

30th January 2025

Annex 1 list of questions

Question 1: Should we define what a mass redress event is? If yes, please explain how we should define it. If no, please explain how we could better identify and address mass redress events (without defining them).

The Financial Conduct Authority (FCA) should define what constitutes a mass redress event. We would argue that a mass redress event is equivalent to an event that would result in a group litigation order (GLO) or class action. It involves multiple claims against a single defendant or group of related defendants relating to the same cause of action, raising common issues of fact and law. The defining feature is the number of consumers affected. There is no minimum number of claims needed for a GLO to be granted but must be more than 2. One of the smallest GLOs; the Corby Group Litigation had fewer than 20 Claimants on the Group Register Equally there is no maximum, the VW Nox Emissions Litigation involved over 70,000 Claimants. The defining feature is that there must be enough Claimants to make consolidating them worthwhile and make investigation of the generic issues together, cost effective and any decisions made as a consequence of that investigation applicable to all Claimants within the group.

Furthermore, in addition to the investigation of generic issues, the Financial Ombudsman Service (FOS) could adopt other procedural elements from group litigation which ensure the efficient investigation and running of claims, including but not limited to;

Standard Schedules of Information: Firms and Claimants provide consistent data to facilitate efficient processing.

Test Cases:

Selected cases reflect the range of issues involved to set principles that can be applied broadly. These cases can be investigated in full whilst the remaining individual cases are stayed awaiting the outcome of the investigation of the test cases and determination of common principles applying to all claims.

Delays and backlogs in FOS' investigation of mass redress events have largely been caused by the FOS' inability to deal with claims by way of a group and its obligation to deal with claims individually. By focusing on assessing generic issues and establishing consistent principles already applied in the courts, the FOS and the FCA can improve the efficiency of managing mass redress events

Question 2: Do you agree with our assessment of the difficulties that mass redress events can create for firms and consumers?

We agree with the FCA's assessment of the challenges posed by mass redress events for both firms and consumers. However, we believe there are significant opportunities to streamline processes and reduce the operational difficulties faced by firms, the FOS, and consumers by focusing on proactive engagement and technological innovation. Below, we outline our further suggestion:

Timely Engagement with the FOS:

The approach taken by firms is often to not engage fully with a complaint by a consumer, but to automatically reject a claim without proper consideration in the hope that the complainant will not have the energy or resources to pursue the matter further. Firms will only take a matter seriously once a letter from a solicitor is received or the matter has been referred to the FOS. In view of the fact that the FOS does not make provision for recovery of PR's fees, complainants, pushed for time, will either drop the complaint or instruct lawyers that can prepare a submission on their behalf and recover their costs if successful. Group action lawyers and CMCs are therefore able to easily identify a trend and organise themselves to manage the expected

volume of claims efficiently and actively seek to attract large volumes of claims.

Firms unable to deal with complaints within the time-limits specified in DISP because of the high volumes they are experiencing should have identified the increased volume of complaints and trend and therefore should proactively make an early assessment of their exposure and engage with the FOS at an early stage, putting the FOS on notice of the potential influx of claims so that the FOS can quickly implement protocols for the efficient management of claims. This would allow for the early identification of generic issues likely to be common across all claims, enabling a more coordinated approach to resolution.

To encourage engagement by firms, firms that fail to identify a trend and fail to engage with the FOS within a specified time frame (say following receipt of 20 complaints relating to the same or similar facts and issues within 8 days of receipt of the 20th complaint) should face fines, sanctions or additional costs. The sanctions could include an uplift on the compensation awarded, of up to 20%, to reflect the firm's failure to identify a trend and/or failure to engage with the FOS at an early stage.

Where the FOS has been put on notice of a mass redress event and has been able to introduce schedules of key information, claims could be referred automatically to the FOS, rather than firms having to comply with DISP procedures and deadlines thereby reducing the burden of dealing with the influx on the firm.

This will speed up resolution of claims for consumers and save costs.

Question 3 What other issues should we consider as part of this review?

The FCA, arguably, is seen to put too much weight on its market integrity goal and not enough on its responsibilities to consumers. Consequently, the FCA is seen by many to be too aligned with the financial services industry participants.

Proactive Collaboration and Engagement with Key Stakeholders:

To give both consumers and firms confidence that FOS & FCA investigation of mass redress claims are a) undertaken fairly, b) that they have the opportunity to put their cases on the generic issues and c) that there is a level playing field with parity of arms and to d) streamline the process and minimise duplication of work and costs, a "Claimant Committee" should be established made up of i) a number of individual Claimants (who can act as test Claimants), ii) a not-for-profit organisation representing the interests of the wider group of affected consumers and iii) a legal adviser appointed on behalf of the claimant committee iv) a representative of institutional shareholders (where the FCA are undertaking an investigation).

Key Information Schedules for Mass Redress Event Claims:

The FOS, in collaboration with firms, and the claimant committee, should for each mass redress event, devise a schedule of key information required to investigate claims effectively. This would simplify the process for both Claimants and firms. Firms could integrate this schedule into their internal processes, ensuring that relevant data is collected and provided promptly

Online Applications Tailored to Mass Redress Event Claims:

The FOS should create a dedicated online application system tailored to the specific issues arising from each identified potential mass redress event. This system would guide Claimants through a structured submission process, ensuring

that all required information is provided upfront via the schedule of key information.

