

Redress Pathways and Risk Team
Financial Conduct Authority
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To The Redress Pathways and Risk Team

Consultation Paper CP25/22 Modernising the Redress System

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two-thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies that provide financial services – primarily savings and loan facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers, they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loan facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and/or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with over 215 credit unions active in Great Britain today with more than 1.5 million members and £2.7 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

Consultation Response

We welcome the opportunity to respond to the joint FCA/FOS consultation. ABCUL will respond to questions relevant to our member credit unions.

Question 1: Do you agree with the proposed criteria for considering whether an issue is a mass redress event?

ABCUL mostly agrees with the proposed criteria for considering whether an issue is a mass redress event. Whilst we understand that some stakeholders have had concerns surrounding the labelling of 'Mass Redress Events' (MRE), the protection of consumers takes precedent over potential 'media attention' of the mass redress event.

ABCUL somewhat supports the 6 criteria to decide if there is or potentially is an MRE for the most part. ABCUL notes that specific figures within the criteria have not been set; we support this in providing the flexibility within the framework for the FCA to identify different types of MREs. We agree with the proposals that it should not be any more rigid than the proposed 6 definitions to ensure a future-proofed framework.

It is important to note that with the proposed criteria, such as criterion a. in paragraph 3.16, not having a set numerical value, we hope this will also incorporate an event that affects a high number of consumers *relative* to sectoral size.

We further welcome the specific reference to consumers in vulnerable circumstances and support the regulator's approach in supporting the most financially vulnerable consumers.

Question 2: Do you agree with the guidance provided in Annex 4 of this consultation paper for how firms can proactively identify and rectify potential issues?

ABCUL agrees with the guidance provided in Annex 4 on the good and poor practice on identifying and rectifying harm, which are clearly stated in the PRIN and DISP sourcebooks. The FCA has noted that 'reasonable steps' is a variable term and is subject to the individual firm, but this should not allow firms to reduce their responsibility in proactively identifying and rectifying potential issues.

For example, ABCUL welcomes further guidance by the FCA, stating it includes 'analysing the root causes common in several complaints, considering if they affected other processes or products, and correcting these root causes, where reasonable to do so'.

The guidance provided by the FCA in Annex 4 emphasises important good practices that all firms should follow. ABCUL agrees that good practices include strong governance, effective communication, especially with vulnerable members, and proper documentation and record-keeping.

We agree that the redress mechanism should be in place when a firm proactively identifies an issue, even if there haven't been any complaints, and notify the FCA when they have identified a systemic or recurring issue or failed to prevent foreseeable harm. It is also important to focus on resolving issues within the organisation, improving systems and controls, and investigating the root causes of complaints to ensure there are no systemic problems within the firm.

ABCUL welcomes the need for firms to tailor their communications when dealing with vulnerable customers to ensure that vulnerable customers are supported and included within any redress remedy framework.

Question 3: Do you agree with the additional guidance proposed at SUP 15.3.8G for when firms are expected to report serious redress risks or issues to the FCA?

ABCUL supports the additional guidance proposed at SUP 15.3.8G to encourage firms to identify harms early and when firms should report serious redress risk and/or systemic issues to the FCA. We welcome the clarity of the proposed criteria for when firms should report an issue. Ongoing awareness of potential redress issues or risks should be/continue to be 'baked-in' to a firm's governance and Consumer Duty.

Question 4: Do you support the introduction of a 'lead complaints' process to address novel and significant complaint issues?

ABCUL welcomes the introduction of a 'lead complaints' process if 'lead' decisions result in consistent outcomes. Under the new model, firms would be able to apply for the FOS to consider a representative sample of lead complaints to be considered against both 'novel' (new products or services or potential new interpretations of regulation) and 'significant' (those likely to generate large volumes of complaints) criteria.

ABCUL welcomes the proposal for a 'lead complaints' framework to not only produce a more efficient and timely way to resolve issues, but also to move towards greater alignment with the FCA through collaboration. Introduction of a 'lead complaints' process could create a more structured way to deal with novel or significant complaint issues. Allowing firms, such as credit unions, to pause related complaints would reduce the duplication that may occur, especially for firms with limited compliance resources. The process should still be able to get a similar outcome without the previous resource constraints.

