

FAIR AND REASONABLE?

REFORMING DISPUTE RESOLUTION

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voice of the collections industry

EXECUTIVE SUMMARY

The role of the Financial Ombudsman Service (FOS) has grown considerably since it was first introduced and, as it reaches its quarter-century milestone, calls for reform have grown louder and louder. A service that was only ever intended to resolve individual disputes “quickly and with minimum formality” has become a behemoth of an organisation, now costing the industry almost £278 million per year¹. Reasonable questions are being asked about the value for money delivered by the FOS, with its 2025/26 annual operational expenditure 14 times the size of its original budget.

The dispute resolution environment has changed in the FOS’ lifetime but the organisation has been slow to respond to that change. Annual average FOS case numbers in the last decade are double what they were in the preceding decade, driven largely by a growing compensation culture and a body of professional representatives raising increasing numbers of speculative and poorly-evidenced complaints. Introducing a case fee for professional representatives has been a positive step but it has taken years to reach this point, years of firms raising concerns about the FOS’ free-to-consumer service being exploited for financial gain.

In the last 12 months, reform has started to look like a realistic prospect, as the Government seeks to remove unreasonable barriers to growth, innovation and competition, and has identified parts of the UK’s regulatory infrastructure as impediments.

The FOS is a prime candidate for intervention, having moved far beyond its original remit in a way that now poses a significant challenge to the financial services sector. The problem is not just the cost of funding the body; it is the uncertainty that comes from its quasi-regulatory role; it is the inconsistency and unpredictability in its decision-making; and it is the knock-on effect this has on those looking to invest in the sector.

There are numerous changes that could be made to bring about sensible reform and return the FOS to its originally-intended remit of quick and effective dispute resolution, many of which have been called for on multiple occasions throughout the FOS’ existence. We have been part of those calls across the decades and would welcome genuine change to address the various problems that have accumulated around the FOS over time.

But the FOS has resisted demands for change for almost 25 years, so perhaps, instead of sensible tinkering, the time has come for something a little more radical. The most common charges against the FOS are that it now occupies a quasi-regulatory role, effectively creating new regulation without consultation with stakeholders or the regulator; that it has become a major financial burden to firms; that it is inconsistent; and that there is no legitimate route for appealing a decision.

Many of these issues could be alleviated by subsuming the FOS into the Financial Conduct Authority (FCA). Efficiencies would drive cost-

savings; cooperation and consultation with the regulator and stakeholders would be obligatory within the FCA structure and subject to the FCA’s statutory objectives; the stewardship of regulatory interpretation would be more clearly the responsibility of the FCA; and appeals could potentially be heard via the Upper Tribunal, as appeals against FCA decisions currently are.

And the FOS could continue to exist as an operational entity within the FCA, fulfilling the dispute resolution role it was always expected to.

As part of its growth agenda, the Government has been clear that attracting investment into the UK is critical. Regulatory uncertainty presents a major barrier to investment appetite and the quasi-regulatory role that the FOS has come to occupy in recent years has made financial services regulation increasingly unpredictable. In order for the sector to function effectively, all parties need to have a clear idea of what compliance looks like and what is expected of them; without this, chaos and confusion can reign, and competition and innovation evaporate.

Whether the Government opts for reform via tweaking the existing infrastructure or via a total overhaul of the FOS, it is imperative for the stability of the industry that reform takes place. The time for reform has come and this opportunity must not be wasted. If the Government is serious about growth, it needs to ensure the financial services sector has an appropriate, functional and reliable regulatory regime.

¹The FOS Plans and Budget 2025/26 record an operating budget of £277.9m for the coming year | Financial Ombudsman Service: Plans and Budget 2025-26 (April 2025)

ROAD TO REFORM

Return the FOS to its original dispute resolution remit

- Option 1: Make the FOS a part of the FCA
- Option 2: Reform the existing legislation and rulebook to return FOS to its dispute resolution role
- Option 3: Establish relevant statutory objectives for the FOS

Establish a proportionate route to appeal FOS decisions

Introduce changes to clarify time frames and reduce poor quality referrals

- Introduce a long stop for complaint referral
- Establish regulatory powers for pausing complaint time frames
- Disapply complaint referral time frames for bulk complaint submissions and allow fairer time frames for affected firms

BACKGROUND

Established in 2001, the Financial Ombudsman Service (FOS) was set up in accordance with the Financial Services and Markets Act 2000 (FSMA) to provide “a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person”². Whether it continues to meet that original remit is the subject of on-going debate.

FSMA was a significant milestone in the development of the current UK financial services regulatory regime and led not just to the creation of the FOS but also firmly established the Financial Services Authority (FSA) as the relevant authority for most of the financial services sector. The regulatory regime as we now know it would emerge some years later, in response to the 2008 financial crisis and claims of inadequate regulation. The government replaced the FSA with the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA), and shortly after this, transferred regulatory responsibility for consumer credit from the Office of Fair Trading (OFT) to the FCA.

