# Response to call for input on modernising the redress system

January 2025

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# Summary

Mass redress occurs when there is significant, widespread detriment in a consumer market. The priority for the Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS) should be preventing that detriment from occurring and ensuring that redress is handled fairly.

The Consumer Duty was introduced to end the 'detriment–intervention' cycle in which serious consumer detriment emerges repeatedly, requiring specific intervention by the regulator. The best way to prevent mass redress is through effective implementation of the Consumer Duty alongside improving the rule book where required. StepChange has consistently highlighted that, to be successful, the Consumer Duty must be matched with a more effective approach from the FCA to setting expectations for firms, monitoring real consumer outcomes and acting proactively to prevent detriment and harm.

At present, a key driver of complaints to FOS is unaffordable subprime credit card lending. From 2018, StepChange highlighted practice that fell short of FCA rules and guidance and raised concerns directly with the FCA in addition to publicising them more widely. Issues were known in that market but not addressed. We raise this point to highlight that preventing mass redress events requires not only changes to FCA and FOS processes, policies and frameworks but a greater appetite by the regulator to address systemic problems.

We would like to see the FCA commit to a more proactive approach to identifying consumer detriment and potential redress drivers at an early stage and, crucially, to act where issues are identified. This should include:

- monitoring jointly with FOS and organisations that support consumers, alongside other sources of information and intelligence, to identify problems with the potential to cause detriment to consumers and lead to redress; and
- taking prompt action to address drivers of detriment before problems become widespread and a source of mass redress, including using FOS decisions to inform FCA guidance so that the 'early warning' of complaints translates into concrete action by firms.

We are somewhat disappointed that the call for input focuses so much on challenges in the redress system and not on its successes and benefits. Consumers have benefitted greatly from a more responsible financial services market through a well-functioning redress system.

We recognise the challenges for FOS and firms of low quality bulk complaints made by complaints management companies (CMCs), but note that there are also more

complaints than in the past because the financial services market has grown and consumers are rightly seeking redress for past firm misconduct. Rising complaints do not just reflect the activity of CMCs but important ways in which regulation has not been working.

Balanced process changes to complaints procedures can address challenges like low quality bulk complaints. We also agree that the FCA could have a role through industry-wide redress schemes and that this can have benefits for consumers as well as firms in wider, speedier access to redress at lower cost. Proposals should, however, not lower standards of consumer protection or reduce redress.

The use of schemes of arrangement agreed with the FCA to reduce the redress liabilities of firms facing financial difficulty represented a poor outcome for the consumers affected, many of whom did not receive redress. Where firms cause serious consumer detriment they must also meet consumer redress—there cannot be a tolerance for firms entering the market, driving serious and widespread harm and then exiting without meeting redress obligations.

The government and FCA should think more about pre-emptively protecting consumer interests where such situations emerge and what mechanisms can be used to ensure consumers redress obligations do not go unmet, for example by extending the Financial Services Compensation Scheme to consumer credit. Earlier and stronger intervention by FCA where problems emerge is also likely to reduce the volume of FOS fees, making it more likely firms will be able to meet consumers redress obligations.

Finally, consumers with debt problems or other financial difficulties and grounds for complaint are often affected by stress, anxiety and other vulnerabilities like mental health problems that make it more difficult for them to take in information and take action to raise concerns with firms. Free to client support for people who need help to complain is not currently widely available. While CMCs can be a good option for many consumers, if FOS and the FCA want to ensure consumers can access redress without some of the risks and downsides of using CMCs, it is important to consider what other advice and support must be offered.

# Response to consultation 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).

We agree that a definition of mass redress could be useful to help the FCA develop a framework for preventing and managing mass redress events. We agree that appropriate considerations include the number of consumers affected, the number (or

breadth) of firms affected in a market, the nature or amount of redress and the time period in which the activity took place.

Any definition must encompass impacts on consumers, not only markets to ensure the FCA and FOS consider emerging events where intervention is appropriate, regardless of whether the event would cause market disruption. Equally, market disruption where smaller numbers of consumers are affected might be of concern to the FCA (although that appears less likely).

