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Submitted by email: consultations@financial-ombudsman.org.uk

Dear Sir/Madam,

Financial Services Consumer Panel response to the Financial Ombudsman Service's consultation on temporary changes to reporting the outcome of proactively settled complaints

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Financial Ombudsman Service's (the Ombudsman) consultation on the proposed temporary changes to reporting the outcome of proactively settled complaints.

The Panel is concerned about the increasing wait times for consumer complaints to be resolved, especially given that many are likely to be in more vulnerable situations due to the Covid-19 pandemic. While we welcome measures to reduce wait times, we are concerned that this specific proposal to temporarily amend the approach to publishing firm-specific outcome data for proactively settled complaints would result in:

- unfair outcomes for consumers
- consumers continuing to wait an unacceptable amount of time for complaints to be resolved satisfactorily
- the masking of important capacity issues within the ombudsman service which still need to be addressed
- the loss of transparency around important data, including uphold rates, which provide an indication of how firms treat customers when handling complaints
- the loss of important insights from Ombudsman investigations, which could include on new types of complaints being brought to the Ombudsman as a result of the Covid-19 pandemic

In previous consultation responses¹, we have set out our vision for financial services. The cornerstone of this vision is that firms should be under a duty to act in the best interests of their customers, which would require fair and efficient resolution of complaints. We also said that consumers should get prompt and commensurate redress. We therefore expect firms to proactively resolve complaints before consumers need to seek recourse through the Ombudsman, and act promptly as required by the DISP complaint handling rules. While we understand that firms may have had operational challenges in responding to complaints within eight weeks at the start of the pandemic, they have now had enough time to address those challenges.

Better handling of complaints by firms would alleviate demands for the Ombudsman Service and avoid the need for consumers, who are sometimes in vulnerable circumstances and facing financial hardship, to wait eight weeks make a claim through the Ombudsman. This includes identifying and contacting customers who are due redress where issues have been identified through complaints to the Ombudsman.

¹ https://www.fs-cp.org.uk/sites/default/files/final_fscpr_response_hmt_frf_review_phase_ii_20210219_v2.pdf p1

As an essential service for consumers, it is imperative that the Ombudsman is adequately resourced to ensure the timely resolution of complaints, including meeting increased demand for the service as a consequence of the Covid-19 pandemic.

The Ombudsman is also a rich source of intelligence on firm behaviour. Published uphold rates should incentivise firms to improve their complaints handling while the valuable insights gathered through complaints can also indicate future trends and volumes which the Ombudsman needs to prepare for, and provide early warning signals to the FCA and other organisations which can act on the information to prevent harm. For example, if Ombudsman data shows a sudden change in the number of complaints being proactively settled by firms, this should trigger monitoring by the Ombudsman and the FCA to ensure that the settlements being offered are fair. Firms which generate a high number of Ombudsman complaints at any one time may be incentivised to make low offers to reduce their costs. Consumers – especially vulnerable customers – may not be confident or able to challenge this. The Ombudsman should publish data on the number of times a firm’s offer is rejected by the consumer but subsequently amended by the Ombudsman. This data could potentially alert regulators to poor behaviours amongst firms and incentivise other firms to act in their customer’s best interests.

If the proposed temporary changes do go ahead, the Ombudsman still needs to ensure that it is adequately resourced to handle complaints promptly and that there are appropriate safeguards in place to ensure that the important insights generated from Ombudsman data are not lost. This will ensure firms remain incentivised to improve their complaints handling.

Finally, we note that the two-week consultation period for these temporary changes is extremely short and may affect the ability of some organisations – particularly consumer-focused organisations which are often resource constrained - to respond.

Our responses to the specific questions posed in the consultation are included at Annex A below.

Yours sincerely,

Wanda Goldwag
Chair, Financial Services Consumer Panel

Annex A – responses to questions

Please note that where asked to select a response from a number of options, our chosen option is marked by being in **bold and underlined**.

Q1: Overall, to what extent do you agree or disagree with our proposal to separately record complaints resolved proactively by businesses?

[Strongly agree; Tend to agree; Neither agree nor disagree; Tend to disagree; **Strongly disagree**; or Don't know.]

The Ombudsman has expressed concern that the inclusion of proactively settled complaints in firms' uphold rates may disincentivise firms from settling a complaint before the Ombudsman has issued a decision. As required by the DISP rules, we expect the prompt handling of complaints by firms, including working with the Ombudsman to resolve complaints. If firms have until 31st March 2022 to proactively resolve complaints before the Ombudsman reverts to its current practice of recording outcomes, this potentially still leaves consumers waiting a considerable amount of time before their complaint is resolved, particularly if they are not satisfied with the offer provided by the firm.

The Panel is also concerned that temporarily amending the approach to publishing firm-specific outcome data for proactively settled complaints could result in:

- the loss of transparency around important data, including uphold rates, which provide an indication of how firms treat customers when handling complaints
- the loss of important insights from Ombudsman investigations, which could include on new types of complaints brought to the Ombudsman as a result of the Covid-19 pandemic

Q2: To what extent do you agree or disagree that:

a) The proposal should be time-limited in the way we propose?

b) The suggested timeframe would allow sufficient time for the proposal to be effective in reducing the number of customers currently waiting for an answer?