Throughout this period, the FOS remained a constant, fulfilling its role to resolve individual disputes. Prior to the financial crisis, case volumes were

relatively stable, hovering around 120,000 on an annual basis. Post-crisis, case volumes exploded, and continued to rise as payment protection insurance (PPI) mis-selling complaints escalated. The emergence of the PPI issue further entrenched the mistrust of the financial services sector that had been generated by the 2008 crisis. FOS cases would never return to pre-crisis levels.

Although these were critical developments in the modern dispute resolution environment, they were not the only factors. The FOS’ remit expanded to include areas such as investments and pensions, and with them came much more complex disputes. The PPI issue saw the claims management sector establish itself and, when PPI complaints were brought to an end, the sector needed other issues to pursue, driving a hunt for a “new PPI”. The growth of social media and online forums enabled people to share their experiences and to better understand their rights, but in the cases of some bad actors, it also enabled them to exchange tactics for exploiting the system.

Fig 1. 25 years of financial services regulation in the UK



²Financial Service and Markets Act 2000: S. 225 (accessed March 2025)

The pre-financial crisis years saw FOS complaint volumes sitting around 120,000-125,000 per year; after the crisis, volumes rose significantly, peaking with the PPI issue with over half a million complaints in both 2012/2013 and 2013/2014.

In subsequent years, the volumes did drop from that PPI peak, although they have consistently been higher than the pre-crisis period, and have been, on average, double what they were prior to the PPI issue. Figures show a relatively steady decline from that peak period in recent years, particularly since a final deadline was put in place for PPI complaints – but with motor finance commission disclosure now emerging as the latest “new PPI”, numbers are likely to rise again.

Complaint volumes are not the only thing that has grown during this period. The cost of funding the FOS has grown considerably. What started out in 2001 as an organisation with an annual budget of £20m per year and an expected annual case-load of 30,000 cases is now an organisation with annual expenditure of just shy of £280m and a predicted case-load of around 270,000 cases⁴. For context, this is equivalent to the annual revenue budget of five typical district councils in England⁵. An expanded remit, increased case complexity and increasing volumes driven by professional representatives all go some way to explaining the rise. But it is not unreasonable to question the value for money delivered when an eight-fold increase in complaint volumes is accompanied by a 14-fold increase in the annual budget.

Number of new cases 2004-2024

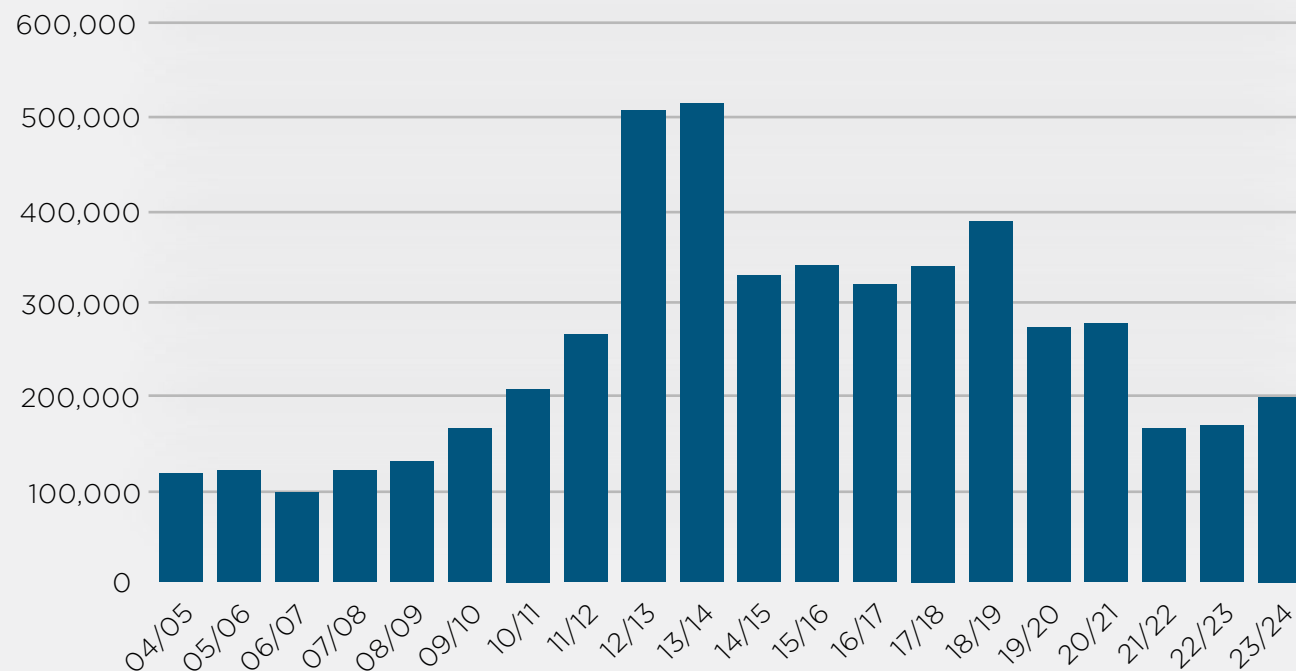


Fig 2. Annual volume of new cases opened by the FOS 2004-2024

Period	Average annual number of new cases
2004/2005 – 2011/2012	150,293
2014/2015 – 2023/2024	310,895

Fig 3. Average annual FOS complaints³

³Given their anomalous nature, the peak years of PPI complaints have been omitted from calculating these averages. However, even including these years in our calculations would show a higher annual average across the last decade than the decade including PPI complaints (255,290 on average between 2004/05-2014/15 vs 310,895 for 2014/15-2023/24).