We do not think that a definition need be overly specific, for example in terms of a minimum number of consumers affected or the amount of redress as the significance and impact of redress will vary by market size. We note one reason the FCA wants to consider its role in managing redress events is market disruption and that this can happen whether or not a specific threshold of consumers affected is met.

Any definition of mass redress should be sufficiently alert to emerging risks: if the FCA and FOS are successful in identifying and addressing emerging problems, it would not always be possible to know if these issues would have become mass redress events. We do not wish to see the most important preventative actions the regulator could take constrained by a narrow definition of mass redress that might set a threshold for intervention so high the regulator does not take timely action when needed.

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

We agree broadly with the implications of mass redress that the FCA and FOS set out but are disappointed that so little emphasis has been placed on the roots of mass redress in conduct failures. The challenges raised by the call for input such as poor quality PR complaints submitted to firms in high volumes, have sensible solutions discussed elsewhere in this call for input. But the difficulties raised around market impacts and disorderly firm failures are fundamentally matters caused by poor conduct that have, foremost, had serious consequences for consumers. It is disappointing that so much emphasis is placed on 'concerns from industry stakeholders that when mass redress events occur, large numbers of complaints are referred to the Financial Ombudsman which may not be properly evidenced or substantiated.' High volumes of PR complaints, even where a proportion of those complaints do not have merit, are driven and sustained by upheld complaints where redress is paid to consumers. If the poor conduct had not occurred, the problem would not exist. A balanced approach to considering reforms to the redress framework must frame the impacts of mass redress on firms in the context of detriment and harm to consumers.

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

The FCA could and should have done more to prevent the problem of unaffordable lending to consumers in financially vulnerable circumstances becoming endemic and

ultimately the source of serious consumer detriment and a high volume of upheld FOS complaints.

At present, a significant driver of complaints to FOS is unaffordable subprime credit card lending. From 2018, StepChange highlighted practice that fell short of FCA rules and guidance and raised concerns directly with the FCA in addition to publicising them more widely.[1] Complaints relating to that issue from that period (and onwards) are now a key driver of complaints to FOS. Firms had interpreted FCA rules in a manner that was unreasonable and has later, rightly, been deemed by FOS to be so and justify redress, typically by overlooking obvious signs of financial difficulty that should have justified more careful affordability checks. Risks to consumers in financially vulnerable situations, and issues likely to drive redress at scale, were known in that market but not addressed.

We would like to see the FCA commit to a more proactive approach to identifying consumer detriment and potential redress drivers at an early stage and, crucially, to act where issues are identified. This should include:

- monitoring jointly with FOS and organisations that support consumers, alongside other sources of information and intelligence, to identify problems with the potential to cause harm to consumers and lead to redress; and
- taking prompt action to address drivers of detriment before problems become widespread and a source of mass redress, including using FOS decisions to inform guidance so that the 'early warning' of complaints translates into concrete action by firms.

There are also lessons from this situation for how the FCA frames rules: too much ambiguity in the rules themselves, and what the FCA expects of firms when applying them, left too much space for firms to make poor decisions. The Consumer Duty can help mediate how firms apply rules in a way that leads to better consumer outcomes, but the Duty also introduces new risks in these circumstances because it puts more emphasis on firms themselves to make decisions. There remains an important place for clear expectations in rules, particularly where those rules and guidance affect consumers in vulnerable situations.

A good approach from the FCA should involve monitoring emerging outcomes and gathering intelligence (including commonalities in FOS cases), identifying risk areas where emerging problems overlap with potential gaps or ambiguities in application of its rules and the Consumer Duty, and acting to address problematic areas with guidance, supervisory intervention and rule changes where needed. The FCA should prioritise risk areas like subprime credit that affect consumers in vulnerable circumstances.

[1] StepChange (2018) *Red card: Subprime credit cards and problem debt*

Importantly, while monitoring is important the FCA must consider how it can institutionalise the appetite necessary to identify and address known emerging drivers of consumer detriment. At present, it is too often the FCA does not intervene until market conduct is revealed as harmful by a large volume of consumer complaints.

