BCLP. Client Intelligent

Insights

UK FINANCIAL OMBUDSMAN SERVICE REFORMS: KEY CHANGES AND IMPACTS

Jan 26, 2026

SUMMARY

In July 2025, HM Treasury ("**HMT**") published a consultation paper (the "**HMT Consultation Paper**") outlining significant reforms to the Financial Ombudsman Service ("**FOS**"). At the same time, the Financial Conduct Authority ("FCA") and FOS published a consultation paper (the "**FCA/FOS Consultation Paper**") designed to be read alongside HMT's proposals whilst setting out their own proposals for reform. BCLP responded to both consultations last year, and further developments are now expected in 2026, with the FCA confirming plans to issue a Policy Statement in the first half of the year.

From its origins as an informal financial services dispute resolution mechanism, the FOS has evolved into an entity that many now view as problematic. The Chancellor, in her 2025 Mansion House speech, described its reform as the biggest of all of the proposed reforms launched. According to HMT, industry stakeholders believe the current FOS has been "*impacting investment in UK financial services and inhibiting innovation by firms*". Getting this reform right is therefore crucial to the Government's growth agenda.

In this article, we consider some of the key aspects of the proposed changes and highlight some significant issues that must be considered before the proposals are implemented.

CLEAR WINS

Several of the proposals appear both practical and beneficial and are likely to be welcomed by many industry stakeholders. Among the most notable are:

INTRODUCTION OF A "LEAD COMPLAINTS" PROCESS

a. The FCA/FOS Consultation Paper proposes allowing firms to apply to the FOS to consider representative samples of "lead complaints". These complaints would need to meet the criteria of "novelty" (i.e. they involve new products/services or new regulatory interpretations) or

"significance" (i.e. they are likely to generate high complaint volumes or redress costs). While these "lead complaints" are being considered, firms could pause their consideration of related complaints. It remains unclear whether this would extend to firms not directly involved in the "lead complaints", though we believe it should.

b. This mechanism offers two key advantages:
   i. Improved consistency in FOS decision making, which is so often lacking; and

   ii. Reduced case fees for firms, as they could await FOS findings on "lead complaints" and apply those findings in their DISP complaints handling.

A NEW "REGISTRATION" STAGE

a. Another proposal introduces a new "registration" stage between the existing referral and investigation stages. This new stage would serve as a checkpoint to assess whether a complaint is suitable for investigation. Complaints would not be registered if, for example, they face fundamental jurisdictional issues, are subject to ongoing regulatory action or litigation, or if they fail to meet minimum evidential requirements.

b. If implemented properly, this change could significantly benefit firms experiencing high volumes of poorly evidenced "cookie-cutter" complaints from claims management companies. Such complaints would remain at the registration phase until properly substantiated, incurring either a reduced FOS case fee or no case fee at all. For the FOS, this reform should bring its unwieldy case load under control and ensure that it focuses on well-formed, appropriately evidenced complaints.

A 10-YEAR LONGSTOP DATE.

a. As matters currently, complaints can be brought to the FOS indefinitely, provided they are brought within three years from the date that the complaint became aware (or should reasonably have become aware) of the event complained of. HMT now proposes a 10 year longstop from the date that the event occurred, with the FCA retaining discretion to set longer limits for exceptional cases. While some industry participants might have preferred a shorter long-stop period, this is certainly an improvement on the current position and is shorter than the 15-year longstop date applicable pursuant to s.14B of the Limitation Act 1980 (which many had expected HMT might seek to mirror).

CAN THE FOS'S ROLE AS A "QUASI-REGULATOR" BE CURTAILED?

The most significant reform proposals aim to address the central concern of the Government and industry stakeholders: the perception that the FOS has become a "quasi-regulator" encroaching on areas which should be reserved for the FCA.

This concern stems from the FOS's broad jurisdiction to determine what is "*fair and reasonable in all the circumstances of the case*". Over time, this discretion has led to decisions that set retrospective standards — often exceeding what is required by the FCA's rules and/or the law. This has had severe consequences for firms, triggering some of the most substantial mass redress events, motor finance being a recent example.

To address this fundamental concern, the HMT Consultation Paper proposes two key reforms:

1. **A revised "fair and reasonable" test.** Currently, the "fair and reasonable" test only requires the FOS to "take into account" FCA rules. HMT now proposes legislative changes so that, where conduct complained of is within the scope of FCA rules, compliance with those rules, "*consistent with the FCA's intention for what those rules should achieve*", will mean that a firm has acted "fairly and reasonably". Notably, this will not apply where the conduct involved engages provisions in law and the firm has complied with the law - instead, the position will remain that the FOS is obliged only to take the law into account (although a wider implications referral to the FCA may still be triggered – see below).