⁴[Financial Ombudsman Service: Plans and Budget 2025-26 \(April 2025\)](#)

⁵[Estimate of typical district council revenue budgets for 2023-24 on a range between £10m and £50m pa as derived from “Local Authority Revenue Expenditure & Financing 2024-25 budget, England” 2/10/24 | Department for Levelling Up, Housing and Communities: Local authority revenue expenditure and financing England: 2024 to 2025 budget \(accessed March 2025\)](#)

In the FOS' defence, it has given some thought to value for money in recent years, undertaking a transformation programme to address its operational deficiencies, namely a substantial complaints backlog. It brought in temporary changes to how it recorded complaints in order to encourage proactive resolution, with the aim of driving quicker resolutions, and it is set to make those changes permanent⁶. Significant inroads into that backlog could, however, be hindered if the motor finance issue genuinely does emerge as a mass complaints issue. All signs point to the FCA intervening with a redress scheme, which would potentially avoid an avalanche of FOS complaints, but everything is speculation at this point.

While costs and volumes have risen in the last 25 years of FOS, what has perhaps grown most is the prominence of the FOS' role in the financial services regulatory regime. A body that was originally intended to resolve disputes quickly and with minimum formality has now found itself occupying a quasi-regulatory role, empowered to effectively impose new obligations on regulated firms. The FOS is afforded an incredibly broad scope for resolving disputes, empowered to decide what it considers to be "fair and reasonable", even if what it considers to be fair and reasonable is not set out in law, regulation or guidance. When combined with rules that require firms to factor historic FOS decisions into their future complaint handling, it effectively imposes an obligation on firms to treat those decisions as if they are regulatory requirements.

The organisation has always been operationally independent from the financial services regulator. As its power has grown, this has become more problematic. While there are expectations for the FOS and FCA to cooperate and consult on matters of wider interest, there has been little evidence in recent years that this is happening in an adequate way. Principles-based regulation brings with it ambiguity, so there is an obligation on the regulator to ensure firms and the FOS understand its expectations, to ensure that these are applied consistently and proportionately. Introducing an outcomes-based element, like the Consumer Duty, to the regime creates further ambiguity and requires even more clarity from the regulator about what it expects. Existing mechanisms for cooperation and consultation between the FCA and the FOS do not appear to have worked as they should during the principles-based regime; it is essential that functional and effective mechanisms are established before the outcomes-based regime is overrun with inconsistent interpretation.

The FOS has an important role to play in consumer protection, providing – as was originally intended – quick dispute resolution with minimum formality. But the organisation, the regulatory system, and the dispute resolution environment have changed considerably since its inception and there is now a need to consider whether the way in which its role has changed is a good fit for the UK regulatory environment.

“A body that was originally intended to resolve disputes quickly and with minimum formality has now found itself occupying a quasi-regulatory role, empowered to effectively impose new obligations on regulated firms.”

⁶Financial Ombudsman Service: Proactively settled complaints to continue (June 2024)

WITH GREAT POWER COMES GREAT... UNCERTAINTY

Many of the concerns we discuss in this paper are far from new. In fact, almost all of the issues have been raised elsewhere across the last couple of decades, as have many of the proposed remedies. It is disappointing that it has taken almost a quarter of a century for the FOS to face meaningful reform, when the problems have been out in the open for so long.

Nevertheless, it is positive that the Government and the FCA are at last looking at the dysfunction in the redress system. It has become costly, open to misuse, needlessly complicated, and a source of great uncertainty in the sector.

As professional representatives continue to account for a substantial proportion of complaints to the FOS – reported most recently by the FOS as accounting for almost half of complaints⁷ – firms face mounting complaint-related costs and resource demands, often for complaints with little merit⁸. With the FOS afforded significant latitude to make decisions that go beyond applicable law, regulation and guidance, firms can no longer rely simply on working to the rules set by the regulator.

Reform is needed in a range of areas. It is essential that the issues discussed in this paper are confronted head-on by government and the regulator, and meaningful reform is implemented, to ensure the sector remains viable and consumers have access to an effective alternative to court for their dispute resolution, albeit one which also considers fairness for all parties to the dispute.



“It is essential that the issues discussed in this paper are confronted head-on by government and the regulator, and meaningful reform is implemented...”

⁷Financial Ombudsman Service: [Financial Ombudsman Service to start charging professional representatives to refer cases \(February 2025\)](#)

⁸“For example, only 25% of cases brought to us by CMCs were found in favour of consumers compared to 40% of cases referred to us directly by consumers for free.” | Financial Ombudsman Service: [Charging claims management companies and other professional representatives: policy statement \(February 2025\)](#)

Disproportionate and conflicting powers

According to DISP 1.3.2A in the FCA Handbook, complaint procedures should “*ensure that lessons learned as a result of determinations by the Ombudsman are effectively applied in future complaint handling*”⁹. The FCA Handbook also advises firms that their assessment of a complaint they receive should be accompanied by “*appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent*”¹⁰.