[Strongly agree; **Tend to agree**; Neither agree nor disagree; Tend to disagree; Strongly disagree; Don't know]

If the proposed temporary changes do go ahead, we would expect it to be time-limited so as to encourage the speedy resolution of complaints while minimising the loss of transparency around actual uphold rates.

Q3: To what extent do you agree or disagree with the proposal to restrict the scope of eligible complaints to those in which the Financial Ombudsman Service hasn't – by a defined date – issued its opinion?

[Strongly agree; **Tend to agree**; Neither agree nor disagree; Tend to disagree; Strongly disagree; Don't know]

While we agree that the scope should be limited to those complaints which the Ombudsman has not issued an opinion on, we have concerns about the fairness of the outcomes for consumers.

Question 4: To what extent do you agree or disagree with the suggested operating process for this proposal?

[**Strongly agree**; Tend to agree; Neither agree nor disagree; Tend to disagree; Strongly disagree; Don't know]

The fundamental issue here is that the Financial Ombudsman Service should be adequately resourced to handle complaints in a timely way, particularly considering that consumers have already waited at least eight weeks for resolution. We are therefore concerned that this measure will mask important capacity issues which still need to be addressed.

However, should the proposed temporary changes go ahead, firms should be given a tight time period to identify complaints that they might settle to avoid customers waiting longer still for resolution. We agree that firms should be acting on intelligence shared by the Financial Ombudsman Service by identifying cases which the Ombudsman is likely to uphold and offering customers rapid redress.

We also agree that all complaints within scope should be chargeable, with a case fee continuing to apply since the Ombudsman is still incurring costs for cases administered in this way.

Q5: To what extent do you agree or disagree that complaints involving vulnerable customers should be prioritised in this way, should the proposal be implemented?

[**Strongly agree**; Tend to agree; Neither agree nor disagree; Tend to disagree; Strongly disagree; Don't know]

Q6: To what extent do you agree or disagree that the Financial Ombudsman Service should reserve the right to proceed with the consideration of a complaint in the scope of the proposal, where circumstances suggest that to be necessary?

[**Strongly agree**; Tend to agree; Neither agree nor disagree; Tend to disagree; Strongly disagree; Don't know]

Q7: Are there any additional safeguards for vulnerable customers that we should consider putting in place, should the proposal be implemented?

[**Yes**; No; Don't know]

Firms should have systems in place to identify vulnerable consumers early and we would like to see the FCA and Ombudsman capturing and publishing data on how firms are identifying and prioritising customers in vulnerable circumstances.

Q8: To what extent do you agree or disagree that presenting offers from businesses to proactively settle complaints in this way would help to mitigate any risk to fair outcomes?

[Strongly agree; Tend to agree; Neither agree nor disagree; **Tend to disagree**; Strongly disagree; Don't know]

The Panel is concerned that consumers will not benefit from the same outcome had the complaint been resolved by the Financial Ombudsman Service. Furthermore, if the Ombudsman communicates offers from businesses to customers, consumers may assume that the Ombudsman has endorsed these offers, regardless of whether the correspondence highlights that the decision to make the offer was the business's alone and that the Ombudsman cannot confirm that the offer is a fair one.

Q9: Are there any additional mitigations that we should consider putting in place, should the proposal be implemented?

[**Yes**; No; Don't know]

Firms should be taking responsibility for resolving complaints, including ensuring that they communicate offers to consumers and make clear, within those offers, that consumers have the choice of continuing to pursue their complaint through the Ombudsman.

Q10: To what extent do you agree or disagree with our assessment of the risks to data integrity and transparency?

[Strongly agree; Tend to agree; Neither agree nor disagree; Tend to disagree; **Strongly disagree**; Don't know]

A fundamental role of the Ombudsman is to prevent harm by providing valuable insights from complaints received to the FCA, firms and consumers. We expect the Ombudsman and FCA to act on market intelligence, while firms should be incentivised to improve their behaviour and processes from the publication of complaints data and published decisions.

The Panel is concerned about the loss of important insights from Ombudsman investigations as a result of the proposed temporary changes. These insights could include information on new types of complaints being brought to the Ombudsman as a result of the Covid pandemic.

Q11: Are there any additional mitigations for this risk that that we should consider putting in place, should the proposal be implemented?

[Yes; **No**; Don't know]

Q12: To what extent do you agree or disagree with our assessment of the risks and mitigations highlighted in our 2016 data consultation?

[Strongly agree; Tend to agree; Neither agree nor disagree; **Tend to disagree**; Strongly disagree; Don't know]

The Panel has previously raised concerns that firms have little incentive to improve their own complaints handling if the Ombudsman steps in to resolve complaints informally and does not include the outcomes in uphold rates. Similarly, we are concerned that firms will be given several more months to resolve complaints, until 31st March 2022, with the possibility that customers will still have to take their complaint to the Ombudsman if it has not been resolved satisfactorily.

Q13: Are there any additional measures we should consider putting in place to mitigate any potential disadvantage smaller firms may experience in participating in the proposed arrangements, should they be implemented?

[Yes; **No**; Don't know]

Q14: Are there any additional risks to mitigate should the proposal be implemented, or any unintended consequences that might arise?

[**Yes**; No; Don't know]

In inviting firms to assist the Ombudsman in resolving the backlog of complaints, the Ombudsman risks masking important capacity issues which demand for the service has created and which still need to be addressed.

Q15: Do you have any further comments or thoughts about the proposals set out in this consultation paper?

[Yes; **No**; Don't know]