2. **Proposed FCA referral mechanisms.** The HMT Consultation Paper introduces two mechanisms through which it is proposed that the FOS is required to refer matters to the FCA:

    a. **Interpretation referrals**: a formal mechanism requiring the FOS to request a view from the FCA on the interpretation of the FCA's rules where the FOS is making determinations that rely on the interpretation of FCA rules and it considers such rules to be ambiguous. Parties may also request that the FOS refers an issue of rule interpretation to the FCA in certain circumstances. Once initiated, the FCA will usually have 30 days to provide a view.

    b. **Wider implications referrals:** where the FOS judges that the subject matter of a complaint may raise a wider implications issue, the FOS will be obliged to refer that issue to the FCA. Again, parties to a complaint may request that the FOS refer such an issue to FCA where appropriate. The FCA will then have a statutory obligation to assess whether a wider implications issue has arisen, and, if so, to respond as necessary.

These proposals represent a marked improvement on the current framework. By placing some clear guardrails around the FOS's discretion and mandating interactions between the FOS and the FCA, something both institutions have been reluctant to do, the reforms promise better and more reliable outcomes. However, while these changes are clearly a step in the right direction, several issues will need to be carefully considered.

First, it is unclear whether the FCA will have the resources to operate the referral mechanisms described above. HMT may have underestimated how much of the FOS's workload involves interpreting ambiguous FCA rules, particularly in the wake of the outcomes-based Consumer Duty. There is a real risk that the FCA could be overwhelmed by interpretation referrals, and indeed also wider implications referrals, given that most interpretive issues will also have wider implications for

other firms and customers. It is not clear how the FCA intends to deal with this increasing demand on its resources.

Second, while these reforms should assist in preventing the FOS from developing retrospective interpretations of FCA rules, there is a real risk that the FCA may end up doing this itself through the referrals processes. Under the proposed amended "fair and reasonable" test, conduct will be deemed compliant with FCA rules if it aligns with the FCA's *intention* for what those rules should achieve. Presumably the FCA's views on interpretation will set out those intentions.

Crucially, this is not the same as the FOS and FCA being required to apply a strict legal interpretation of the FCA's rules as a court would do – such exercise would usually be primarily grounded in the meaning of the actual wording of the rule in question and would then move on to consider the purpose of the provision as a secondary factor. The potential for problematic retrospective "interpretations" by the FCA is evident, particularly if views are provided years later, in a hurry, by unsuitably qualified FCA employees without appropriate checks and balances in place. Moreover, those views would quickly become embedded into the redress framework, because, once the FCA has given a view on its intentions for a rule, the prospects of successfully judicially reviewing FOS decisions upholding that standard would become remote – i.e. it is hard to argue that conduct complies with the FCA's intentions for a rule when the FCA has given a public view suggesting that it does not.

Third, these reforms may not be compatible with the FCA's principles-based and outcomes-focused approach to regulation. As noted, this is likely to generate far more FCA rule interpretation referrals than HMT anticipates Even if the FCA can handle this (and avoid its own problematic retrospective rule interpretations), firms could still be left in a difficult position if the FCA Handbook becomes supplemented by a wide-ranging body of FCA views on rule interpretations. If not managed properly, it could leave firms in the worst of all worlds. They will have lost a lot of the flexibility and scope for innovation provided by the FCA's outcomes-based approach. However, the clarity on their legal obligations that they will have gained in return may be limited if such "clarity" is spread across a disparate body of FCA views that are hard (particularly for small firms) to decipher.

HOW SHOULD THE PROPOSALS BE FURTHER DEVELOPED?

To address the concerns identified above, we believe two main developments to the proposals would significantly improve the effectiveness and practicality of the proposed reforms.

First, we would welcome a more precise definition of when the proposed FCA referral mechanisms will be engaged. We believe that the threshold should be set relatively high, ensuring that referrals are reserved for material issues. This approach would ensure that the FCA is able to handle referrals with appropriate internal safeguards and that firms are not bombarded with an unmanageable array of FCA views on rule interpretations.

Second, we recommend adjusting the proposed amendment so that firms will have met the "fair and reasonable" test if they comply with the FCA rules in accordance with the normal legal principles of interpretation, rather than solely in accordance with the FCA's "intentions" for those rules. In addition, serious consideration should be given to whether compliance with the law should be a safe harbour for firms under the "fair and reasonable" test.

This refinement would not add any additional burden to the FOS, as it currently needs to understand the requirements of FCA rules (as properly legally interpreted) and the law in order to take them into account. The effect of this change would, of course, be to make FOS decisions much more susceptible to judicial review and the FOS, therefore, much more susceptible to oversight from the courts. While some may fear this could overburden the courts, we believe judicial review proceedings would still be used relatively sparingly, given their cost and complexity, and would likely be reserved for issues that really matter to firms.

We will be watching closely as HMT, the FCA and the FOS continue to take these proposals forward over the course of 2026 and look forward to continuing to discuss the development of these with our clients.

EMERGING THEMES

Stay up to date with our latest Financial Regulation and Disputes insights

We anticipate a pivotal year for investigations and enforcement

RELATED CAPABILITIES

- Financial Regulation Compliance & Investigations
- Litigation & Dispute Resolution

MEET THE TEAM

Rhys Corbett

Partner, London

rhys.corbett@bclplaw.com
+44 (0) 20 3400 3531

Marc Thorley

Partner, London

marc.thorley@bclplaw.com
+44 (0) 20 3400 4906