In effect, this means that firms are required to factor past FOS decisions into their complaint handling. And in fairness to the regulator, even though each case should be considered on its merits, there is a logic to the idea that firms should take into account how the industry’s independent adjudicator has approached similar issues in the past, especially in terms of reducing referrals and driving earlier resolution.

However, this gets a little more complicated when we also consider some of the provisions in DISP 3.6, the section of the Handbook where we find FCA rules and guidance in relation to FOS decisions.

DISP 3.6.1 replicates the expectations set out in the s.228 of Financial Services and Markets Act 2000¹¹ (FSMA), stating that the FOS will determine a complaint “*by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case*”. The FCA elaborates on its expectations of the FOS in DISP 3.6.4. However, rather than requiring the FOS to apply the law, rules, regulations and guidance applicable at the time, the FOS is required only to take this into account when deciding what is fair and reasonable. It is

down to the FOS to consider what weight to lend the applicable law, rules, regulations and guidance. This gives the FOS significant latitude to decide what it considers to be fair and reasonable, regardless of the rules by which the respondent firm was operating at the time. Furthermore, if the FOS does make a determination against a firm that goes beyond the stated requirements, that decision becomes another that must be factored into a firm’s future complaint handling, regardless of whether or not it is consistent with industry requirements. This effectively creates new obligations on firms.

The FOS may not view it this way and it may believe it is simply adjudicating an individual dispute – but FCA rules mean that isolated FOS decisions carry more significance than may be intended or even recognised by the decision-maker. The FOS has no strategic objectives to think about the wider ramifications of its decisions, which means that, unlike the FCA, the FOS has no statutory duty to contemplate the impact on consumers, on firms, and on the market when interpreting law and regulation, or to consult with affected parties in relation to regulatory change. The responsibility to think more broadly is critical in ensuring that a proportionate and considered approach is taken.

The risk of so-called ‘mass redress events’ is amplified by affording this kind of power to the FOS, enabling it to introduce the precise kind of gap that professional representatives are searching for. Investors will – reasonably – be reluctant to invest in a sector where firms face a heightened risk of exposure to a ‘mass redress event’ regardless of whether it has sought to comply with all relevant rules and guidance.

“This gives the FOS significant latitude to decide what it considers to be fair and reasonable, regardless of the rules by which the respondent firm was operating at the time.”

⁹Financial Conduct Authority: DISP 1.3 (accessed March 2025)

¹⁰Financial Conduct Authority: DISP 1.4 (accessed March 2025)

¹¹Financial Services and Markets Act 2000: S. 228 (accessed March 2025)

Cooperation and consultation

With the capability to make determinations that have a wider impact on the financial services sector, one would expect the FOS to be in frequent consultation with the FCA on interpretation of the rules, given the FCA designed and regulates those rules. Especially when there are various measures that seem to demand this kind of cooperation and consultation.

For example, the FOS is required under s415C (1) of FSMA¹² to cooperate and consult with both FCA and the Financial Services Compensation Scheme (FSCS) on matters of interest. This expectation is also documented in the Memorandum of Understanding (MoU) between the FOS and the FCA¹³. Separate to this, recent years have also seen the FCA and the FOS attempt to revitalise the Wider Implications Framework (WIF)¹⁴, although it's worth noting that this also appeared to be the case when Lord Hunt conducted his assessment of the FOS back in 2008¹⁵.

And yet, there is little evidence to suggest that the FCA and the FOS are cooperating and consulting to the degree that the financial services sector needs. For example, the FOS decisions made in relation to motor finance last year clearly had broader significance and yet there was no apparent consultation or cooperation with the FCA prior to making those decisions, and it ultimately resulted in the FCA having to adopt extraordinary measures to pause complaints and consider the issue further¹⁶, to avoid a major influx of complaints.

It seems reasonable that responsibility for interpreting regulations sits with the body setting those regulations - the FCA. And where there is ambiguity or a matter of potentially wider significance, it seems logical that these two bodies, the FCA and the FOS, would act in accordance with the expectations that they consult and cooperate, and ensure there is a consistent and considered position, one that has had critical stakeholder input.

The FOS was never expected to work in the same way as a regulator – it is a dispute resolution body, so it has not been designed with wider industry and stakeholder consultation in mind. While it is capable of doing this in limited circumstances, such as inviting views on its plans for the year or on its own reform plans (e.g. rethinking funding arrangements), it is not equipped or empowered to do this for regulatory matters of wider significance. The FCA, on the other hand, is expected to take on this role and has established routes to capturing views and expertise that the FOS does not. The need for cooperation between the two is clear.

As long as there are provisions that allow for the two bodies to have conflicting positions on interpretation of the rules and what constitutes 'fair and reasonable', it will be difficult for firms to be confident in their own compliance with regulatory requirements.