AI-Powered Analysis:

Artificial intelligence (AI) should be used to collect, scan and collate data and documents submitted by both Claimants via the online application process and by firms.

This would enable the FOS to:

1. Identify patterns and trends across claims.
2. Assess claims for eligibility and completeness.
3. Categorise claims by shared characteristics
4. Speed up responses and resolution of mass redress claims.
5. Reduce costs

Focus on Generic Issues, Transparency and Information Sharing

The FOS/FCA should prioritise the assessment of generic issues common to all claims in a mass redress event, by establishing a set of principles, through the use of test cases and in collaboration with firms and the claimant committee.

The investigation process should be non-adversarial, and the claimant committee and firms should be consulted throughout, to ensure transparency and confidence. However, failure on the part of firms in providing disclosure and requested data should result in sanctions.

It is vital for the FCA to disclose relevant information not only to regulated firms but also to Claimants and consumer bodies via the claimant committee supported by their appointed legal adviser. This ensures equality of arms and prevents Claimants from being disadvantaged by a lack of access to critical data.

The costs of a legal adviser appointed on behalf of the claimant committee should be recoverable from the FOS (or from the firm in the case of a decision in favour of the Claimants) to ensure parity of arms and a level playing field.

Full Engagement with Stakeholders and Inclusion of Claimant Representation:

The Claimant Committee referenced above would prevent decisions that are perceived as misaligned with consumer and investor expectations, such as the handling of the claims against Link Fund Solutions in relation to the Woodford Equity Income Fund. In this case we believe that the FCA did not engage fully with claimants or their PRs, nor share relevant information. The FCA's handling of the claims against the ACD Link did not take into consideration the interests of those who had felt most aggrieved and had taken steps to issue proceedings. Votes of retail investors most affected were also drowned out by the votes of institutional shareholders. The FCA's settlement preventing Claimants pursuing/continuing litigation against Link prevented access to justice for those Claimants who had issued proceedings against Link, but did not prevent further litigation as Claimants have gone on to seek alternative routes to obtain fair redress (the RGL claim against Hargreaves Lansdown), taking up further court time and additional costs.

Consumer-Centric Approach:

Both the FCA and the FOS should explicitly consider what outcomes-focused regulation means for consumers in practice.

Outcomes must be evaluated not only in terms of compliance with high-level principles but also in terms of the tangible benefits and redress provided to consumers

Benefits of This Approach:

For Firms:

Improved predictability of exposure, and resolution, reduced administrative burden, and greater confidence in the claims process.

For Consumers:

Faster resolution of claims, greater transparency, greater confidence on the outcome knowing that a claimant

committee has been involved in identifying the generic issues and establishing the principles, resulting in overall reduced reliance on PRs for individual consumers, which in turn would maximise the proportion of compensation received.

For the FOS:

Streamlined operations, reduced case backlogs, and the ability to focus resources on complex or exceptional cases.

Question 4: Are there any changes to the regime that we ought to consider to ensure it remains appropriate, given the shift to outcomes focused regulation?

Defining "Outcomes-Focused" for Consumers:

The FCA and FOS must ensure that outcomes-focused regulation is meaningful to consumers. For example, this should include:

1. Clear, measurable standards for consumer redress.
2. Early engagement with consumers and key stakeholders - to fully understand consumer expectation and be able to assess whether the outcomes are fair, transparent, and timely.

Collaborative Transparency and Engagement with Stakeholders and Claimants:

Both the FCA and FOS must avoid operating in secrecy. Greater collaboration with claimants is essential for fostering trust and ensuring that the outcomes align with consumer expectations.

Provision should be made for the Claimant Committee to obtain legal advice and cost shifting should be implemented to ensure a level playing field.

Implementation of efficiency measures suggested above and closer collaboration with consumers, will give consumers confidence that their claims will be dealt with fairly and efficiently and comply with outcome focused regulation

Transparency in Regulatory Settlements:

The FCA's handling of significant cases (e.g., Link Fund Solutions) highlights a need for greater consultation with affected consumers. Lack of early engagement with consumers and their not-for-profit representatives can undermine trust in the redress system.

Regulatory settlements should include mechanisms for Claimants to provide input, ensuring that their concerns are directly addressed.

Standardised Processes for Widespread Harm:

When evidence of widespread harm or a mass redress event arises, a systematic approach is required. This, as previously mentioned, should include:

Standardised information-sharing protocols between the FCA, FOS, and Claimants.

Public disclosure of the principles used to evaluate outcomes-focused decisions.

Clear guidance on how affected consumers can engage with the process.

Mitigating Inconsistent Expectations:

A more robust alignment between FCA and FOS objectives and consumer expectation is essential. Options could include:

Jointly issued guidance clarifying how outcomes-focused regulation is interpreted and applied.

