TISA

Response by TISA to FOS and FCA's Call for Input on Modernising the Redress System

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January 2025

About TISA

Supporting the financial journey through life
The Investing and Saving Alliance's (TISA) ambition is to improve the financial wellbeing of all UK consumers by working collectively with the financial services industry to deliver solutions and champion innovation, for the benefit of people, our industry, and the nation.

We do this by working with our member firms to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA is a not-for-profit membership organisation and a trusted partner of key industry stakeholders in helping shape the future of the UK financial services and the environment in which we operate. We have over 270-member firms involved in the supply and distribution of savings, investment products and associated services, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, FinTechs, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

Our work, your influence

With a focus on **three strategic pillars of work** to best support the consumer and UK financial services, TISA has become a major industry delivery organisation for consumer focused and digital industry infrastructure initiatives.

1. Build **Strategic policy initiatives that influence policy makers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments;

2. Provide **expert technical support to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering ISAs, MiFID II, CASS, ESG/RSI, operational resilience, Cyber Risk, SM&CR and a range of other areas, and

3. To transform our industry architecture by helping build **digital transformation solutions** that are driving ground-breaking innovation, including; an Open Finance scheme to increase savings habits for the short and long term; the Select ID scheme, which aims to be a market-leading Digital ID scheme and marketplace; and TURN – a digital platform providing a secure data exchange for financial services using blockchain technology.

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Contents

Introduction and Summary of Recommendations 4

Responses to Questions 5

Introduction and Summary of Recommendations

TISA welcomes the opportunity to respond to the FOS and FCA's joint Call for Input on Modernising the Redress System. We support the aims to:

- modernise the redress system to ensure a more effective and efficient framework for the future.
- improve co-operation under the current framework.

We agree that it is essential that consumers should receive appropriate redress in an efficient manner when things have gone wrong. Customers should know what to do if something has gone wrong and should have confidence that firms will listen, provide redress and will learn from past mistakes. Recourse to the FOS should only be required where the consumer is unhappy with the way in which the firm has addressed their complaint.

To enable this to happen, it is crucial that there is a clear, public articulation of the roles and responsibilities firms, FCA, FOS and consumers. These roles, responsibilities and processes should play out in a consistent manner. These two things combined will improve trust and confidence in financial services, financial regulation, and ultimately the integrity of our system. Consequently, insufficient transparency and inconsistent outcomes will undermine confidence in financial services and regulation.

We support the proposal for greater alignment and collaboration between the FCA and FOS. In addition, brining FOS into consumer redress scheme design discussions will help everyone understand the expectations and desirable scope and operation of schemes. This early engagement will prevent misalignment, confusion and poor consumer experiences and outcomes later down the line.

We would like to thank FCA and FOS for the opportunity to respond to the Call for Input and would be happy to discuss these recommendations and any other aspects of our consultation response. We look forward to FCA and FOS progressing their work on the redress framework and we stand ready to engage, collaborate and lend out support to help achieve the policy objectives.

Question Responses

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).

Yes.

Where s404 FSMA has been exercised, and the underlying issue at the centre of the consumer redress scheme has a wider impact across the financial services industry.

In addition, where two or more firms have voluntarily agreed to establish a consumer redress scheme, the schemes share the underlying issue at the centre of the redress schemes and there is the potential for there to be wider impacts across the financial services industry. For both of these scenarios, the measures outlined in s404B FSMA should apply, so that consumers, firms and authorities can have clarity and certainty.

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

Yes. We would also observe that under the current system, there potential for inconsistencies depending on whether a customer complains before a redress scheme has been established, while the scheme is ongoing, or whether the FOS makes a determination. These inconsistencies are difficult to track and resolve where there is a mass redress event. This inconsistency can undermine consumer and investor trust and certainty in UK financial services, as well as the redress frameworks that regulate them.

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

We recommend that there are clear, public articulations of the roles, responsibilities and handoffs between official sector bodies, firms and consumers. This information would be useful for all parties involved in mass redress events, as well as more localised, individual complaints.

Given the issue of redress is not unique to the UK, we also recommend that an international benchmarking exercise is undertaken to understand how other jurisdictions regulate this matter, what works well and could be potentially deployed into the UK system, and what areas is the UK ahead. This would align with the FCA's secondary objective.

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?

Nothing further to add.

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.

Without more information and details on the FCA's proposals, it is difficult to take a position on this. However, we do agree that undertaking this review does not contravene any FCA objectives.