“It seems reasonable that responsibility for interpreting regulations sits with the body setting those regulations - the FCA.”

¹²Financial Services and Markets Act 2000: S. 415C (accessed March 2025)

¹³Financial Conduct Authority: Memorandum of Understanding between the FCA and the FOS (November 2024)

¹⁴Financial Ombudsman Service: Financial regulatory family strengthen Wider Implications Framework (January 2022)

¹⁵“7.15 My call for evidence document asked specifically why the Wider Implications (WI) process is so little used. Shortly after publication of that document, the FSA, FOS and OFT held a major event for trade associations and other stakeholders to announce a relaunch of the process, including updating its web presence...” | Rt Hon Lord Hunt of Wirral MBE: Opening Up, Reaching Out and Aiming High: An agenda for accessibility and excellence in the Financial Ombudsman Service (2008)

¹⁶Financial Conduct Authority: FCA to undertake work in the motor finance market (January 2024)

Costs and redress

Forgetting the more abstract costs (e.g. lost investment) of regulatory uncertainty for a moment, the existing dispute resolution regime still costs financial services firms dearly. Firms currently contribute to the FOS both through a variable annual levy and a fixed case fee of £650 per complaint case raised by the FOS. The case fee has been particularly problematic because, as the professional representative sector has grown, the fee has become a tool for leverage by less scrupulous representatives. Knowing that a respondent firm will face a set case fee of £650 no matter the merits of the case affords the representative some immediate leverage when it comes to making a complaint and seeking redress.

The recent introduction of a case fee for professional representatives – which is something that has been called for at least as far back as the 2008 Hunt Report – is hoped to tackle this challenge; however, the fact that the fee for professional representatives will be less than half of the £650 case fee that a respondent firm pays means that they will retain some leverage over the respondent firm. FOS case fees are not charged solely for the investigation and adjudication of a dispute; the FOS will also charge firms a fee for anything that constitutes a “chargeable case”. And, as we can see from the FCA Handbook definition¹⁷, a chargeable case is open to some very broad interpretation:

‘Chargeable Case’

“Any complaint referred to the Financial Ombudsman Service, except where:

- a)** The Ombudsman considers it apparent from the complaint, when it is received, and from any final response, summary resolution communication or redress determination which has been issued by the firm or licensee, that the complaint should not proceed because:
 - i.** The complainant is not an eligible complainant in accordance with DISP 2; or
 - ii.** The complaint does not fall within the jurisdiction of the Financial Ombudsman Service (as described in DISP 2); or
 - iii.** The Ombudsman considers that the complaint should be dismissed without consideration of its merits under DISP 3.3.4R or DISP 3.3.4AR (2) to (5) (Dismissal of complaints without consideration of the merits); or
- b)** The Ombudsman considers, at any stage, that the complaint should be dismissed under DISP 3.3.4R (2) or DISP 3.3.4AR (1) on the grounds that it is frivolous or vexatious; or
- c)** The Ombudsman considers it apparent from the complaint when it is received, and from any redress determination which has been issued by the respondent, that the respondent has reviewed the subject matter of the complaint and issued a redress determination in accordance with the terms of a consumer redress scheme, unless the complainant and the respondent agree that the complaint should not be dealt with by the Ombudsman in accordance with the consumer redress scheme.

The crucial part of the definition is that the FOS must consider the ineligibility of a complaint to be apparent upon receipt. If it is not immediately obvious, the firm is likely to end up with a chargeable case, even if investigation concludes that it is out of the FOS’ jurisdiction or the complainant is ineligible. This is a complaint we hear time and again from members, especially SMEs, who are penalised for ambiguity in the FOS’ jurisdiction.

As for the annual levy, this is, as of recently, intended to cover the fixed FOS overheads. The variable element of the levy has fluctuated over the years¹⁸, often used as the tool to generate additional funding as and when it has been deemed necessary. The principle of a levy to fund the body is a reasonable one – in the same way the sector should fund its regulatory body, it is also fair that it funds an independent dispute resolution body.

The approach to funding, however, has become somewhat disproportionate. According to the FOS’ 2023/24 annual complaints data, there were 844 complaints about debt collection - less than 2% of all new consumer credit cases during that year. Yet, collections firms face the same levy costs as other sectors, calculated on the basis of their turnover, despite generating such a tiny proportion of work for the FOS.

¹⁷Financial Conduct Authority: Glossary: chargeable case (accessed March 2025)

¹⁸It has been as low as £0.02 for every £1,000 of turnover above £250,000 and as high as £1.497 for every £1,000 of turnover above £250,000.

Absence of appeal function

At present, the only real option for challenging an Ombudsman decision is to pursue judicial review. However, judicial review is simply not a viable route for most firms.

The focus of a judicial review is on the decision-making process, rather than the decision itself. Coupled with the enormous amount of statutory discretion afforded to the FOS in terms of the decisions it can make, it is tremendously difficult for judicial review proceedings to be accessible, never mind successful. The last couple of decades are littered with failed attempts to pursue judicial review against the FOS, illustrating the difficulty firms face in challenging the FOS.