Regular reviews to ensure consistency across regulatory bodies.

Question 5: Do you agree that our proposals to better manage mass redress events can help ensure that the FCA acts in a way which is compatible with its statutory objectives, including the secondary international competitiveness and growth objective? Please explain why you agree or disagree.

While the FCA's proposals are a step in the right direction, more rigorous oversight, timely investigations, and enhanced consumer protections are essential to ensure compatibility with the FCA's statutory objectives. Proactively addressing systemic risks and learning from past failures like the WEIF/Link case will bolster consumer confidence, market integrity, and the UK's international competitiveness

Greater Proactivity in Oversight and Prevention

Significant Failures on the part of the FCA; FCA's handling of the Woodford Equity Income Fund (WEIF) suspension highlights the consequences of delayed action. Had the FCA exercised more rigorous oversight of the fund's liquidity management and acted sooner, the WEIF collapse could potentially have been prevented. This case illustrates the need for a more thorough, proactive and preventative approach to identify and mitigate risks before they crystallise into mass redress events. The FCA's approach in this instance was to close the barn door once the horse had bolted, despite the advance warning of an unacceptably high number of historical fund suspensions, particularly in the property sector.

Onus on Authorised Corporate Directors (ACDs) and Fund Managers:

The FCA should place greater accountability on both ACDs and Fund Managers, to ensure they meet their regulatory obligations effectively. ACDs and firms that fail in their duties should face far more severe and significant consequences, including loss of licences, to ensure higher standards of governance and consumer protection. They must ensure that ACDs and other relevant bodies have sufficient insurance

cover to ensure claims can be met. The WEIF collapse was not Link Fund Solutions' first failure, underscoring the need for more stringent oversight of repeat offenders. The FCA failed investors in WEIF through their lack of oversight, lack of engagement with key stakeholders and lack of transparency.

Timeliness of Investigations:

Delays in FCA Investigations:

The length of time taken by FCA investigations and lack of transparency, undermines consumer confidence in the redress system and forces Claimants to issue legal proceedings to protect their statutory limitation periods.

FCA investigations should adhere to strict timetables to avoid situations where consumers are compelled to take costly legal action due to prolonged delays.

Consideration should be given to suspending statutory limitation periods for Claimants during the course of FCA investigations. This would protect consumer rights without adding undue pressure for potentially premature and avoidable litigation.

Alignment with the FCA's Objectives

Consumer Protection Objective:

By ensuring that mass redress events are handled promptly and consistently, the FCA can reduce the financial and emotional toll on consumers, maintain confidence in the regulatory system, and ensure orderly firm conduct. Faster investigations and enhanced accountability for firms would mitigate the risk of disorderly firm failures that could harm consumers and the wider market.

Market Integrity Objective:

Effective management of mass redress events strengthens trust in the UK's financial markets. Avoiding high-profile failures such as WEIF in the first place can prevent the erosion

of market confidence and bolster the credibility of the regulatory framework. However, calls to loosen regulatory oversight to boost the economy, may lead to even more mass redress events. It is therefore imperative to ensure that a robust and efficient methodology is in place to handle those events as efficiently as possible.

Secondary International Competitiveness and Growth Objective:

A redress system that is efficient, fair, and cost-effective for firms enhances the global reputation of the UK's financial markets. The UK, however, is rapidly becoming a legal backwater with class action claims being backlogged in the Competition Appeals Tribunal (CAT) and law firms referring claims to the Dutch courts under the Stichting regime rather than progressing them through English Courts.

Reducing the risk of disorderly firm failure and providing consistent outcomes to consumers promotes stability, ensuring the UK remains an attractive destination for financial services.

Recommendations for Improvement

Accelerate Investigation Timelines:

Establish clear and enforceable deadlines for FCA investigations.

Ensure that cases involving mass redress events receive prioritised attention to avoid delays.

Suspend Limitation Periods for Claimants:

Implement a mechanism to suspend statutory limitation periods for potential Claimants during FCA investigations. This will ensure consumer rights are preserved without forcing premature litigation.

Strengthen Accountability for Repeat Offenders:

Introduce stricter oversight of firms with a history of governance failures, such as Link Fund Solutions, to prevent repeated harm to consumers.

Consider requiring firms to proactively report potential systemic issues to the FOS/ FCA before they escalate.

Enhance Transparency via Proactive Engagement with Affected Stakeholders:

Engage early with consumers, not-for-profit consumer groups and other stakeholders to identify potential risks and consumer expectations and address systemic issues more effectively.

Question 6: What, if any, further information or guidance is needed in DISP to help firms identify and proactively address harm, given the Consumer Duty?

Recommendations to Enhance Proposals:

Enhanced DISP Guidance:

The FCA should provide specific DISP guidance on:
The use of complaints data to identify systemic harm, with detailed examples and case studies.
The implementation of Proactive Past Business Reviews to rectify harm before complaints escalate.

Standardised Complaint Monitoring Framework:

Firms should be required to use a standardised framework for recording, analysing, and reporting complaints data under DISP. This would enable:

- Early detection of trends or systemic issues.
- Efficient resolution of complaints
- Implementation of AI models to identify trends.