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?

The shift to outcomes-focused regulation has been driven by the introduction of the Consumer Duty that itself was developed in an explicit recognition of the need to end a 'detriment-intervention' regulatory cycle and raise the standard of consumer protection.

There are both risks and potential benefits to outcomes-focused regulation. It can help firms that embrace the right outcomes-focused culture and good processes of monitoring, and learning from, customer outcomes to avoid complaints. But it also creates risks, if outcomes are not adequately specified or monitored, that poor market conduct will go unaddressed because it is easier for firms to 'mark their own homework', or because firms' understanding of acceptable outcomes and the regulator's become mis-aligned. The FCA acknowledges this risk in the call for input (1.12) but has not yet set out a clear approach to mitigate it.

Previous attempts to encourage firms to take proactive responsibility for meeting the expected standards of conduct, like the Treating Customers Fairly framework, failed because the expectations of firms and the regulator were not aligned, and firms tended to approach the framework from the perspective of their own processes and compliance, rather than customers' interests and good outcomes. Ultimately, this happened because the interests of firms and consumers are not the same. Outcomes-based regulation does not, of itself, change that fact. To ensure the success of the Consumer Duty, the FCA must both ensure it has adequately specified outcomes and that it holds firms to account for meeting their Consumer Duty obligations.

It must also continue to recognise the role of specific, detailed rules to clarify expectations where appropriate. Unaffordable lending complaints have revealed how firms have pushed interpretation of rules too far. The Consumer Duty can help here, but only if rules set sufficiently clear expectations and the FCA is prepared to take action where firms have not taken sufficient account of Consumer Duty obligations in applying those expectations, such as their responsibilities to prevent foreseeable harm.

It is too soon to judge to what extent the Consumer Duty has shifted market conduct likely to drive mass redress, and it would be premature for the FCA to make changes to the redress framework on the basis of any assumptions about the impact of the Duty.

It is not at all clear to us based on the experiences of our debt advice clients, for example, that the practices that drive high volumes of upheld complaints about unaffordable lending have changed substantively post-Consumer Duty. We do not

think the Duty, on the present pathway without a stronger appetite for action where appropriate from the FCA, is likely to insulate consumer markets against further instances of mass redress. This means both proactive action to be more explicit about what the FCA wants to see and intervention though supervision powers where firms are not acting in a way that is aligned with the FCA rules including the Consumer Duty.

In principle, obligations under the Consumer Duty such as the requirement to proactively remediate customers when firms identify that its actions have caused foreseeable harm will have benefits. But this preventative function of the Duty only works where firms act in good faith, and it is not so different to previous obligations on firms to implement learning from complaints. There is much that can go wrong.

The FCA can ensure the Consumer Duty and outcomes-based regulation drive a reduction in mass redress by matching this intent with the appetite to proactively identify where the market is falling short and take action. In some cases this will mean challenging established and market-wide product and service norms.

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 agree that there are situations in which the FCA can intervene to better manage mass redress events. In particular, disorderly failures among firms with significant redress obligations have left consumers out of pocket. Here, the FCA should take a role in ensuring consumer interests are protected and that firms cannot effectively relieve themselves of redress obligations through administration and then re-enter the market.

We also think the FCA could have a role through organised redress schemes where problems revealed through complaints affect a large number of consumers. Consumer redress must be fair: any scheme should reflect FOS judgements and be developed closely with FOS. Redress should not be narrowed or reduced compared to FOS outcomes through an FCA scheme; doing so except where there is no other choice would be unfair and undermine consumer and public confidence in the redress system and financial services. We would also note here that organised redress can have advantages for consumers as well as firms (through reduced FOS fee liabilities) because it tends to increase awareness and creates an accessible route to redress.

More generally, the FCA and FOS should be alert to the risks of reducing firms' exposure to consumer redress brought about by their own misconduct. Consumer regulation creates the conditions for flourishing competition and growth, ensuring that consumers have confidence that products and services are safe, and firms can compete and innovate with the confidence they will not be undercut by less responsible competitors. Consumer confidence is essential to the demand side of any market. When firm behaviour becomes predatory, this not only causes harm to

vulnerable people but the market itself becomes less attractive to some potential entrants (or existing, more responsible firms) for reputational reasons.

