independence:** Insufficient protection against regulatory capture

Without addressing these fundamental failures, the reforms risk creating a more efficient system for denying consumer redress rather than improving access to justice.

Q12: Making FOS an FCA subsidiary

We strongly oppose this proposal as fundamentally incompatible with consumer protection.

The suggestion that FOS should become an FCA subsidiary represents perhaps the most dangerous proposal in the entire consultation. Independence is not merely desirable but essential for consumer confidence and effective dispute resolution.

Fatal flaws in the subsidiary model:

1. **Conflicts of interest:** FCA decisions, rules, and enforcement failures are often central to consumer complaints. An FCA subsidiary cannot fairly adjudicate FCA performance.
2. **Regulatory capture:** Industry influence over FCA would extend directly to FOS, eliminating the last independent check on regulatory failures.
3. **Consumer confidence:** Public trust requires clear separation between the regulator that sets rules and the body that judges whether those rules have been fairly applied.
4. **International standards:** Ombudsman independence is a fundamental principle recognized globally. Subsidiary status would undermine UK leadership in dispute resolution.

If this misguided proposal proceeds, essential safeguards must include:

- Statutory guarantee of operational independence
- Separate funding streams independent of FCA budget pressures
- Independent board appointment processes
- Legal protection against FCA interference in individual cases
- Parliamentary oversight of independence arrangements

Q13: Ten-year absolute time limit

Time limits must reflect the reality of consumer harm, not administrative convenience.

While reasonable time limits serve legitimate purposes, the proposed ten-year absolute limit risks extinguishing legitimate claims where harm only becomes apparent later or where firms have concealed problems.

Essential considerations:

1. **Long-tail products:** Pensions, investments, and insurance products may not reveal problems for decades
2. **Concealment:** Firms may actively hide problems, making discovery impossible within arbitrary time limits
3. **Vulnerable consumers:** Those with disabilities, mental health issues, or limited financial literacy may need longer to understand they have been harmed
4. **Complex products:** Sophisticated financial instruments may take years to demonstrate harm

Required exceptions and safeguards:

- Extended limits for fraud, concealment, and misrepresentation
- Vulnerability exceptions with clear criteria
- Long-term product exceptions (pensions, investments, life insurance)
- Discovery rule protections where harm could not reasonably be known
- Judicial discretion for exceptional circumstances

Q14: FCA power to make exceptions

Exception powers are essential but must be meaningful and accessible.

The FCA's power to create exceptions to time limits is crucial for consumer protection but must be exercised transparently and consistently.

Requirements for effective exceptions:

- Clear, published criteria for exception categories
- Regular review and updating of exception rules
- Consumer input into exception policy development
- Appeal rights for exception refusals
- Proactive identification of emerging long-tail harms

Q15: FCA flexibility in mass redress events

Consumer protection during MRE investigations must be strengthened.

While improved MRE handling could benefit consumers, the proposals risk prioritizing administrative efficiency over consumer rights during investigation periods.

Essential consumer protections:

- Maximum time limits for MRE investigations with automatic progression

- Interim compensation for consumers facing hardship during delays
- Mandatory communication requirements to keep consumers informed
- Right to individual complaint processing if MRE resolution is delayed
- Independent oversight of MRE investigation decisions

Q16: Simpler legal test for section 404 schemes

Simplification must not weaken consumer protections or compensation levels.

Streamlining section 404 procedures could help consumers access redress faster, but only if standards and compensation levels are maintained.

Required safeguards:

- Compensation levels must match or exceed individual FOS awards
- Consumer representation in scheme design and oversight
- Right of appeal for inadequate scheme terms
- Independent monitoring of scheme effectiveness
- Public reporting on outcomes and consumer satisfaction

Q17: FCA directing FOS to align with redress schemes

Individual consumer rights must be preserved even within mass redress frameworks.

While consistency in mass redress is desirable, individual consumers must retain access to FOS review where scheme terms are inadequate or unfairly applied.

Essential protections:

- Right to FOS review where scheme redress is inadequate
- Consumer representation in scheme development
- Independent quality control of scheme decisions
- Appeal rights for scheme determinations
- Compensation for scheme delays or failures

Further thoughts on Consumer Protection Reforms Required

The notes that follow are additional thoughts on important topics. They go beyond the specific questions asked. Please consider them as an integral part of our consultation response.

1. Addressing Regulator-Caused Harm

The Problem: Consumers can suffer direct harm from FCA decisions, such as inappropriate section 178 consolidation approvals, inadequate supervision, or flawed rule-making. Currently, no accessible redress route exists for regulator-caused harm.

The Solution:

- Create an independent Consumer Redress Tribunal for regulator-caused harm
- Establish clear liability principles for regulatory failures
- Provide legal aid for consumers challenging regulatory decisions
- Implement mandatory regulatory impact assessments with consumer compensation provisions

2. FOS Compliance and Accountability

The Problem: FOS operates under DISP 3 rules and the FCA-FOS Memorandum of Understanding but provides no transparency about compliance, leaving consumers without recourse when procedures are ignored.