FCA Oversight and Support:

The FCA should issue periodic reviews and feedback to firms on their adherence to DISP and Consumer Duty obligations and highlighting good practices.

Strengthened Accountability for Firms:

Firms can identify trends early and are positively expected to do so under the DISP. Firms should be incentivised to follow DISP guidance and to notify the FOS and FCA of potential mass redress trends by:

- Imposing penalties for failure to identify and notify the FOS of trends potentially leading to a mass redress event.
- Allowing extra time for firms to respond where notification has been made to the FOS and FCA

Timely FCA Investigations:

DISP already requires firms to act on systemic issues identified through complaints. However, FCA investigations often take too long, forcing Claimants to issue proceedings prematurely to protect their statutory limitation periods. The FCA should:

Enforce and adhere to strict timelines for investigations.
Consider suspending statutory limitation periods for Claimants during FCA investigations to protect Claimants' statutory limitation periods.

Transparency and Engagement:

Both the FCA and firms must ensure greater transparency in the management of mass redress events, including regular updates to Claimants and consumer bodies, in line with DISP reporting requirements.

Question 7: What options should we consider to ensure firms are given an appropriate opportunity to resolve complaints fairly before cases are referred to the Financial Ombudsman?

Strengthen DISP Requirements:

The FCA should enhance DISP guidance to ensure firms are incentivised to address complaints fairly and effectively within the specified timeframes. See response to questions 5 and 6.

Penalties should be introduced for firms failing to comply with DISP obligations or for consistent poor handling of complaints.

Pre-Escalation Engagement Framework:

Implement a structured pre-escalation process requiring firms to demonstrate that they have:

- Conducted a comprehensive review of complaints.
- Engaged with the complainant to address their concerns and provide clear explanations.

Real-Time Complaint Monitoring:

Mandate firms to integrate a real-time complaint monitoring and reporting system, enabling the FCA to identify systemic issues early and encourage proactive resolution.

Early escalation of mass redress events to the FOS/ FCA

Require firms to notify the FOS and FCA of trends within specified time frames. Early notification of mass redress events will enable the FOS and FCA to implement a methodology for timely and efficient handling and processing of claims, to comply with consumer expectations and to avoid proliferation of litigation. Implementation of Key protocols as suggested above would also reduce the burden on firms.

Question 8: Would a 2-stage process be appropriate in light of the Consumer Duty, and if implemented, how could it be effectively monitored to ensure good outcomes for consumers?

Reintroduction of a Safeguarded 2-Stage Process:

A 2-stage process should be reinstated if:

- Clear safeguards are in place to prevent misuse.
- The first-stage response is detailed, transparent, and aligned with Consumer Duty requirements.
- Firms are required to justify their decisions comprehensively and address all points raised by the complainant.

Timeframes for the second stage are substantially reduced.

Effective Monitoring Mechanisms:

The FCA should monitor compliance with the 2-stage process through:

- Regular audits of firms' complaint-handling records.
- Collecting and analysing data on the proportion of complaints resolved at each stage and consumer satisfaction levels.

Mandatory Consumer Follow-Up:

Firms should be required to follow up with complainants after the first stage to confirm whether their concerns have been resolved satisfactorily. Positive responses should be required from the consumer to indicate their acceptance of the outcome. Non-response should be taken as an expression of dissatisfaction and that should be notified to the consumer along with the right to refer to the FOS.

Question 9: What options should be considered to ensure firms and complainants resolve complaints fairly at the earliest opportunity before a final Ombudsman decision is taken?

See responses above

In addition to the responses above we believe that the right to request a final decision should remain. We have seen instances (including Woodford related decisions) where the final decision has differed from the preliminary assessment.

It might be helpful to change the language so that the preliminary assessment is referred to as a decision, and the final decision is referred to as an appeal.

Question 10: Should the rules in DISP provide different routes to redress for represented and non-represented complainants with different expectations? If so, what factors should be considered?

Differentiating routes to redress for represented and non-represented Claimants in DISP is a desirable option, provided it ensures fairness, incentivises quality representation, and maintains accessibility.

Key Factors to Consider:

1. Quality Standards for Professional Representatives (PRs):

- PRs should be held to higher standards of particularisation when submitting claims, ensuring they are well-evidenced and properly substantiated.
- Failure to meet these standards should result in the rejection of poorly prepared claims, as this protects the FOS from processing baseless or inadequately detailed complaints.
- Early notification of mass redress events will enable the FOS/FCA to implement fair and well-advertised schemes as suggested above, which will make it easier for Claimants to make applications and avoid the need for PRs.

Consumer Protections:

Non-represented Claimants should not be disadvantaged in comparison to those using PRs. The FOS must ensure that the complaint process remains accessible, transparent, and fair for all consumers, regardless of representation.

The announcement by the FOS of a Mass Redress Application scheme established with full engagement of key stakeholders will avoid the need for Claimants to be represented. Represented Claimants should still have the ability to use PRs without unnecessary barriers.