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?

In line with our response to Q1, DISP 1.1.11A should be expanded to include consumer redress schemes that are voluntarily entered into by firms, following engagement and with continued oversight of the FCA and FOS.

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?

It is often the case that a firm will voluntarily agree to set up a consumer redress scheme, rather than the FCA exercising s404 FSMA. There may be benefits to adopting this approach; for example, firms may be able to set up redress schemes more expeditiously than if the FSMA process, which includes a requirement on the FCA to formally consult, were adopted. Understandably, the FCA is heavily engaged in any consumer redress process, with the firm in question regularly providing information, updates and taking on feedback from the FCA. We believe that the FOS is also a key stakeholder and should be brought into these discussions from an early stage, so that they are made aware of the redress scheme and they can also take part in conversations on the scope and limitations of any redress scheme. This recognises that that many of the complaints taken to FOS are likely to be borderline cases, and brining FOS in at this earlier stage would help firms and authorities clarify and set the right scheme parameters from the start. FOS should also be kept up to date on the progress being made by the redress scheme, which will help them determine the right point in time for cases to be brought to them, and when to refer a consumer back to the firm and the ongoing redress scheme.

If this is not done, there is a risk that the parameters of a consumer redress scheme are fluid, as a FOS determination could have wider implications for the ongoing redress scheme, which would undermine the original parameters of the scheme and decisions already made under the scheme, ultimately, reducing confidence firms and consumers have in the voluntary redress schemes.

If we want to maintain the benefits of firms adopting voluntary redress schemes, the consequential implications that apply to s404 redress schemes (i.e. s404B) should be adopted. This would ensure that the FOS remains a backstop that consumers can turn to once firms have been given the opportunity to resolve complaints.

In addition, we recommend that the FOS publishes a framework that sets out how it makes decisions, the key factors that are taken into account when making a determination and whether there are particular issues, products, approaches etc. that their decisions are focussed on. Alongside this, FOS should also publish its decision guides. This greater level of transparency would enable consumers and firms can understand the processes that FOS applies when making a decision. This greater level of transparency would increase consistency in the approaches firms take when handling complaints (noting DISP 1.3.2A), which in turn would lead to lower levels of FOS cases, as consumers would also be able to understand how their case would be determined.

Finally, we also recommend that the FOS provide and equal level of detail when providing its rationale for rejecting a complaint, as they do when upholding them. The greater level of information currently given by FOS when upholding a complaint helps firms understand the FOS' rationale and make operational changes and updates as required. If this additional information were also provided when FOS rejects a complaint, a firm could equally review and determine any appropriate changes that are needed in order to continuously improve their service and offerings.

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 do not see the benefits of adopting this proposal. It would add complexity and is susceptible to abuse by bad actors.

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?

Please see our response to 7.

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?

The FCA could consider obliging PRs and CMCs to disclosure that consumers are able to raise complaints directly to the FOS without incurring any costs, charges or fees.

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

If our recommendations noted in response to questions 1 and 7 are taken forwards, no changes are needed.

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?

To increase trust in the system, the FOS should publish its decision guides so that consumers and firms can understand what is taken into account when the FOS is deciding what is fair and reasonable. This greater level of transparency would increase consistency in the approaches firms take when handling complaints, which in turn would lead to lower levels of FOS cases, as consumers would also be able to understand how their case would be determined.

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

In line with our response to Q1, the grounds for dismissal that apply where a s404 consumer redress scheme has been established, should equally apply where a voluntary consumer redress scheme has been established and is subject to ongoing supervision by the FCA.

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 accept that the time limits may be blunt tools, particularly in complex cases, but overall, we do not support the dilution of the time limits for referring complaints, save for the carve outs that should be applied where a voluntary redress scheme is in place.

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?

Yes.

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?

On balance, we do not think the FOS timescales should be paused if they are awaiting regulatory interpretation. These requests should give due prioritisation to ensure consumers receive appropriate redress in a timely manner.

If the FCA and FOS are minded to take this proposal forwards, it should only do so if it is willing to provide an equivalent concession where additional input is sought from the financial services provider.

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?

Please see our response to questions 1 and 7. In addition, further clarity in this area and defined scope/responsibilities would be useful.

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

It would be extremely helpful if the FOS were obliged to apply relevant FCA rules, guidance and common law judgments when making their determinations. These are the requirements that firms are obliged to follow, and if a firm were to depart from them, they would face consequences. Alignment in approaches taken by FCA and FOS would materially improve consistency and trust.

