TISA

Response by TISA to the FCA/FOS consultation on Modernising the Redress System

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About TISA

Supporting the financial journey through life

The Investing and Saving Alliance (TISA) is committed to improving 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.

We care about the entire financial life of consumers: from their first savings account opened to ensuring people can age and retire with dignity. TISA believes that savings and investments play a significant role in the lives of people and small businesses. Consumers benefit when they put aside money for their future. Saving and investing can provide a buffer for emergencies; help people achieve big and small goals throughout their lifetime; and give people quality of life in later years.

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 approximately 270 member firms involved in the supply and distribution of savings and investment products and associated services.

Our work, your influence

Our policy work reflects TISA's broad scope of interests and aims on meeting the needs of UK consumers, members and our industry. From improving financial education, inclusion and accessibility, right through to savings, investments and retirement planning, the work we do with our members to **influence policy** is crucial in enhancing the industry we operate in and driving positive change.

As part of our commitment to delivering focused and impactful consumer outcomes, TISA's policy working groups have been structured into **four distinct workstreams**:

1. **Consumer Protection -** *Protecting the best interests of UK consumers in their financial journeys.*
2. **Consumer Access -** *Considering issues that could directly impact access to financial products.*
3. **Effective Products -** *Examining key considerations and legislation relating to products across the investing and saving landscape.*
4. **Corporate Responsibility**
   Exploring issues that directly impact society, the environment, and the economy.

All groups focus on both strategic and technical elements of policy/regulation. We provide a channel for firms to have their say on the policy we develop and present, contribute to our technical and regulatory interpretation work and, importantly, gain insights from other TISA members, policy makers, government and regulators.

Find out more about TISA here: **www.tisa.uk.com/about-tisa**

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Summary of Recommendations

TISA welcomes the opportunity to respond to the FCA/FOS joint consultation on Modernising the Redress System.

We are supportive of HMT, FCA and FOS's policy objectives and think many of the proposal, in principle, will achieve a more transparent and consistent FOS. However, careful consideration needs to be given to how these proposals are implemented in practice to ensure they achieve their intended policy objectives and do not have unintended consequences.

As HMT, FCA and FOS progress this policy work, we would encourage a strong degree of active engagement with industry and membership associations. We have an opportunity to increase trust, efficiency and growth if there is a strong public/private partnership.

I would like to thank FCA and the FOS for the opportunity to comment and for their proactive engagement with TISA and TISA members throughout the consultation period. This continues to be an area of fundamental importance to TISA and TISA members. I would be happy to discuss these recommendations and any other aspects of the TISA response. We look forward to HMT, FCA and FOS finalising their policy work and stand ready to engage, collaborate and lend out support to help achieve a better redress system.

Sophie Legrand Green
Head of Policy, TISA.

Responses to Consultation Questions

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

Yes, we agree with the proposed criteria. It would be useful for the FCA to clarify that all of the criteria need not be met in order for there to be a mass redress event. In addition, given the policy intention is to increase FCA flexibility and agility, we recommend that the wording also clearly includes forward looking considerations to the criteria. This could be achieved by putting criteria into the future tense, so if the issue is likely to lead to a high number of FOS complains, or will result in a significant number of firms being unable to meet their redress liabilities. It would be highly undesirable for these events to occur before the FCA is able to determine that an issue is a MRE.

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?

We welcome the Guidance but think it could go further. We are aware that different firms adopt different proactive redress approaches, even where the redress centres on the same underlying issue. This means consumers may receive different treatment depending on the firm they do business with. We think the FCA could provide more helpful guidance in respect of designing and scoping proactive redress programmes to ensure a greater degree of consistency. For example, further thought should be given to the ultimate outcome the consumer is likely to receive. Is the communication likely to material erode trust, where a breach is fairly technical and immaterial? If this is the case, is the communication needed? In line with the Consumer Duty, there should be proper consideration of consumer understanding, fair value and consumer outcomes. Another example of an area where the FCA could give further guidance links to Example 4 on page 86 of CP25/22, which mentions that a £250 threshold would be considered poor practice. It would be helpful for the FCA to also state whether any threshold is ever acceptable, if this is acceptable, examples of this would be helpful. This type of Guidance could set a helpful baseline that could be consistently applied.

The FCA should also consider updating their good and poor practices on a rolling basis, taking into account real life, comparable scenarios.

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?

Yes, we think this guidance will be of particular interest to small and medium sized firms.
It would also be helpful for the FCA to provide Guidance on examples of what constitutes a “high number of complaints” under subsection (d).

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

We can see merit in this suggestion, but think it would be better to pause this initiative until the FOS has implemented its decision making frameworks. These frameworks will help to drive consistent decision making, which is needed in order to make the lead complaints proposal successful. We strongly recommend that the FOS prioritises its work to implement interactive decision frameworks for its caseworkers. This proposal is very welcome and we also agree with the FOS's intention to publish the frameworks. In support of this initiative, we recommend that that FOS prioritises its decision making framework for Targeted Support and works with the industry and consumer groups to pilot and implement this. This would build on the collaborative and constructive approach that has been taken throughout the Advice Guidance Boundary Review.

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

Please see our response to question 4. We think this lead complaints process is unlikely to achieve its intended benefits, unless the FOS can address issues with underlying inconsistencies in decision making.

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?

If this proposal is taken forwards, then yes.

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

As noted, we consider that improvements should first be made to ensure the FOS applies consistent decision making frameworks. This would ensure confidence in the lead complaints process and avoid unnecessary delays.

In addition, we recommend that any lead complaint process is conducted in a timely manner, with time limits prescribed in secondary legislation. The FOS should also consider implementing additional controls, such as only the most qualified and experienced Ombudsman handling lead complaints. We feel this is warranted, given the wider implications and short timescales associated with a lead complaint process.

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

Yes.

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

Yes.

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

FOS should conduct consumer testing to ensure that additional checks are not overly burdensome for consumers.

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?

Yes.

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

Yes.

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

We agree with the principle that sits behind the proposed changes, however there is some concern that the changes may decrease, rather than increase, the operational efficiency of the FOS. The codifying of the evidence that must be provided to the FOS may encourage to adopt an overly forensic and burdensome approach. A number of members have raised that c1-2 years ago, the FOS adopted a very detailed approach that saw a significant increase in the types of information being requested as evidence (e.g. all letters, calls, processing work on a file). More recently, improvements have been made to decrease the administrative burden of addressing FOS complaints. It would be undesirable if the proposed changes led to a return to the overly burdensome approach. To mitigate this risk, and ensure a balanced, proportionate approach, it would be useful for the proposed changes to note that requests for evidence should be specific and relevant to the complaint, rather than extending to out of scope materials.

To prevent retrospective application of FCA rules and guidance by the FOS, the FCA could explicitly prohibit this by expanding DISP 3.6.4R. The FCA could prohibit this except in cases where retrospective application is expressly written into relevant laws and regulations.

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?

Yes.

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?

Yes.

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?

Yes.

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?

Yes.

Question 19: Do you agree with our analysis of the costs and benefits of these proposals?

When outlining measuring the success of the proposals, the FCA has not made any reference to engaging with consumers and consumer groups. We strongly recommend that the FCA includes this consideration and feedback received from these groups in their success measures.