Proposals for Amending DISP Rules:

Incentives for Early Resolution:

Introduce provisions allowing firms to recover costs from PRs submitting frivolous or inadequately substantiated claims.

Streamlined Dismissal Rules:

Amend DISP dismissal grounds to enable the FOS to collectively reject poorly particularised complaints submitted in bulk by PRs, improving operational efficiency.

Monitoring and Enforcement:

The FCA should monitor PR conduct and ensure compliance with standards, particularly regarding evidentiary quality and substantiation of claims.

Question 11: What amendments, if any, to the Financial Ombudsman case fee rules should be considered for mass redress events?

We agree with the introduction of a £250 fee for represented complaints, but feel strongly that this should be reduced to zero where the outcome is in favour of the complainant.

If partial recovery of FOS costs is considered desirable in the case of an upheld complaint, this should be borne by the relevant firm and not by the claimant or PR.

Question 12: Are there additional or different considerations that the Financial Ombudsman should take into account when deciding what is fair and reasonable in all the circumstances of the case?

Incorporating reasonable consumer expectations alongside industry practices would provide a more balanced approach to assessing fairness and reasonableness. This ensures that the outcomes reflect not only compliance with regulatory and industry standards but also the rights and reasonable entitlements of consumers based on the representations they received.

Reasonable Consumer Expectations:

The Financial Ombudsman should explicitly consider the reasonable expectations of the consumer when deciding what is fair and reasonable. This involves evaluating:

Representations Made to the Consumer:

- What representations were made by the firm about the product or service?
- How might these representations have shaped the consumer's understanding and expectations?

What an Average Consumer Would Reasonably Expect:

- The Ombudsman should assess the situation from the perspective of the "average consumer," considering:
- The information available to consumers at the relevant time.
- The general level of understanding of the product or service in question.

Reasonable Entitlement:

Whether the consumer was reasonably entitled to expect certain outcomes based on the firm's actions, marketing, or contractual terms.

Balancing Industry Practices and Consumer Rights:

While industry practice is a critical benchmark for evaluating fairness, it should not overshadow the rights and reasonable expectations of the consumer, particularly where industry practice may be poor overall.

The Ombudsman should weigh both:

- The firm's adherence to what was deemed "good practice" at the time.
- Whether such practices aligned with the consumer's reasonable entitlement and understanding.

Enhanced Transparency in Decision-Making:

The Ombudsman should clearly outline how consumer expectations and industry practices were balanced in its decisions. This would help:

- Improve confidence in the fairness of decisions.
- Provide better guidance to both consumers and firms about the standards applied.

Consistency with Regulators:

The independence of the Financial Ombudsman in interpreting rules and regulations must be preserved. At the same time, there should be alignment with and between regulators (e.g., the FCA, PSR) on the interpretation of rules wherever possible, particularly for evolving areas such as APP fraud reimbursement. This alignment reduces the risk of inconsistency, which could undermine confidence in the system.

Question 13: What amendments to the dismissal grounds should be considered when the Government repeals the 2015 Regulations?

Avoiding Exemptions for the Financial Ombudsman Service (FOS):

There must be transparent criteria for dismissing claims, including a clear and practical definition of terms such as "frivolous" and "vexatious."

Efficient Handling of Mass Redress Claims:

The FOS needs to adopt modern and efficient mechanisms for handling mass redress claims, such as suggested above :

Claimant management Use of a claimant committee including a legal adviser. This gives consumers confidence that their interests have been fully represented.

AI-Powered Analysis and Consolidation of Similar Claims: Deploy artificial intelligence to collate data, categorise and prioritise cases, ensuring streamlined handling of large volumes of complaints.

Certainty and Transparency for Claimants:

Claimants need clarity early in the process regarding:

- Whether the FCA or the FOS will handle their claim via a Mass Redress Application process.
- The criteria for how claims will be handled and assessed.
- The FOS and FCA must communicate clearly and invite input from key stakeholders, including investors and consumer representatives, to avoid operating in an echo chamber

Collaboration Between the FCA and FOS:

Referring mass redress cases to the FCA without clear timelines or stakeholder engagement risks inefficiencies, delays and prejudice. Currently:

FCA investigations often take too long, lack clear timetables, and fail to prioritise the best interests of investors and affected stakeholders.

Referring cases to the FCA should not constitute dismissal. The FOS should be required to review the eventual outcome of regulatory intervention and should only dismiss a claim once

a satisfactory outcome has been achieved (which may require secondary intervention by the FOS).

A decision of the FOS or the FCA should not be the final determination of a complaint. The rights of individuals to issue court proceedings if unsatisfied by the decision of the FOS or FCA should not be precluded.

Modernisation of the FOS:

The FOS must modernise its approach to mass redress cases by:

- Learning from Claims Management Companies (CMCs) and group action lawyers on how to efficiently coordinate collective claims.
- Using AI and data-driven systems to identify common issues and issues specific to individuals to group complaints effectively, and collate and review data etc.

Question 14: Should the current time limits for referring complaints to the Financial Ombudsman be reviewed? If so, what alternative approaches should we consider that would provide an appropriate level of protection for consumers?