Until this change can be made, wherever FOS does adopt a different approach, they should provide a rationale as to why they have done so.

In addition, firms should have the ability to refer matters to the FCA where the complaint centres on an interpretation of the FCA's rules and / or guidance. This would aide consistent interpretations and consistency, which all parties could benefit from.

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

The FCA has made great strides to improve its ability to represent the whole country, as demonstrated through its regional offices, commitment to measuring and taking steps to increase diversity and adopting flexible recruitment practices. This has strengthened the FCA's ability to have a truly national footprint of UK financial services users.

The FCA could leverage this strength, by surveying its own staff as a way of taking a temperature check on emerging consumer trends and redress events. This could provide valuable data in a proportionate and cost-effective manner.

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

We suspect this will closely tie to the FCA's definition of a mass redress event. Further guidance eon notifications should align with this definition, helping firms to interpret it.

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?

It may be prudent to consider this through a higher-level, more strategic viewpoint, so that mass redress events can be spotted earlier. Factors that could be considered include:

- Are there any emerging systemic operational resilience issues that could become mass redress events?
- What mass redress events are occurring in other jurisdictions and could they have relevance to UK markets, firms and consumers

Two additional, more near-term factors to consider are:

- whether CMCs are targeting customers that may have experienced a certain event / issue / service or taken out a particular product.
- Whether consumer advocates are campaigning to bring wider attention to an redress event

We also note the FCA's existing guidance on factors to take into account when considering whether a firm failures that require a consumer redress scheme are widespread, which may also be of use.

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

- Involve more official sector stakeholders (e.g. PRA, SRA)
- Increase formal and informal engagement with non-official sector stakeholders.
    - Meet with industry (e.g. firms that are central to a mass redress event), industry bodies and consumer bodies. These stakeholders could attend sections of WIF meetings, or be invited to separate events, such as roundtables.
    - Regularly, publicly consult on issues that should be considered.
- Provide more information about the WIF's work, for example more detailed minutes of meetings, which provide more information on the nature of discussions and the types of impacted customers and firms.
- There is a perception that the WIF is being driven by the FCA, with unclear levels of support and engagement from the other member authorities. To overcome this perception, we recommend that the WIF appoints a co-chair from another member.
- It may be beneficial for the WIF to create and publish an action log. This would provide transparency on the tangible actions that are agreed and taken forwards at WIF meetings.

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

We are not aware of any engagement between WIF and industry, but in future, we would be happy to engage, collaborate and support the efforts of WIF.

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?

- Bring FOS into working and senior level discussions with firms when consumer redress schemes are being set up. This includes involving FOS in conversations about the scope and limitations of consumer redress schemes.
- Where two or more firms have voluntarily agreed to establish a consumer redress scheme; the schemes share the underlying issue at the centre of the redress schemes; and there is the potential for there to be wider impacts across the financial services industry, the measures outlined in s404B FSMA should apply, so that consumers, firms and authorities can have clarity and certainty.
- Having clear roles, responsibilities and handovers would ensure that WIF members understand which authority takes the lead on a matter, or a particular stage of a matter, and which members are acting in an advisory capacity. Provide public transparency on this would increase confidence in the WIF and its ability to ensure effective cooperation.
- As mentioned, there is a perception that the WIF is being driven by the FCA, with unclear levels of support and engagement from the other member authorities. To overcome this perception, we recommend that the WIF appoints a co-chair from another member.

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?

Yes, this should increase the level of external engagement, albeit we wonder why a WIF member could not attend every panel meeting. More frequent engagement would enable the WIF to keep apace with new, fast-paced issues, that potentially have wider implications.

In addition, we presume that non-FCA WIF members also have equivalent or similar panels, which could also be engaged. Engagement with these non-FCA panels would increase the pool of external stakeholders that are engaged. WIF should also meet with industry bodies to understand cross-cutting themes and areas of focus.

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

- Increase formal and informal engagement with non-official sector stakeholders.
    - Meet with industry (e.g. firms that are central to a mass redress event), industry bodies and consumer bodies. These stakeholders could attend sections of WIF meetings, or be invited to separate events, such as roundtables.
    - Regularly, publicly consult on issues that should be considered.

- Provide more information about the WIF's work, for example detailed minutes of meetings, which provide more information on the nature of discussions
- It may be beneficial for the WIF to create and publish an action log. This would provide transparency on the tangible actions that are agreed and taken forwards at WIF meetings.