

Equity Release Council response to

HM Treasury consultation paper - Review of the Financial Ombudsman Service

Published by HM Treasury, July 2025

Introduction and Summary

The Equity Release Council welcomes the opportunity to respond to HM Treasury’s consultation on the future of the Financial Ombudsman Service (FOS). As the representative trade body for the equity release sector, we work with lenders, advisers, solicitors, surveyors and funders to uphold consumer protection through our industry Standards, while supporting the safe and sustainable growth of later life lending.

For this consultation we received a limited number of direct member responses. While the points set out below reflect the views provided, they are also informed by the Council’s broader engagement with members and our experience of tracking published Ombudsman decisions over the past five years. These insights have given us a unique perspective on how complaints manifest in the later life lending market, and on the importance of ensuring that the redress framework is both fair and proportionate.

In summary, the member responses we received demonstrate broad support for aligning the “fair and reasonable” test with FCA rules, which is seen as vital for providing clarity, certainty and consistency. There is also strong endorsement of a formal referral mechanism to the FCA, though members are clear that it must be transparent, timely and properly resourced to avoid undermining the Ombudsman’s purpose as a quick and accessible service.

Transparency is another key theme. The detailed publication of Ombudsman decisions has been of particular value in our sector, and the Council’s analysis of these decisions remains one of our most widely used member resources. While thematic guidance is welcomed as a complementary tool, members caution strongly against moving away from publishing individual determinations.

Finally, members identify several areas where further reform is necessary. Chief among these is the absence of appeal rights for firms, which creates an imbalance compared to consumers. Views are mixed on other issues, such as whether FOS should become a subsidiary of the FCA and whether a 10-year absolute time limit is appropriate, with support dependent on clear safeguards, well-defined exceptions and legislative oversight.

Overall, although the evidence base for this response reflects a limited set of contributions, the themes raised are consistent with the concerns we hear across our membership. Members view the reforms as a positive step forward but emphasise that successful implementation must preserve transparency, address the imbalance in appeal rights, and ensure effective alignment between the FCA and FOS.

About the Equity Release Council

The Equity Release Council (“the Council”) is the independent trade body representing the UK equity release sector, with around 785 firms and nearly 1,850 individuals registered, including providers, regulated financial advisers, solicitors, surveyors, and other professionals.

The Council leads a consumer-focused market by setting authoritative standards and safeguards for the trusted provision of advice and products. Since the Council was formed in 1991 under its original name of Safe Home Income Plans (SHIP), more than £50bn of housing wealth has been unlocked by homeowners via Council members to support their finances in later life.

The Council also works with government, regulators, consumer groups, and professional bodies to inform and influence debate about the role of housing wealth in later life and retirement planning. Every member is committed to the Council’s Standards, which aim to ensure robust consumer protections and safeguards.

In addition, the Council seeks to increase public awareness of how Later Life Lending can contribute to addressing the financial challenges facing people aged 55 and over in the UK.

For any aspect of this response, please contact:
Kelly Melville-Kelly, Director of Risk, Policy and Compliance
kelly.melville-kelly@equityreleasecouncil.com

A Summary of responses from members

Q1: Do you agree that, where conduct complained of is in scope of FCA rules, compliance with those rules will mean that the FOS is required to find a firm has acted fairly and reasonably?

Members broadly welcome the proposal to adapt the FOS' "fair and reasonable" test so that compliance with FCA rules is determinative. They see this as a positive step that would provide greater certainty for firms, remove ambiguity in rule interpretation, and help ensure consistency of decision-making between firms and the Ombudsman. This alignment is also considered helpful in addressing long-standing concerns about FOS being perceived to act as a quasi-regulator.

Q2: Will the aligning of the Fair and Reasonable test with FCA rules still allow the FOS to continue to play its relatively quick and simple role resolving complaints between consumers and businesses?

Members believe aligning the fair and reasonable test with FCA rules should not undermine the Ombudsman's ability to deliver quick and simple dispute resolution. While interpretation disputes may lengthen some cases, particularly where referral to the FCA is needed, members see this as an acceptable trade-off for more consistent and fair outcomes."

Q3: Do you agree with the proposed approach for dealing with law which may be relevant to a complaint before the FOS?

When considering how FOS should deal with questions of law, members support the proposal that issues with wider implications should be referred to the FCA. They believe this approach avoids FOS overstepping its remit by interpreting legal matters, while ensuring that complaints are handled consistently and fairly. Although this may extend the resolution of affected complaints, members view the trade-off as appropriate in order to deliver sound and reliable outcomes.

Q4: Do you consider that there are some cases that are not appropriate for the FOS to determine, bearing in mind its purpose as a simple and quick dispute resolution service? How should such cases be dealt with?

Members agree that there are some types of complaints which are not appropriate for FOS to determine. Examples include cases relating to solicitors or surveyors involved in financial transactions, which should instead be directed to their respective dispute resolution schemes such as the Legal Ombudsman or the Property Ombudsman. Firms have expressed concern at being held accountable for the failings of such independent service providers, despite having no control over their conduct. Members believe FOS should issue clearer guidance to firms and consumers on which types of complaints fall outside its scope and where they should properly be directed.

Q5: Do you agree that there should be a mechanism for the FOS to seek a view from the FCA when it is making an interpretation of what is required by the FCA's rules?