We do not support the introduction of a longstop.

Alignment with Legal Standards:

The existing time limits align broadly with those in the Limitation Act. Maintaining this consistency ensures that the rules are straightforward for consumers and firms alike.

Retaining Flexibility for Long-Term Products:

The absence of a "longstop" is critical for products such as pensions and other long-term financial products, where losses may not materialise or become apparent for many years. Removing this flexibility would disadvantage consumers and weaken protections in such cases.

Alternative approach:

Suspension of Limitation:

A suspension of the limitation period should be introduced when the FCA takes an active role in investigating mass redress events.

Introducing a limitation suspension mechanism during FCA investigations may require legislative reform but would streamline the resolution process and reduce avoidable litigation.

Flexibility in mass redress events for 1st stage time limits see above.

A. While a longstop may have some cost benefits for firms (particularly around insurance), we believe that the negative impact to consumers in terms of confidence outweighs any financial benefit.

Costs to consumers from a suspension of Limitation are likely to be reduced, with no impact on costs to FOS or the subject firm.

Benefits include:

- Protecting consumers' rights while the investigation is ongoing.
- Preventing premature escalation to the courts due to time pressures.

B. Introduction of a longstop would, in our view, negatively impact market confidence. If one were to be considered, it should be set at, say, 20 years (consistent with tax avoidance limitations for individuals).

The perceived impact on consumer protection from a suspension of Limitation would be significant by providing clearer and more logical sequencing as between FOS, FCA and private litigation. This would improve consumer confidence and the reputation of the UK as a safe marketplace.

Question 15: Are there any other short to medium term changes you think should be made to the framework? Please tell us:

- a. Your thoughts on the likely costs and benefits (for firms and consumers) of each of the short to medium term options discussed above.
- b. What the impact could be on consumers or consumer protection, or other relevant considerations such as the impact on firms, market integrity, competition and the UK's international competitiveness?

Please see responses above

Question 16: Should we do more to consult each other on cases, and make our views more widely known publicly, when significant numbers of complaints on a similar issue are being made and/or interpretation of FCA rules is a key issue in the complaint?

Collaborative Decision-Making:

Importance of Alignment and Leverage of FCA Resources:

The FCA has greater access to disclosure and resources and can compel firms to provide detailed data and documentation under its statutory powers.

This includes access to internal records, transaction data, and firm-wide compliance documentation, enabling the FCA to assess systemic issues comprehensively. The FOS in turn relies on firms to voluntarily provide information relevant to individual complaints.

While firms are required to cooperate under DISP rules, the FOS does not have the same investigatory powers as the FCA

to compel comprehensive disclosure. As a result, there is no level playing field as the firms can hold all the cards. This can result in delay and unsatisfactory outcomes.

Either the FOS's power to order disclosure and impose time limits and penalties for failing to disclose data in a manageable form, must be strengthened, or the FCA must work with the FOS early in the investigation stage to use its statutory powers to obtain disclosure, particularly in relation to mass redress events.

Tailored AI systems should be developed to review voluminous disclosure.

Transparency and Stakeholder Engagement:

Full Transparency from the FCA:

The FCA must ensure transparency in its decision-making processes, especially when providing guidance to the FOS on rule interpretation.

Clear, public communication and publication of decisions and FCA's views ensures that firms, consumers, and other stakeholders understand the basis for decisions.

Stakeholder Input:

The FCA must actively engage stakeholders, including Claimants and not for profit consumer bodies, during investigations and decision-making processes, as discussed above. This ensures decisions are informed by a wide range of perspectives and gives consumers confidence in the process.

Suspension of Limitation Periods:

Protecting Claimants' Rights:

Suspension of limitation periods should extend to court proceedings in cases where the FCA is conducting investigations. This ensures:

- Individuals are not forced to issue legal proceedings prematurely to protect their statutory limitation periods and their right to pursue a claim through the courts.
- Claimants can benefit from FCA investigations without sacrificing their statutory limitation periods.

Enhancements to the Wider Implications Framework (WIF):

Improved Coordination:

The FCA and FOS should enhance their engagement under the WIF to address systemic issues early, ensuring a unified approach to complaints with wider implications.

Public Disclosure of Joint Views:

Jointly issued guidance or public statements from the FCA and FOS on complex cases would provide clarity and consistency.

Question 17: Should the Financial Ombudsman be able to pause the timescales in the DISP rules while it awaits regulatory input on the interpretation of rules?

Key Points:

Allowing the FOS to pause timescales would ensure that its decisions align with the FCA's investigation avoiding inconsistent outcomes that could undermine confidence in the redress system.

However, pauses in timescales should be limited to cases where the FCA is undertaking the investigation where there have been seriously significant regulatory breaches or a mass redress event.

Where the FCA provides guidance or clarity regarding the interpretation of FCA rules, the FCA must work within specified time limits so as to not delay the FOS investigation of the claim.

Protecting Claimants' Rights:

As discussed previously Claimants often face the risk of losing their ability to bring legal action if statutory limitation periods expire during a pause in the FOS / FCA process.