We note the FCA's recent initial review of evidence of the links between financial services regulation and growth.[2] The evidence set out in this review shows that the relationship between financial services and growth is complex and deregulation (or 'lighter touch' regulation) is by no means a growth driver. In fact, while the review shows many gaps in evidence and nuanced issues, the arguments in favour of robust consumer regulation to support a growth agenda look just as strong if not stronger than those suggesting a less assertive approach.

History has shown there is a profound risk to undermining regulation in financial services. There is a litany of examples where this has resulted in consumer harm, such as the surge in payday loan firms, the long unaddressed practice of charging vulnerable consumers harmfully high unauthorised overdraft fees and predatory rent-to-own lending—each subsequently addressed by belated government or regulatory intervention.

There is moral hazard in sending any message to firms that misconduct may be 'bailed out' through reduced redress obligations. In supporting growth, the FCA must place its primary emphasis on clear expectations of firms in the regulatory framework, and the application of that framework, and preventing the drivers of redress from emerging in the first place.

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?

Strengthening and better aligning DISP requirements with the Consumer Duty could have benefits in reducing future complaints. It may, for example, be that the language of DISP 1.3.2AG ('lessons learnt') is too circumspect or the framing of DISP 1.3.3R (root cause analysis) in the context of 'recurring or systemic problems' is too vague and does not direct sufficient attention to how recurring complaints should tell a firm it is not supporting good consumer outcomes and trigger action.

However, we consider that these requirements are already fairly clear in their intent. We are also somewhat sceptical that language changes alone to DISP rules would prevent more serious mass redress events since such problems tend to emerge from a fundamental disconnection between what firms understand to be acceptable and what the Ombudsman deems to be acceptable. As such, self-reflection by firms alone is unlikely to have headed off such problems.

[2] Morrison, E. et al (2024) *Research Note: The growth gap: a literature review of regulation and growth*. Financial Conduct Authority.

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 agree that making sure firms deal with complaints fairly the first time rather than re-introducing a two stage procedureis the right approach. As an FCA-regulated advice provider, StepChange is aware of the challenges of resolving complaints in a way that is satisfactory for clients where time limits are exhausted and it becomes necessary to issue a final decision. However, this challenge would remain even with a second stage and we do not think it would be proportionate to return to a two stage procedure.

Firms have flexibility to engage with customers that have made a complaint and seek information to deal with the complaint fairly the first time. If they do not, there is often little reason to expect the firm's decision to change except by the Ombudsman. There is also a risk that a two stage procedure would discourage customers from referring their complaint to the Ombudsman because it has, in effect, already been 'dismissed' twice by a firm. The two stage process was removed because it did not led firms to deal with complaints better and in contrast raised the risks of consumers disengaging from the complaints process.

While we hope and expect to see some impacts from the Consumer Duty, it is unlikely the new expectations it creates have eliminated incentives for firms to avoid upholding complaints that have significant redress obligations. The FCA can ensure the Consumer Duty changes these incentives by taking action against firms not dealing with complaints in a way that is compatible with the Duty. Recent published FOS complaints indicates that many legitimate complaints related to the period following the introduction of the Consumer Duty continue to be upheld by the Ombudsman having been dismissed by the firm with no indication that an additional stage would have changed that outcome. 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?

For the reasons set out in our response to question 7, we do not think a two stage procedure would be appropriate. The Consumer Duty is likely benefiting the good handling of complaints, where firms are able to link complaints to outcomes monitoring and better understand both. However, that does not mean the problems of a two-stage procedure would not re-emerge as the incentives on firms remain very similar. We remain of the view that more evidence is needed about the impact of the Consumer Duty before it is used as the rationale for further reforms predicated on its success in addressing entrenched problems of firm conduct and culture.

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?

