

Redress & CMC Policy Team
Financial Conduct Authority
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To Whom It May Concern,

FCA Call for Input: 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 who 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 strongly 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 230 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 fifty staff to small voluntary organisations.

Consultation Response

We welcome the opportunity to respond to this Call for Input and the desire of the Financial Ombudsman Service (FOS) and Financial Conduct Authority (FCA) to work together with stakeholders to modernise the redress system which should create greater certainty for consumers and businesses to manage mass compliant issues more effectively.

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).

We would agree that defining mass redress events would be useful. However, we do have concerns around the matrix as to what would quantify a mass redress event. As the financial services sector has many differing sized organisations and the volume of complaints that would cause significant impact would differ depending on that institution. Placing a numerical value e.g., the number of consumers affected for a Tier 1 Bank vs a Credit Union would be significantly different, if it were an issue only relevant to a certain sector within the financial services ecosystem. Any definition should take into account the number of consumers affected, the extent of redress and the impact it will have on the companies e.g. financial and resources.

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

We do agree with your assessment of the difficulties that mass redress events can create for firms and consumers. We strongly argue that many of the difficulties lie around issues of mass submission of poorly evidenced or substantive claims by Claims Management Companies (CMCs) as highlighted in the CFI. We have seen many of the CMC's complaints relying on consent from the consumer dating back to a previous PPI complaint that had taken place in 2010/11 which they have then used to pursue another claim without the consumer's knowledge. Allowing this kind of practice to be the basis for any complaint but more so mass complaints should allow the complaints to be dismissed.

The CMCs who are acting in this unscrupulous manner, many of whom are charging a significant percentage from any redress, are not looking after the consumers' interests, but simply relying on previously agreed consent from over a decade ago to help increase their income line. Many of the consumers who they have represented have had no knowledge of the

complaints being submitted until the firm receiving the complaint requests permission to share any information with the CMC.

This not only flags a lack of consumer care but also then places undue strain financially and administratively on firms to review and respond to each complaint. In these cases, where no up-to-date consent has been received firms should be allowed to dismiss the complaint.

This would not only alleviate the resources required by the firms but also reduce the follow-on impact on the FOS of cases being referred. Mass redress cases where they are referred to the FOS create a prolonged process for the consumers and the firms.

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

We have highlighted some of the other issues that should be considered in our response to question two. We would also like to raise the issue on the lack of knowledge and understanding of what rules are applicable to the credit union sector and what guidance. There have been a number of CMCs who have been quoting CONC rules as part of their complaints which have then also been referenced by the FOS in their responses. We would like to take this opportunity to reiterate that CONC rules only apply to firms carrying out credit-related activities, many of the credit unions do undertake these activities with only a small number providing products and services that would qualify for the reference to CONC. The Consumer Credit (Exempt Agreements) Order 1989 exempts credit unions from the Consumer Credit Act. We would also recommend that any CMCs who reference CONC as part of their complaint where it is not correct should be dismissed due to the lack of attention and care given to each claim made by the CMCs by referring to inaccurate information.

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

We do not support the belief that it would be appropriate for the FOS to define expectations regarding Consumer Duty. We would support the option for more engagement with the FOS and regulators when a possible mass redress event is industry-wide so that we can help educate our members on the findings of previous complaint cases and the redress that was proposed. This would allow the firms to ensure any required amendments to processes, procedures or products are completed in a timely manner to reduce further consumers being impacted where possible.

The shift towards outcomes-focused regulation certainly has its place within other areas of regulation. We would encourage that complaints and redress should be focused on more defined rules and now subject to being open to interpretation.

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.

We do support the proposals and agree they will help but would also argue that the issues that have led to this Cfl extend beyond mass redress events. As we have previously stated in our responses above the lack of knowledge and understanding of the credit union sector has led to the FOS referring to irrelevant rules and also referring to previous case history which references to complying within the spirit of the guidance (CONC). We need to have clear boundaries for what is within the scope of the sector and what is now, there seems to be a blurring of the regulatory lines in recent years, which need to be addressed.

The FCA's primary objective is consumer protection, market integrity and competition. Due to the mass redress events, we have already seen many firms withdraw from the markets or become more risk-averse. With the increasing mass complaint submissions from CMCs to firms around unaffordable/irresponsible lending many providers of affordable credit will become risk averse due to the potential threat of a CMC submitted FOS complaint which is then viewed in favour of the complainant, which may have been upheld under some of the rational listed in the paragraph above. This then has a detrimental effect on the firm, especially smaller firms with little resources and could result in the failure of the firm. What is missing is the confidence from credit unions that the FOS have a well-rounded knowledge of the sector and what rules do/do not apply.