The Solution:

- Mandatory annual compliance audits by independent assessors
- Public reporting on DISP 3 compliance with detailed metrics
- Consumer right to procedural review with compensation for failures
- Parliamentary oversight of FOS operational compliance

3. Protection Against Complaint Manipulation

The Problem: Consumers report that FOS sometimes reframes or narrows complaints without consent, potentially excluding valid issues from consideration.

The Solution:

- Mandatory consumer sign-off on complaint definitions before investigation
- Right to expand complaint scope if new issues emerge
- Clear appeals process for complaint scope disputes
- Consumer advocacy support for complex cases

4. FCA Statutory Duty Enforcement

The Problem: FSMA Schedule 17(2)(1) requires FCA to ensure FOS can meet its legal obligations, but there's no evidence this duty has been actively fulfilled.

The Solution:

- Annual parliamentary reporting on Schedule 17 compliance
- Independent evaluation of FOS capability and performance
- Consumer and industry input into capability assessments
- Statutory remedies for Schedule 17 failures

5. Quality Control and Professional Standards

The Problem: The FOS "lottery" where decision quality depends on which of 500+ officials handles a case undermines consumer confidence and fairness.

The Solution:

- Implement ISO 9001 quality management systems
- Establish professional competency frameworks for all decision-makers
- Create systematic case review and quality assurance processes
- Provide consumer compensation for clearly inadequate decisions

6. Genuine Transparency and Consumer Education

The Problem: Consumers often don't understand their rights, the FOS process, or even what their complaint covers, leading to uninformed decisions and procedural failures.

The Solution:

- Mandatory consumer briefing with written confirmation of understanding
- Plain English explanation of all decisions with clear reasoning
- Searchable public database of anonymized decisions
- Regular consumer education programs and materials

7. Concerns about the Performance of the Independent Assessor

We have well-founded concerns about the performance of the Independent Assessor (IA) in the context of consumer protection; it functions inadequately.

The Independent Assessor (IA) does not fulfil the role of holding FOS to account for failings in how it decides complaints. It only looks at customer service, and reports back to the FOS Board itself. This makes the IA more of a partial service-quality reviewer than an accountability mechanism - and for many consumers, it feels like yet another obstruction rather than a genuine safeguard.

Proposal

To improve consumer protection, the IA must move from being a service-quality reviewer inside FOS to being a statutory safeguard with real independence, wider remit, and powers to trigger case reviews and redress, with parliamentary accountability.

We recommend the following to improve the performance of the IA role, to deal with referrals from their Customer complaints team and improve service quality across the organisation.

1. Expand Scope Beyond Service Issues:
 - Current: IA only looks at delays, rudeness, and admin errors.

- Improved: Allow IA to consider substantive failings in FOS case handling, such as:
 - i. whether legal obligations under FSMA were followed;
 - ii. whether decision-makers were properly independent; and
 - iii. whether governance conflicts (e.g. Chair/CEO influencing case outcomes) occurred.
- 2. Powers to Recommend Case Review:
 - Current: IA cannot change or overturn an Ombudsman's decision.
 - Improved: Give IA power to refer cases back for a fresh review by a different Ombudsman if serious procedural or governance flaws are found.
- 3. Direct Accountability to Parliament:
 - Current: IA reports to the FOS Board — essentially marking the organisation's own homework.
 - Improved: Require IA to report annually to the Treasury Committee, not just FOS, so MPs can scrutinise systemic failings.
- 4. Consumer Redress Powers:
 - Current: IA can only recommend apologies or small goodwill payments.
 - Improved: Authorise IA to recommend financial compensation where poor governance or statutory breaches have caused injustice.
- 5. Independence of Appointment:
 - Current: IA is appointed by FOS itself; a very obvious conflict of interest, and a tell-tale sign of regulatory capture.
 - Improved: Appointment made jointly by the Treasury and Parliament, not FOS, to guarantee independence from the body they scrutinise.
- 6. Transparency:
 - Current: IA reports are rarely published in full and consumers have limited visibility.
 - Improved: Publish IA findings regularly and in detail (with anonymised case studies), so systemic problems can't be hidden.

Conclusion

The Treasury's consultation represents an important opportunity to reform a system that has lost public confidence through a combination of regulatory capture, institutional failures, and lack of accountability. However, the proposed reforms, while addressing some industry concerns, fail to tackle the fundamental consumer protection failures that undermine the system's legitimacy.

True reform requires more than administrative efficiency and regulatory coherence. It demands:

- **Independence:** Clear separation between rule-makers and adjudicators
- **Accountability:** Meaningful oversight of both regulators and the FOS
- **Transparency:** Open processes that consumers can understand and trust

- **Quality:** Professional standards that ensure consistent, competent decision-making
- **Access:** Genuine equality of arms between consumers and financial institutions

Without these fundamental reforms, the proposed changes risk creating a more efficient system for protecting industry interests rather than improving consumer access to justice. The government must recognize that consumer confidence in financial services depends not just on market stability and regulatory clarity, but on ordinary people's belief that they will be treated fairly when things go wrong.

We urge the Treasury to expand its reform agenda to address these critical consumer protection gaps. Only comprehensive reform that puts consumer rights at its heart can restore the public trust essential for a thriving, innovative financial services sector.

For and on behalf of the Transparency Task Force.

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