The priority for the FCA and FOS must be first of all to ensure that complaints are resolved fairly. We would disagree with any proposal to remove consumer right to request a final Ombudsman decision as this would risk unfair complaints outcomes since some Ombudsman decisions do change with a final decision. In general, we do not consider this a promising avenue to reduce burdens on the Ombudsman and would encourage the FCA and the Ombudsman to focus on upstream opportunities to prevent detriment and raise the quality of PR complaints.

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 are open to some requirements in DISP for PR-represented complaints provided that these requirements do not set a higher redress or consumer protection bar, i.e. that the focus of the alternative route or gateway is solely on setting reasonable expectations that complaints should be accompanied by evidence, raise a real expression of dissatisfaction and be accurate to the extent that is reasonable and therefore not be vexatious.

Changes along these lines can have benefits for consumers in helping ensure that where they have a complaint likely to be upheld a PR does justice to the complaint. However, FOS and the FCA should be cautious about new requirements and ensure that the deal with problems and do not delegitimise the role of CMCs where this activity is conducted responsibly.

FOS and the FCA should monitor the impact of any changes on PRs and ensure there is a strategy to mitigate reduced access to support for complainants. We know from the experience of our clients in financial difficulty that it is hard for consumers, who are often stressed and anxious and unfamiliar with formal procedures, to speak up when they have concerns and take action. Work undertaken by FOS to ensure its service is accessible is positive but the call for input suggests complacency about the implications of further reducing access to redress through CMCs. Ultimately, FOS and the FCA must strike a balance between preventing low quality CMC complaints and maintaining consumer access to redress. We think FOS and the FCA need to set out more about the second aspect of this balance.

We do not support the possibility raised of bulk dismissals as this call for input sets out 'upstream' options like DISP requirements, building on steps like FOS PR form, to increase quality and prevent poorly evidenced bulk submissions which appear preferable to a more drastic approach.

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

Considering recent changes to FOS case fees, the focus for the present should be on monitoring the impact of those changes on practices of PRs and any issues affecting

consumer access to redress.  Ensuring consumers, including those in the most vulnerable circumstances, have access to redress should be a priority.

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 are extremely worried by the possibility raised here as it appears to suggest of watering down the Ombudsman's responsibility to act in a way that is independent, fair and reasonable. Shifting the balance of decision-making towards a presumption in favour of firms directly or indirectly would be a disaster for consumers. It would transform incentives for firms further away from responsible conduct and reframe the FCA rulebook as a document to be arbitraged as far as possible.

We do not think the words 'where appropriate' in regard to the circumstances in which the Ombudsman should consider industry good practice are problematic. Removing this framing risks creating a sense that industry practice norms should set a benchmark for interpreting responsible firm conduct. It is very often those norms that have been the source of misconduct and this would, in effect, give firms more power over interpretation of regulation in a way likely to lead to worse consumer outcomes.

We do think the FCA should be quicker to use emerging principles from FOS cases to ensure industry understanding of acceptable practice changes when needed. The FCA should make clear to firms that they must demonstrate they have considered principles arising from FOS decisions, articulated by the FCA where appropriate, in their complaints resolution approach and any underlying business practice driving complaints.

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

When the ADR chapter of the Digital Markets, Competition and Consumers Act 2024 is implemented, FOS should ensure that access to redress for consumers is maintained. Any extension of dismissal grounds must be considered extremely carefully.

We are unclear what dismissal grounds could be introduced in regard to the problem of poorly evidenced volume complaints that would not risk summarily dismissing some complaints that have merit since identifying those complaints requires consideration of complaints at an individual level. The introduction of the FOS PR gateway and the potential to introduce some DISP expectations for PR complaints appears to be a more promising route of ensuring volume complaints reach a reasonable minimum threshold of quality. Any extension of dismissal grounds must be accompanied by safeguards to ensure legitimate complaints cannot be summarily dismissed without due consideration. (An example of this would be ensuring consumers can raise a complaint that was dismissed because it was initially submitted poorly by a PR.)

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 consider any reduction in the time limits would be in the interests of consumers or a responsible financial services market. It is not reasonable for consumers to know of a grounds for a complaint on many issues that are common drivers of upheld complaints, which is why consumers have three years to make a complaint from when they knew or ought reasonably to have known they had cause to complain.