Effective and consistent management of mass redress events by the FOS, in line with the FCA's regulatory expectations, is essential for maintaining confidence in the regulatory framework. This is also critical for consumer protection and the international competitiveness of the UK financial sector.

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?

We do not believe that any further information or guidance is required in DISP as the majority of firms monitor, record, review and assess complaints on a regular basis and learn from any FOS decisions and apply these to all complaints moving forward. Previous mass redress events have not been as a result of the guidance for firms in DISP.

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?

We would like the FCA and FOS to consider allowing an extension to the response deadline if the complaint has been received as part of a mass complaints submission by a CMC/PR. This

would allow firms to ensure accurate and concise data is reviewed prior to any response, this would be particularly welcomed by those smaller firms who are limited on resources.

We would also call on the engagement between FOS and the FCA to be more transparent to firms when they are stating regulatory expectations. We would also recommend that firms should be able to escalate any concerns about an FOS decision to the FCA when it refers to rules or guidance that the firm believes is out of the scope of the firm.

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?

We would support the reintroduction of the 2-stage process in light of the Consumer Duty. This would allow firms the opportunity to effectively resolve complaints without consumers referring to the FOS. The 2-staged process provides firms with the extended opportunity to achieve a resolution for the consumer. This may also then reduce the number of cases the FOS has to review which would allow them to focus their resources on other more complex complaints.

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?

We strongly oppose the proposal that the ability of firms and consumers to escalate cases to an Ombudsman should be restricted to specific circumstances. When a case is escalated this is due to dissatisfaction from either the consumer or the firm who believe that the FOS investigator has wrongfully ruled on the case. There have been occasions where such escalations have resulted in a change in the original decision. Although as stated in the Cfi there have been “very few” determinations changing between the preliminary assessment stage and final decisions those that have been overturned could have made a significant difference to firms and consumers. It would be beneficial to have a report detailing the number of overturned decisions and the reason for overturning the preliminary decision.

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?

We would strongly support amendments to the rules in DISP to provide different routes to redress for represented and non-represented complainants with different expectations. For those represented complainants, there should be a requirement to evidence up-to-date consent to represent the complainant by the CMC/PR. We would encourage changes to ensure the

CMCs are required to investigate each potential claim thoroughly before submitting or pursuing a claim, as currently many are not providing the relevant information to the firms in order for them to fully investigate the claim. We would like to see the prevention of mass submissions, and that each individual claim is submitted with the relevant documentation.

We would also like to see the DISP rules update to allow the FOS to dismiss CMC complaints that have:

- not provided the relevant information,
- not obtained up to date consent from the complainant
- miss quoted rules or regulations not relevant to the firm responding or
- have not detailed why the final response from the firm was not accepted.

We see these points as basic administrative tasks that the CMC should be able to complete prior to any escalation of a complaint to FOS. Allowing complaints to be dismissed who have not met the necessary basics would reduce the overall volume of CMC-led complaints, which would ease the operational burden of both the FOS and firms in handling numerous complaints by CMCs which are produced from a standard template with no understanding of the product or firm they are referring the complaint too.

We would also encourage the FCA and FOS to work alongside industry bodies to encourage firms to manage any potential mass redress events directly with their customers which would limit the volume of CMC claims and also allow firms to take ownership of any redress event.

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

We would encourage the FOS to reduce the case fee paid by responded firms to include a reduction or rebate if the complaint is rejected. This aligns with the proposed case model fee for CMC complaints. We welcome the proposal to charge CMCs a £250 case fee, however, this is only after the first ten cases which are free. We would like to see CMCs paying the same case fee as firms and they should not be benefiting from any free cases given the excessive percentage of any redress they charge their customers.

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?

We support that the FOS places the individual consumer at the centre of their assessment process, but they also need to consider the impact of their decisions on the firms, sectors and financial services industry as a whole. The decisions by FOS can have hugely damaging effects on some firms and may even cause the firm to fail or bear the costs of implementing any changes onto the consumers. We strongly believe that FOS should be required to put greater

emphasis on the rules, regulations and legislations that the firms need to comply with at the time the product or service was provided. This would provide greater clarity for firms, CMCs, and consumers with a more defined and predictable outcome. This would also provide precedence for the firms to follow if they received a similar complaint, which could then reduce referrals to the FOS.