A University of Sheffield study into judicial review and Ombudsman Schemes¹⁹ identified that over a 17-year period between 2002 and 2019, there were just 26 judicial review cases involving the FOS that actually progressed to a hearing.

The hopelessness of seeking judicial review against the FOS was further illustrated in 2017 when Berkeley Burke sought to circumvent the judicial review approach and instead challenged the FOS²⁰ in the courts, arguing that the FOS decision was an arbitration award under the Arbitration Act 1996 – the challenge failed but it illustrated firms' reluctance to make an application for judicial review.

The limited scope and accessibility for judicial review leaves firms without a viable route to challenge FOS decisions.

The FOS does, of course, have a two-tier system for complaints, which allows for escalation of an investigator decision to an ombudsman. But it was noted in the FCA's recent call for input on modernising the redress system that investigators tend to follow a general FOS approach, which *"results in very few determinations changing between preliminary assessment stage and final decision"*²¹. If an ombudsman simply follows the general approach, the likelihood of any decision being overturned is slim.

So, while judicial review may be unbiased, it does not allow for the actual decision to be challenged; and the internal escalation process allows for a decision to be challenged, but is likely to have some inherent bias (especially given that few determinations are overturned). Both options are flawed and neither route affords firms a genuine review of the decision.

This may have been acceptable when the FOS was first established, when it operated within its remit to provide quick dispute resolution, when it did not have authority to award complainants up to £445,000²², and when its decisions did not represent new obligations on firms. But these are the new realities of the FOS and it is no longer appropriate that it can do so without firms having any viable route to challenge it.

An appeals route that allows decisions to be considered by, for example, the High Court or Upper Tribunal, would give parties a valid opportunity to challenge particularly contentious decisions.

"The limited scope and accessibility for judicial review leaves firms without a viable route to challenge FOS decisions."

¹⁹Kirkham, R., & O'Loughlin, E. A. (2020). Judicial Review and Ombuds: A Systematic Analysis. Public Law, 2020 (Oct), 680-700

²⁰Hill Dickinson: [Judicial review – second bite of the cherry on FOS decision? \(November 2017\) \(accessed February 2025\)](#)

²¹Financial Conduct Authority: [Call for input on modernising the redress system \(November 2024\)](#)

²²Financial Conduct Authority: [Call for input on modernising the redress system \(November 2024\)](#)

“These kinds of ambiguous or overly generous time frames for raising a complaint defeat the object of having limits in the first place.”

Unclear limitation periods

The time limits for referral of a case to the FOS have become more ambiguous over time. This has been further complicated by recent court cases stating that an unfair relationship complaint can effectively be considered for as long as the relationship exists plus a further six years, regardless of whether the act or omission in question occurred decades ago.

The FOS has said it will be pragmatic about this and if a consumer raises a complaint years after the fact, this will be taken into account. However, we are a little sceptical about this claim, especially as it is not a position that the FOS is obliged to uphold. Agreeing to take this into account and actively doing so are very different things.

It is essential, therefore, to put in place a long stop for referral to the FOS. It defies logic that an individual can complain about an ‘unfair relationship’ several years into that relationship, where the incident occurred at the outset of the relationship. It puts firms at an incredible disadvantage, especially as they must also comply with data protection requirements to minimise the data they hold. Firms are thus conflicted between meeting their data protection obligations and protecting themselves against complaints about historic issues. And if they do opt to retain data for longer than necessary, they not only risk breaching data protection law (which carries huge potential

penalties), they also incur the accompanying extensive data storage costs.

There is a lot of ambiguity around the time frames for referral which can essentially render them pointless. For example, DISP 2.3.1R stipulates that a complaint cannot be considered if it is referred to the FOS “*more than six years after the event complained of or (if later) more than three years from the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint*”. Determining when a complainant became or ought to have become aware of an event is fraught with ambiguity, is open to very broad interpretation and is very difficult to challenge.

These kinds of ambiguous or overly generous time frames for raising a complaint defeat the object of having limits in the first place. Limits are in place because it is considered unfair for organisations or individuals to be perpetually exposed to litigation risk for wrongful acts or omissions. Stretching those limits, undermining them, or making them needlessly ambiguous makes it impossible for firms to manage their risk of exposure to remediation or redress. This has a consequential effect on investment into the sector and the ability of firms to plan for the future – which ultimately denies consumers an innovative and competitive market.

BRING BACK PROPORTIONALITY

The problems that exist with the current financial services dispute resolution system are not new. They have been called out repeatedly over the years, but change has not been forthcoming. However, the sector now finds itself at a crossroads where genuine reform is on the agenda. Decisions will be made in the coming 12 months about what that reform should look like and we discuss here what we think should be on the table in those discussions.

RETURN THE FOS TO ITS DISPUTE RESOLUTION REMIT

There are different routes by which this could be achieved, some more radical than others. Pros and cons will vary, but more substantial reform could bring considerable cost-savings at a time when the government is looking to cut regulatory administration. Nevertheless, each option merits some consideration.