As a debt advice provider, StepChange is also acutely aware that consumers are asked to maintain contractual obligations and debt repayments to firms for agreements made six years or longer ago, even where doing so is extremely difficult. Moreover, the effects of poor firm conduct very often cast a long-term shadow over an individual's subsequent circumstances with debt problems caused or deepened by irresponsible lending themselves frequently lasting many years, having serious negative impacts on health, relationships and work, and leading to negative credit reporting markers that remain in place for six years.

Credible time periods in which to make complaints is essential to public confidence that financial services regulation and the redress system is fair and not tilted against consumers.

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?

Schemes of arrangement implemented by firms and agreed with the FCA represented a poor outcome for the consumers affected, many of whom did not receive redress. Where the market causes serious consumer detriment it must meet consumer redress—there cannot be a recurrence or tolerance of firms entering the market, driving serious and widespread harm and then exiting without making redress due. The government and FCA should think more about pre-emptively protecting consumer interests where such situations emerge, for example by imposing capital requirements on firms where it is apparent redress is likely. But the government and FCA should also consider what mechanisms can be used to ensure consumers redress obligations do not go unmet, for example through extending the scope of the Financial Services Compensation Scheme.

We are open to the FCA using its powers where appropriate to set up organised redress schemes, but the circumstances when this is appropriate are likely to be narrow and relate to clearcut mass redress events. It would be better for all concerned for the FCA, so far as possible, to prevent the necessity for mass redress through well-designed regulation and strong action to address emerging detriment at an early stage. Where a mass redress situation is amendable to an industry-wide scheme, redress should not be less than consumers might otherwise access through the FOS process. Industry-wide redress can be justified on the basis that it reduces avoidable administrative burdens on firms and FOS without being to the detriment of consumers. Industry-wide redress must not become a means deliberately or otherwise reducing redress itself otherwise consumers will be treated unfairly, consumer trust in markets and the regulator will decline and incentives for firms to act in a responsible way will be unduly weakened.

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?

The statutory and operational independence of FOS is vital to the credibility of its role and public trust in the redress framework. Any changes FOS and the FCA make must maintain both that independence and the perception that it exists. FOS must ultimately reach independent judgements, using FCA input where appropriate, and there cannot be an appearance that the FCA is instructing FOS in complaints judgements. The FCA should neither pre-empt nor 'unpick' FOS decisions.

The FCA could usefully do more to use insight from FOS complaints, whether upheld or not, alongside other intelligence to identify where firms' interpretation and application of rules differs to its expectations, focusing on risks affecting large numbers of consumers or consumers particularly vulnerable to harm and poor outcomes. It should use this information to act and intervene more proactively to address these risks and reduce consumer detriment and subsequent redress. Here, we would reiterate that the FCA could have done more to prevent the emergence of existing redress drivers, and doing so in future does not depend on new powers but a change in the appetite and culture of the regulator.

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?

Giving FOS powers to 'stop the clock' and pause the DISP rules may be helpful but only in narrow and clear circumstances where regulatory input is genuinely necessary (and additional time is genuinely needed to provide that input) and proportionate. There is a risk that firms or industry might aggressively challenge FOS interpretations, pushing for FCA clarification and stalling or slowing complaints inappropriately. Any such power must have clear safeguards to prevent use that undermines FOS' independence or

delays in access to consumer redress. We do not want to see a situation that dampens FOS' appetite to make reasonable independent judgements without FCA guidance.

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?

The consultation paper states "it might be appropriate for the FCA to 'pause' the complaints handling requirements in DISP when any of our primary or secondary statutory objectives are engaged, while the FCA carries out diagnostic work to assess the extent of harm and consider the best approach to resolve the issue." We would welcome FCA proposals to address gaps in its powers and recognise there are can be rare circumstances in which it must intervene to pause complaints. These powers must focus on facilitating an essential intervention in light of the FCA objectives and/or to prevent disorderly, unfair redress outcomes for consumers where firms or markets fail. As such, the FCA must ensure the framework in which the power to pause complaints is engaged does not reduce access to consumer redress or undermine the independence of the Ombudsman.