A suspension of statutory limitation periods during any pause would:

- Protect Claimants' rights without requiring them to initiate court proceedings prematurely.
- Provide Claimants with certainty and fairness while the FOS and FCA address the issue.

Avoiding Unnecessary Litigation:

Without a suspension mechanism, Claimants often have no choice but to issue proceedings in court to protect their limitation periods, leading to:

- Increased litigation costs for all parties.
- Potential duplication of effort, as parallel court proceedings would undermine the purpose of the FOS process or FCA investigation.

Where mass redress litigation has commenced prior to a FCA investigation, rather than pausing the litigation, the FCA could act as an intervener in the litigation and work with the parties in the litigation to avoid wasted or duplicated costs and facilitate a mediated settlement which has wider implications. In these circumstances, consumers will feel that their interests have been properly represented

Two track approach to the DISP rules

In addition to the above proposal, the FOS/ FCA should implement a two-track approach, one for individual claims and one for mass redress events.

Where a mass redress event has been identified and

- A FOS / FCA investigation is underway
- A schedule of information has been devised
- An online application form has been uploaded onto the FOS website

The DISP rules applicable to firms could be amended to allow firms to automatically refer Claimants to the FOS without the

need for a final decision letter being sent by the firm to the complainant, subject to firms' strict adherence to deadlines imposed for the provision of information relating to all claims.

This will reduce the burden on firms, incentivise early notification and provide a streamlined approach to the resolution of claims.

Question 18: What changes to the current rules should be considered for mass redress events? Please tell us:

Your thoughts on the likely costs and benefits (for firms and consumers) of each of the longer-term options discussed above.

What the impact could be on consumers or consumer protection, or on other relevant considerations such as the impact on firms, market integrity, competition and the UK's international competitiveness?

Question 19: Are there any other longer-term changes you think should be made to the framework, including potential legislative changes?

Response to questions 18 & 19

In addition to responses already made, the FCA must ensure that its regulatory actions complement, rather than undermine, existing protections such as FSCS coverage.

Strengthen FSCS Safeguards:

The FCA must ensure its regulatory actions do not cut across or undermine FSCS protection, as was observed in the Link Fund Solutions case.

FSCS should remain the ultimate safety net for consumers, providing compensation in cases where firms are unable to meet liabilities (where relevant).

We feel that an FCA pause on the DISP rules should also apply to statutory Limitation periods to avoid forcing consumers to litigate while investigations are ongoing this will need legislative change

Commented [MB1]: FSCS doesn't apply to all cases, only those that fall within FSCS rules.

(see previous responses)

Question 20: What proportionate approaches could the FCA use to collect better data on emerging redress events?

The FCA can collect better data on emerging redress events by using insights from not-for-profits, group action law firms, and CMCs, while also enhancing reporting requirements for external stakeholders will ensure that redress issues are identified and resolved more efficiently

Early Engagement with Not-for-Profit Organisations:

The FCA should actively engage with not-for-profit consumer representatives to identify breaches that have been brought to their attention via their various outreach programmes and members.

These organisations often have valuable insights into consumer expectations and systemic issues and consumer harm that firms may not disclose promptly.

Early collaboration with not-for-profits and other early notification measures, can help Claimants reduce reliance on claims management companies and group action law firms, thereby maximising returns for complainants.

Leveraging Expertise from Group Action Law Firms and CMCs:

Adopt Data Management Best Practices:

Group action law firms and CMCs operate with efficiency as they are incentivised to maximise their own returns. Their methodologies for:

- Efficient data processing,
- Disclosure review, and
- Claimant management

would provide valuable lessons for the FCA and FOS in handling not only emerging mass redress events but large volumes of individual claims.

Monitoring CMC Activity:

Require CMCs and Group Action law firms to report data on complaints they manage to the FCA to identify trends and systemic issues earlier.

Enhanced Reporting Requirements for Firms:

Threshold-Based Reporting:

Introduce proportionate thresholds for immediate notification of redress events based on:

The number of affected consumers (as discussed above)

The financial impact of the issue.

The potential for market-wide implications.

Clarified SUP 15 Guidance:

Expand and clarify expectations under **SUP 15** to ensure firms understand their obligation to report systemic issues in a timely manner.

Improved Use of Technology:

AI and Data Analytics:

As discussed above use AI-powered tools to analyse complaint returns and data from firms to identify emerging patterns and systemic issues.

Real-Time Data Collection:

Shift from six-monthly or annual reporting to real-time or quarterly reporting of complaints and redress data, ensuring more timely detection of redress issues.

Mandatory PR Notifications:

Require Professional Representatives (PRs) to notify, the FCA and the FOS of potential systemic issues before formally issuing court proceedings.

Question 21: In what circumstances should the FCA expect firms, including PRs, to notify it of emerging redress events?

Defined Notification Triggers:

Firms and PRs should notify the FCA of emerging redress events when thresholds are met:

- A certain number of complaints about the same issue are received (see response to question 1)
- The financial impact exceeds a specified amount.
- The issue has market-wide implications or could lead to significant consumer harm.