OPTION 1: Make the FOS a part of the FCA

Ensuring the FOS has independence from the parties over whose disputes it adjudicates is critical to providing an unbiased dispute resolution system. The value of making the FOS wholly independent from the regulatory body whose rules it adjudicates on is less obvious. As we have touched on in this paper, the distance between the FOS and the FCA creates needless uncertainty on how rules are to be interpreted, making it more difficult for firms to have confidence in their compliance and for investors to be assured that their investments into compliant firms will not be later undermined by an anomalous FOS decision.

The FOS is also a costly body to run, now averaging running costs of around £280m per

year, costs that are predominantly funded by financial services firms through levy and case fee. The Economic Secretary to the Treasury is set to examine the role of the FOS more closely with a view to addressing a range of concerns, including how the framework in which the FOS operates has resulted in it acting as a quasi-regulator²³.

Should the Government be looking to take particularly bold action, it may want to consider arguments for the FOS to be subsumed into the FCA, becoming an operational entity within the regulatory body. While it may seem radical, we are already seeing a similar approach by this government to the Payment Systems Regulator (PSR)²⁴, in the interest of cutting costs, bureaucracy and duplication. An Ombudsman Service absorbed into the FCA would be able to identify and address matters with wider implications far more swiftly, and would also be able to leverage the wider networks of stakeholders that the FCA has access to in order to ensure issues are consulted on as widely as possible before determinations are made.

It would also enhance the FCA's regulatory data and, as a professed data-led regulator, being able to connect the complaint data reported by firms to the complaint data generated by the FOS would potentially deliver useful intelligence on emerging issues.

Furthermore, this would have the potential to reduce costs for industry, with more efficiencies in terms of resource deployment, recovery and distribution of levy, access to regulatory expertise, and engagement both internal and external. In its 2025/26 Budget and Plan²⁵, the FOS operational costs include £37.1m against "other costs", which it attributes to internal functions such as HR, finance and communications. The FOS has, in recent years, been active in cutting its reserves to a more proportionate level, using historic reserves to cut costs. Nevertheless, it still holds £93.2m in reserve.

The FOS would need to retain independence from the regulator in terms of the routine decisions it makes in individual disputes, where there are not matters of wider regulatory interpretation involved. It is essential that the FOS remains empowered to make a determination as to whether FCA rules or guidance have been breached. Any attempt to bring FOS "in-house" to the FCA would need to ensure ample safeguards are in place to prevent undue influence from government or FCA over FOS decisions; failure to do so would risk damaging trust in the regulatory infrastructure and consumer confidence in the FOS process. Transparency will be key to the effectiveness of this change.

²³Financial Ombudsman Service: Financial Ombudsman Service sets ambitious targets for case resolution in 2025/26 (April 2025)

²⁴HM Treasury: New approach to ensure regulators and regulation support growth (March 2025)

²⁵HM Treasury: Letter to the Treasury Committee about the Payment Systems Regulator (March 2025)

Changes to UK law on alternative dispute resolution would probably be necessary. UK law in this area was developed to comply with the EU's Alternative Dispute Resolution (ADR) Directive, but the UK has since left the EU and is thus no longer bound by the Directive. The Government may welcome the opportunity to more broadly consider whether the national ADR framework remains suitable, given its focus on cutting administrative costs. Our immediate priority, however, is reform of financial services dispute resolution.

There may be additional challenges around ensuring there is adequate oversight of the FOS, given that the FCA presently sets the DISP rules that apply to FOS – but many would argue that there is already inadequate oversight of FOS and that it has long been able to cite its 'operational independence' to avoid scrutiny of the decisions it makes and the way in which it operates. One oversight-related upside to this change would be the potential for FOS decisions to be challenged via the Upper Tribunal as FCA decisions currently can be.

OPTION 2: Reform the existing legislation and rulebook to return FOS to its dispute resolution role

The government has demonstrated a willingness to make bold choices in reducing regulatory burden and cutting costs to the public purse, and may therefore be open to exploring the potential benefits that could be made in both areas by bringing FOS within the FCA. But should that not be the case, then we would recommend government take swift and effective action to return the FOS to its originally intended remit.

The original legislation that created the FOS was clear about its intended role – to provide quick dispute resolution with minimum formality. FSMA is also clear that rule-making responsibility lies with the regulator. Yet legislation and regulation have combined to afford FOS a de facto rule-making power.

Regulatory uncertainty is bad for firms, bad for consumers, and bad for the economy. Several steps should be taken to restore certainty to the financial services sector:

1. The FOS should be required to make its decisions based on law, rules, regulation and guidance applicable at the time of the event complained of.
2. Where matters of potential wider significance or of regulatory uncertainty arise, a mechanism should be introduced to allow referral to the regulator. The regulator would then determine whether said matter warrants further regulatory consideration and / or stakeholder consultation.
3. The power to pause the complaints process for the purposes of assessing a matter of potentially wider significance or regulatory uncertainty, or for the purposes of consulting on related changes to rules and guidance, should be introduced.
4. An effective, representative, and transparent forum should be established to ensure that referred matters are adequately considered with input from key stakeholders.