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

We would support the broadening of dismissal grounds to include empowering the FOS to be able to dismiss complaints as previously mentioned in our response to question 10. We would also support that the case fee for the respondent firm should not be charged in these cases.

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 would support the reduction in the timeframe for consumers to refer complaints to the FOS from 6 months to three months. We feel that 6 months is a very lengthy time to then go and revisit a complaint.

We understand and support the 6-year time limit from the event as this is in line with most financial record keeping. We would like to ask what defines the “event” being complained about. There seems to have been a number of interpretations of this, so clarity on this would be greatly received by the sector.

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?**

We would suggest having more engagement with industry representatives e.g. trade associations on potential complaint issues and horizon scanning. This would allow firms to respond quicker to any potential issues, put into place remediation of services and also provide a quicker response to any complaints received. This could in turn reduce the workflow of cases being referred to FOS and enable firms to be better prepared for the impact of financial or operational burdens.

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?

We would also support more engagement and communication with the industry where FOS are seeing a considerable number of complaints on a similar issue. This would provide the sector with a better understanding of what type of complaints are being raised and the FOS's view on the cases and any potential redress impacts for firms.

As regulatory requirements and expectations are under the FCA's remit we would like to see more transparency on when the FCA have contributed to the FOS decision on a complaint. We understand that FOS operates independently of the FCA but that its decisions need to be aligned with the FCA's expectations of the case in question. This will also help to provide clarity to many firms, in relation to our previous point on the regulatory creep/application of other rules that are not relevant to those firms. We would like to see more consistency in the reviewing and outcomes of cases this will in turn instil confidence in the FCA and FOS by firms.

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?

We would support the FOS being able to pause the timescales in the DISP rules while it awaits regulatory input on the interpretation of the rules. We would like to caveat that unfortunately sometimes the request for interpretation can differ depending on who is responding, which we have heard from member credit unions when engaging with the FCA. Once the interpretation has been provided this should also be shared with the respondent firm to allow them to help resolve any further complaints received. However, there must be an open channel to allow firms to escalate any disagreement to the FCA over the interpretation provided to FOS.

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

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

We do not have any recommended changes to the current rules for mass redress events.

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

We would like to see CMCs being held to account and put under greater scrutiny. The majority of complaints being raised by CMCs are not being upheld, this is due to poor behaviours within the CMC sector, which is having a negative impact on the consumers they inadequately represent but also firms like credit unions who are always striving to provide an ethical, affordable, and sustainable service to their members. This service is being negatively impacted by CMCs and their persistent ill-prepared claims, which take up vital time and resources from the important work credit unions do day in and day out. These claims also have an impact on the growth, innovation and risk appetite within the sector. CMCs need to be held to account for the substandard practices and at times proceeding with claims without the consumers' updated agreement, in these occasions, the CMCs should have to pay for all the case fees involved.

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

As previously stated in questions 15 and 16 we would like to see more engagement about what is currently happening and horizon scanning instead of looking at previous data. By the time data is collected and analysed it is no longer as impactful. Having more engagement with representatives and open dialogue as to what trends all parties are hearing or seeing would be more effective.

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

We believe the requirements under PRIN, DIPS, SUP and Consumer Duty are clear for firms.

We are not in support of PRs/CMCs notifying the FCA of what they consider to be emerging redress events as this could result in more unscrupulous behaviour by PR/CMCs who would stand to benefit from the redress event.

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?

As we previously stated the definition of a 'mass redress event' needs to be defined but not overly prescriptive due to the reasons we provided in question 1. Also, the definition of wider implications as detailed in the WIF should be used as a consistent reference. As per our previous comments, the FCA should be guided by the FOS and also by engagement with industry representatives to help determine if an issue has wider implications or the potential to become a mass redress event.

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

We believe that there needs to be more transparency about the activities of WIF and more engagement and communication with industry representatives. It would be beneficial to have at least an annual meeting involving the industry representatives to discuss the ongoing work and any concerns from WIF, this would provide the industry with an opportunity to help understand the current issues and would allow firms to respond to these more effectively.

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

Please see our response to question 23.

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?

Please see our response to question 23.

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?

No comments

Question 26. What other improvements could be made to how we engage and communicate with stakeholders when considering issues with wider implications?

Please see our response to question 23.

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

Kind regards,



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ABCUL