ABCUL agrees with the FCA that the lead complaints process could complement other proposals, including the handling of MREs. ABCUL urges the FOS to ensure that Stage 5 of the proposed process is followed in order to maintain responsiveness and proportionality while also striving to reduce regulatory burdens.

Question 5: Do you think that the lead complaints process will achieve its intended benefits?

While ABCUL supports the 'lead complaint' process and hopes it will achieve its intended benefits, we feel this is something that can only be determined once in place. This process would provide a framework for early regulatory alignment, allowing the FOS to seek FCA input where appropriate to ensure a more robust approach moving forward.

Question 6: Do you agree that firms should be allowed to pause related complaints while lead cases are under investigation in the lead complaints test process?

ABCUL supports the idea that firms should be permitted to pause related complaints while the main or "lead" cases are being investigated as part of the "lead complaints" test process. However, this should only apply when the complaints are closely related to the lead complaint and have been evaluated according to a defined set of criteria. Implementing this process could significantly reduce the reporting burden for credit unions. Nevertheless, we strongly encourage the FOS and FCA to monitor this mechanism to prevent any misuse by firms attempting to delay complaints.

We do feel further clarity is needed for firms that continue to receive complaints from consumers on the same related issue while there is a 'lead complaint' investigation ongoing. As per DISP 1.6.1, credit unions must provide a written response to the complaint within 8 weeks. As the firm knows that there is a 'lead complaint' being investigated by the FOS, would there then be exemptions provided or an alternative process for firms to follow during this period?

Question 7: What safeguards should there be to ensure the lead complaints process is not used to delay or avoid complaint resolution?

Having the appropriate referral mechanism and considering the complaint against the 'novel' and 'significant' should ensure that firms do not use the process as a way to delay or avoid complaint resolution. Also, noting firms that submit complaints regularly to the process should be monitored closely.

Question 8: Do you agree in principle with the introduction of a new registration stage before a complaint is investigated by the Financial Ombudsman?

ABCUL supports the idea of implementing a new registration stage in the complaints process. This preliminary stage could serve to pre-screen complaints, identifying those that warrant a full investigation. By doing so, we hope it enhances the quality of cases and helps filter out complaints that could be addressed through other means.

Moreover, ABCUL welcomes these proposals if they will reduce the volume of low-quality complaints from professional representatives through the proposed registration stage, notably through areas such as Minimum Evidential Standards before a complaint is proceeded to the investigation stage by the FOS.

ABCUL emphasises that this process should be proportionate and considerate of the needs of credit unions, especially with areas of CONC referenced by professional representatives – we urge the FOS to be aware that areas of CONC are not applicable to credit unions and if brought to the registration stages by PRs we hope that scrutiny is robust enough to not allow to proceed to the investigation stage.

Furthermore, ABCUL stresses the importance of transparency and effective communication from the FOS throughout the later stages of the complaints process.

Question 9: Do you agree that the registration stage will help complainants preparing and submitting complaints to the Financial Ombudsman?

ABCUL agrees that the registration stage will help complainants to prepare and submit complaints. However, we would urge complainants to prepare high-quality complaints even if this stage was not in place. ABCUL hopes that introducing the registration stage will lead to well-informed and appropriately evidence complaints only progressing to the investigation stage. With the implementation of the charging fees for PR's, we would anticipate that this would also encourage a higher standard of submission with the appropriate evidence, which has previously been lacking.

We support the aim to create a checkpoint for complaint cases to see if they are valid to proceed to the investigation stage. We support the registration stage in that it could enable 'a more structured, responsive and proportionate approach to complaint resolution'.

Question 10: What safeguards should there be to ensure the registration stage does not limit access to justice, particularly for vulnerable consumers?

We would propose that there is signposting provided to support vulnerable consumers in completing their information, e.g. Citizens Advice. Providing those individuals with free support in order to complete the process. We would also propose that there may need to be an alternative route for the registration stage for individuals who do not have online access or lack digital skills.

Question 11: Do you agree that the Financial Ombudsman being able to pause or pass back cases at the new registration stage would improve respondent firms' ability to manage mass redress events or emerging regulatory issues?

ABCUL agrees that the FOS being able to pause or pass back cases at the new registration stage would improve respondent firms' ability to manage mass redress events or emerging regulatory issues. As stated, the current complaints model can be overwhelmed by high complaint volumes from MREs. Allowing the FOS to pause these cases at the new registration can allow for the continued operational effectiveness of the FOS. ABCUL urges clarity in the criteria to ensure firms are not inadvertently sending complaints to the FOS, which could be resolved by the firm.