There are other key changes needed for an effective dispute resolution body, which we outline below, but in terms of bringing the FOS back to its

original intended purpose, we believe these steps would ensure that the FOS can focus on resolving individual consumer disputes and the regulator can resume responsibility for rules and guidance.

OPTION 3: Establish relevant statutory objectives for the FOS

If the government is not willing to pursue options 1 or 2 in the name of reform, and will instead enable the FOS to retain its unintended rule-making powers, then those powers must be accompanied by statutory objectives akin to those under which the FCA operates.

The FCA has to think more broadly about the implications of its regulatory decisions and interpretation, and if the FOS is going to continue having the ability to make rules, it should be obliged to apply the same considerations in its decision-making. While our overriding view is that the FOS should not have any rule-making powers and that its remit should return to quick and effective dispute resolution, these FOS powers have survived several historic reviews, so there is a chance that the appetite for reform falls away.

Should this be the case, the minimum the government must do is to impose a statutory requirement for the FOS to consider the wider impact of its decisions and to ensure these align with the regulator's statutory objectives.

ESTABLISH A PROPORTIONATE ROUTE TO APPEAL

Enable FOS decisions – complaint and procedural – to be appealed via High Court or Upper Tribunal

At present, the only real option for appealing an Ombudsman decision is by pursuing judicial review.

As we have discussed, this is not a viable route for firms to challenge the FOS – the focus of judicial review is on the decision-making process, rather than the decision itself, and statutory discretion afforded to the FOS in terms of the decisions it can make mean that it is difficult for proceedings to be accessible, never mind successful.

Further, research indicates that only around a third of judicial review hearings find against an ombudsman. In the case of the FOS, across a 17-year period, only around 26 judicial review cases were heard, and success is rare, if not non-existent. The volume and low success rate are illustrative of the unsuitability of judicial review as any kind of appeal mechanism.

Given the powers afforded to the FOS and the implications for the decisions it makes, there must be a legitimate alternative for affected parties and stakeholders to appeal decisions, one that does not involve the decision being considered internally by the FOS.



INTRODUCE CHANGES TO CLARIFY TIME FRAMES AND REDUCE POOR QUALITY REFERRALS

Introduce a long stop for complaint referral

The rules in DISP around time frames for referring a complaint to the FOS are overly generous and needlessly ambiguous. They are open to such broad interpretation that firms would face incredible difficulty challenging an individual who sought to rely on the rules around referring their complaint.

It is unclear at this point what changes may come as a result of the Supreme Court appeal in terms of complaint time barring. Whatever the outcome, there is a need to remove uncertainty from the rules and ensure all parties are clear on when a complaint can be referred and when it cannot. Clear, proportionate and consistent referral time frames are essential.

Any revision to the rules must also be fair to firms, ensuring that they can meet their obligations under data protection law and do not face prohibitive data storage costs.

Establish regulatory powers for pausing complaint time frames

When the motor finance issue first emerged, the FCA introduced temporary rules in order to pause the regulatory time frames for related complaints and give itself time to investigate the issue and consider any necessary remedies. The complaint pause remains in place while the issues are considered as part of a Supreme Court appeal.

The challenge the FCA has is that if another problem like this occurs, it would need to consult on and introduce temporary powers again, in order to pause time frames for related complaints.

We are already advocating for better cooperation and consultation between the FOS and the FCA on issues with wider implications. But in order for them to do that effectively, it will also be necessary for the regulator to have the power to pause the time frames for complaints related to the issue under consideration.

Disapply complaint referral time frames for bulk complaint submissions and allow fairer time frames for affected firms

The combination of the growth of the professional representative sector in the last decade and half and the strict provisions on complaint handling time frames has created a scenario open to exploitation by less scrupulous professional representatives, whereby submitting complaints in large volumes can overwhelm recipient firms and make it impossible to respond comprehensively to all submitted complaints within the necessary time frame.

In doing so, the professional representatives can easily be assured of an opportunity to escalate the complaint to the FOS, guaranteeing a case fee is imposed on the respondent firm.

In a recent statistics release, covering Q3 2024/25²⁶, the FOS stated that between April and December 2024, professional representatives accounted for almost half of the cases it receives. These are just the cases submitted to the FOS; the volumes submitted directly to firms – often speculative – will be far higher. The introduction of

a case fee for professional representatives making a complaint to the FOS may reduce the volume that come to FOS, but it is unlikely to reduce the volume of complaints made directly to firms. With this in mind, where firms receive a disproportionate number of complaints from a professional representative, the standard time frames should be disapplied and replaced by more appropriate time frames to ensure respondent firms have adequate time to investigate and respond to the allegations.

The impact on firms will vary depending on volume of cases and size of firm, specific rules around extended time frames may be difficult. Data protection law does afford data controllers a potential further two months to respond to a data subject access request in certain circumstances, so something similar could be viable in the rulebook. Alternatively, it may be more appropriate to require any such extension to the time frame be subject to FCA approval – which would also have the added benefit of giving the regulator insight into vexatious and / or excessive bulk submissions by professional representatives.

²⁶Financial Ombudsman Service: Quarterly complaints data: Q3 2024/25 (March 2025)

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