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

The FCA states that it wants 'to make sure we have greater visibility of redress matters at an early stage' and notes reporting requirements on firms under the Consumer Duty, its rulebook and Principle 11. We support this intention but reporting requirements in their current form are unlikely to help identify redress matters at an early stage; once complaints emerge in volume, it is likely too late to prevent the detriment driving the complaints.

We would like to see the FCA commit to a more proactive approach to identifying consumer detriment and potential redress drivers at an early stage and, crucially, to act where issues are identified. This should include:

- monitoring jointly with FOS and organisations that support consumers, alongside other sources of information and intelligence, to identify problems with the potential to cause harm to consumers and lead to redress; and
- taking prompt action to address drivers of detriment before problems become widespread and a source of mass redress, including using FOS decisions to inform guidance so that the 'early warning' of complaints translates into concrete action by firms.

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

We have highlighted the importance of shifting the point of monitoring emerging redress to an earlier stage where the FCA must gather and interpret intelligence. We would like to see the FCA build on firms' Consumer Duty and DISP obligations to identify and address issues (through outcomes and complaints monitoring) and collect information more quickly using RFIs when FOS cases (or other evidence) suggests an emerging issue .

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

We agree with the FCA's proposals to require firms to notify it of emerging redress events. Any obligations should have an appropriate emphasis on potential redress so that the FCA can take action at an early stage wherever possible to prevent the consumer detriment driving redress.

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?

The factors the FCA outlines are sensible but it is not clear they would ensure emerging potential drivers of mass redress are identified. This requires a framework for connecting Consumer Duty and enforcement monitoring to WIF monitoring. If the FCA becomes aware its expectations are not being met, that has the potential to driver detriment and ultimately redress. However, the FCA must also be alert to situations where its expectations are being met yet poor outcomes and/or complaints nevertheless emerge, potentially indicating a weakness in firms' or the FCA's approach that must be addressed if detriment and redress are not to emerge.

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

We have no comment at this time.

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

We have no comment at this time.

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?

The FCA notes that cost-of-living data was shared by WIF members to help identify emerging trends and risks of harm, and this informed the FCA's strategic response to cost-of-living pressures. While this sounds like sensible activity, upheld unaffordable lending complaints most often result from firms' decisions to overlook obvious signs of actual or potential financial difficulty among customers who cannot make ends meet. The FCA has cited cost of living pressures in 'dear CEO letters', but that has been the

case over a number of years and it is not clear that it has had any impact on lending norms in the market. In other words, this kind of data sharing can be helpful but will not reduce redress unless it sits alongside meaningful action from the FCA to identify and address drivers of consumer detriment requiring redress later on.

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?

We welcome the proposed additional engagement with the consumer panel but also note that panel is unlikely to be well-placed to spot or feed back from a consumer perspective on all emerging issues (since the panel has limited real time monitoring responsibilities or capabilities). It is not clear how the Consumer Panel would be in a position to highlight potential issues that may have significant implications at a sufficiently early stage. As such, the FCA should consider how it can establish mechanisms to gather consumer intelligence to identify potential redress issues. We would be glad to discuss this further and any way in which the free debt advice sector can contribute with FCA colleagues.

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

We would encourage the FCA to consider ways it can widen and more systemically gather consumer intelligence. Currently, debt advice providers can feed back case studies or intelligence to through the FCA consumer network and this (we understand) would be passed on when appropriate to enforcement colleagues and otherwise treated as informal insight for colleagues in the consumer directorate with policy responsibility. More structured approaches are possible. For example, Ofgem has set up an email address and arrangements for organisations supporting consumers to share case studies. Currently, StepChange shared quarterly case studies with Ofgem, but our ability to gather relevant case studies depends in part on our confidence that insight will be fed into an active monitoring gateway. Structured arrangements for sharing case studies and intelligence on potential consumer detriment and redress would we hope be useful for the FCA and would facilitate input from the advice sector.