Question 12: Do you agree that the Financial Ombudsman should consider differential case fees for cases in the registration stage?

ABCUL would support the FOS in implementing a differential case fee for cases in the registration stage if it reduces high-volume, low-quality complaints.

Question 13: Do you agree with the proposed changes to DISP to improve the Financial Ombudsman's operational efficiency?

ABCUL supports efforts to improve the Financial Ombudsman's operational efficiency through proposed changes to DISP, where it provides better, more effective, and fairer outcomes for credit unions. Particularly, the additional guidance at DISP 1.4.AG to clarify DISP 1.4.4R to further illustrate how respondents could meet their obligation to fully cooperate with the FOS by providing evidence or information which is required to properly assess a complaint. This will provide firms with a clear understanding of their obligations and reduce the likelihood of delays.

We also support the amendment to DISP 1.6.1R to require respondents to provide, when acknowledging complaints, information about the time they have to provide an FRL to the complainant. This is a practice that is already in place by many credit unions and should be standardised by all firms. ABCUL welcomes further guidance to improve firms' obligations when assessing a complaint, as well as improving the overall clarity of guidance.

Question 14: Do you agree with the proposed amendments to COMP 4 and COMP 12A to simplify the list setting out who is and is not eligible to make a claim to the FSCS?

ABCUL acknowledges the vital role that the FSCS play in the wider redress system. ABCUL welcomes proposals to simplify the current eligibility in COMP 4 & 12A to reduce complexity in the Handbook. We understand that the intended changes to COMP are not intended to change the perimeter established by altering who will be an eligible claimant. The changes will allow FSCS to resolve certain types of valid claims more efficiently, and this is something we are in support of.

Question 15: Do you agree with the proposed amendments to COMP 6.3.4R to enable the FSCS to determine a relevant person in default, where they are not co-operating with the FSCS, or where personal circumstances prevent them from co-operating?

ABCUL agrees with the proposed amendment, which seeks to address scenarios that can cause significant delays for claimants. One such example is when a director initially responds to FSCS outreach but then repeatedly fails to provide the necessary information for FSCS to properly

investigate claims. This lack of cooperation results in delays for eligible claimants and increases costs for participant firms due to prolonged claim processing.

Question 16: Do you agree with the proposed amendments to COMP 11.2 to give the FSCS greater discretion over where compensation is paid under specific circumstances as described in that provision?

ABCUL generally supports the proposed amendments to COMP 11.2. It is essential to ensure that when compensation is paid, there are strong processes in place to verify the correct recipient or entity. ABCUL emphasises the importance of exhausting all avenues to contact the original intended claimant before compensating a different individual. Furthermore, it may also be necessary to demonstrate that the compensation truly serves the best interests of the claimant.

Question 17: Do you agree with the proposed amendments to COMP 12.2.10R and the additional factors listed in COMP 12.2.11R that FSCS must take into account when considering if a claimant is eligible?

ABCUL generally supports the proposed amendments to COMP 12.2.10R and the additional factors outlined in COMP 12.2.11R when determining a claimant's eligibility. ABCUL agrees that the FSCS must consider the importance of preserving public confidence in the operation of the compensation scheme. Members of credit unions trust the FSCS, and maintaining this confidence is essential to the scheme. ABCUL also recognises that the FSCS can only take into account the information available at the time of its decision. The proposed amendment better enables FSCS to use the discretion within the rules in appropriate circumstances.

In addition to our responses above, we would like to take this opportunity to highlight some inconsistencies we have observed in certain FOS decisions relating to the credit union sector. Specifically, we have noted frequent references to the FCA's CONC sourcebook despite it being out of scope for credit unions. In some final decisions, credit unions have been expected to comply with the 'spirit' of these rules.

This approach undermines predictability, consistency, fairness and principles that are explicitly referenced in Chapter 2 of this consultation paper. Holding credit unions to standards that do not formally apply to them is not only detrimental to the credit unions themselves, but also risks compromising the integrity of the FOS.

If this is an area you would be open to exploring further, we would welcome the opportunity for discussion.

Please contact us at advocacy@abcul.org if you have any questions about our response to your consultation.

Kind regards,



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ABCUL