Encouraging Accountability and Early Reporting:

Ensure that firms cannot "mark their own homework" by making proactive reporting mandatory under DISP 1.3 and SUP 15 with penalties imposed for failure to comply

Enhancing Engagement with Stakeholders:

Proactive Collaboration with External Stakeholders:

Engage more closely with not-for-profit consumer representative organisations, and other external stakeholders to identify breaches and systemic issues.

This external input would complement firm-reported data and provide a more balanced perspective.

Proportionality in Reporting:

The FCA should balance the burden on firms by:

Using thresholds to determine when notifications are required.

Avoiding excessive or duplicative reporting requirements that could increase compliance costs unnecessarily.

Question 22: What other factors should be taken into account when determining if an issue has wider implications or the potential to become a mass redress event?

See responses above

Question 23: Are there any other changes needed to make the WIF more effective?

Question 24: How effective has the WIF been in facilitating early collaboration between its members and industry on matters with wider implications?

Responses to questions 23 to 24

The WIF has proven to be effective in facilitating early collaboration between its members and industry on matters with wider implications, as evidenced by its structured framework and achievements, such as the resolution of the mortgage SVRs issue.

However, there are areas where the WIF's approach could be strengthened. In particular, greater engagement with the public and not-for-profit organisations representing consumer interests is needed. For instance, the lack of engagement regarding issues such as the collapse of WEIF and liability of the ACD has perpetuated litigation, which might have been avoided with more proactive communication and transparency, whilst the interests of those most aggrieved were overridden by institutional shareholders. While the WIF has been effective within its industry-focused scope, its engagement with broader consumer voices, including retail shareholders and organisations advocating for them, has been limited. This has created an impression of operating within a vacuum where the views of those actually affected have not been fully addressed

Question 25: What improvements could be made to how we work under the current framework to ensure effective co-operation on matters with wider implications?

Question 26: Do you believe that the amendments made to the WIF ToRs will improve the ability for external stakeholders to provide input on issues where wider implications are identified, and if not, why not?

Question 27: What other improvements could be made to how we engage and communicate with stakeholders when considering issues with wider implications?

Responses to questions 26 and 27

The current amendments are insufficient to address the systemic failings of the redress framework. Without stronger consumer representation, improved access to justice, and enhanced collaboration between the FCA, FOS and the public, UK consumers will continue to face barriers to achieving meaningful redress. A holistic reform of the redress framework, including the development of a wider UK class action regime, is essential to restoring confidence in the system.

Key Issues:

1. Access to Justice Is a Real Concern:

The UK is falling behind international jurisdictions like the Netherlands, which have established effective class action regimes, leaving UK consumers at a disadvantage. Current mechanisms, such as the FOS, cannot adequately handle complex claims and suffer from extreme delays, undermining their effectiveness as a redress mechanism. Attempts by lawyers to use alternative legal avenues, such as: CAT class action regimes, - which become backlogged because of the number of claims being shoehorned into

arguments of abuse of market dominance to take advantage of this class action regime.

High Court CPR 19.8 representative action provisions, have proven unsuccessful, leaving consumers without viable legal options.

The FCA's Role in Undermining Redress Attempts:

The FCA has, in some cases, actively undermined efforts by individuals to achieve redress through the courts, as seen in past cases where regulatory settlements conflicted with, limited or stopped legitimate legal proceedings.

Consumers have been failed on all sides, with inadequate support and delays from the FCA and the FOS, and barriers to accessing judicial remedies. This leaves many without a realistic path to redress.

Tokenistic Engagement with Consumer Groups:

Current engagement efforts with consumer groups under the WIF appear tokenistic, offering little opportunity for meaningful influence or collaboration.

Without formal inclusion of consumer groups in the decision-making process, the WIF risks prioritising industry perspectives over consumer needs.

Recommendations for Improvement:

Formal Consumer Representation in the WIF:

Consumer groups and not for profit organisations representing investors should have permanent representation within the WIF, ensuring that their voices are heard in discussions about systemic issues and potential redress schemes.

Development of a UK Class Action Regime:

Advocate for legislative reforms to establish a robust, dedicated class action regime similar to the Netherlands. This would provide an effective and efficient mechanism for resolving mass redress claims while maintaining judicial oversight.

Strengthening the FOS's Capacity:

Allocate additional resources to the FOS to address delays and improve its ability to handle complex claims.

Introduce specialised teams within the FOS to deal with mass redress events, leveraging AI technology such to process high volumes of claims efficiently.

Transparency and Accountability for the FCA:

Require the FCA to engage with stakeholders more meaningfully and transparently, ensuring that its interventions do not undermine court-based redress efforts.

Publish detailed updates on how stakeholder inputs influence WIF decisions and regulatory actions.

Joint FCA-FOS Oversight for Mass Redress:

Establish a formal framework for collaboration between the FCA and FOS during mass redress events, ensuring alignment and avoiding conflicting approaches.

Strengthening Communication Channels:

Develop tailored communication strategies to engage stakeholders representing vulnerable consumers, ensuring their voices are prioritised.

Provide regular updates on the status of issues under investigation and redress schemes, fostering transparency