Members strongly support the creation of a mechanism for FOS to seek the FCA's view on the interpretation of rules. They believe the FCA should retain the authority to provide definitive instructions on its own requirements, which would address concerns about whether FOS investigators or Ombudsmen have the necessary expertise to interpret complex regulation. This mechanism would promote consistency and certainty across the market, but members stress it will only succeed if FCA responses are delivered promptly to preserve the Ombudsman's effectiveness.

Q6: Do you agree that parties to a complaint should have the ability to request that the FOS seeks a view from the FCA on interpretation of FCA rules where the FCA has not previously given a view?

Members agree that both firms and complainants should have the right to request that FOS seek a view from the FCA on rule interpretation where one has not already been provided. They see this as a fair and transparent safeguard, akin to the current ability to escalate a complaint from an investigator to an Ombudsman. However, they caution that criteria for making such requests must be clearly defined to prevent frivolous or tactical use that could create unnecessary delay.

Q7: Do you agree that parties to a complaint should have the ability to request that the FCA considers whether the issues raised by a case have wider implications for consumers and firms?

There is strong support for allowing parties to a complaint to request that the FCA consider whether issues raised have wider implications. Members believe this would be a valuable way of identifying systemic problems early and ensuring they are dealt with consistently across the sector. They also welcome the FOS' proposed triage process, which would help ensure timely referral of relevant issues to the FCA.

Q8: As part of implementing the proposed referral mechanism, do you think there are any issues which should be considered in order to ensure the mechanism works in the interests of all parties to a complaint?

In relation to the referral mechanism, members identify three critical issues that need careful consideration. First, referrals should be conducted formally and in writing, routed through FOS to a dedicated FCA team, as telephone calls or informal contact are unlikely to deliver consistency or accountability. Second, members are concerned that the proposed 30-day response timeframe is too long and incompatible with the Ombudsman's role in providing timely resolutions. They stress that FCA must resource the process adequately to avoid undue delays. Third, members are clear that the FCA's written responses must be communicated directly and verbatim to both parties, rather than being filtered or interpreted by FOS, in order to guarantee transparency.

Q9: Do you agree that the Chief Ombudsman should have overall authority for determinations made by FOS ombudsmen, and through that authority, should be responsible for ensuring consistent FOS determinations?

On governance, members agree that the Chief Ombudsman should hold overall authority for determinations but caution against concentrating too much decision-making power in a single individual. They argue that consistency must be underpinned by strong internal governance, quality assurance and training, so that determinations reflect shared standards rather than personal subjectivity.

Q10: What approach to transparency arrangements would provide the most accessible way for consumers and firms to understand what outcomes to expect for particular types of cases that the FOS deals with?

Within the equity release sector, the publication of Ombudsman decisions has long been regarded as a valuable source of insight. The Equity Release Council has tracked these published complaints for over five years, and our analysis is consistently among the most popular resources we produce for members. At least one member has emphasised that all decisions and supporting documents should remain available, given the role they play in helping firms understand how complaints are assessed and in promoting accountability across the industry.

While members recognise the challenges of monitoring every individual decision and the risk that isolated outcomes can be misinterpreted, there is concern about moving entirely away from this practice. Instead, members would support a balanced approach: retaining access to published decisions while also introducing quarterly thematic guidance that summarises trends and explains how the FOS has applied relevant FCA standards in practice. Such thematic reports, ideally tailored to specific sectors and approved by the FCA before publication, would enhance accessibility and consistency. However, members are clear that the detailed publication of Ombudsman decisions should continue to play a central role in transparency arrangements for our industry.

Q11: Do you think the package of reforms outlined above, taken together, will be sufficient to address the problems identified by the review and ensure the FOS fulfils its original purpose?

When asked whether the package of reforms as a whole is sufficient, members acknowledge that many of the proposals address key concerns, particularly the perception of FOS acting as a quasi-regulator. However, they argue that the absence of an appeal mechanism for firms remains a major weakness. While consumers are free to reject a FOS decision and pursue the matter through the courts, firms have no comparable right. Judicial review is considered prohibitively expensive and unsuitable for addressing the merits of individual cases. Members believe strongly that fairness requires a level playing field where both parties can reject or appeal Ombudsman decisions.

Q12: Taking into account the other reforms proposed in this consultation, do you think that the FOS should be made a subsidiary of the FCA? If so, what are your views on the appropriate institutional arrangements?

Views are divided on whether FOS should become a subsidiary of the FCA. Some members support the proposal, noting the potential benefits in accountability, data sharing and alignment across the regulatory and redress frameworks. Others, however, caution that such an arrangement could compromise the Ombudsman's independence. Those who support the subsidiary model stress that it must be accompanied by clear safeguards, such as separate boards, independent governance, and formal memoranda of understanding to protect impartiality.

Q13: Do you agree that 10 years is an appropriate absolute time limit for complainants to bring a complaint to the FOS?

On the question of time limits, members are split over whether a 10-year absolute limit is appropriate. Some view this as a fair balance between consumer protection and certainty for firms. Others argue it is too long, given the difficulty of establishing facts and evidence over such a timescale. They also note that in long-term products such as equity release, issues can arise many years after the transaction, meaning there may be a case for tightly defined exceptions. However, members are clear that an absolute cut-off point should still apply.

Q14: Do you agree that the FCA should have the ability to make limited exceptions to this time limit?

There is further disagreement over who should set exceptions to the 10-year rule. Some members believe the FCA should have flexibility to allow exceptions, while others argue that this power should rest with government through legislation to ensure consistency and fairness. Regardless of where the power sits, members agree that the criteria for exceptions must be transparent and that consumers should bear a reasonable burden of proof in demonstrating why a complaint could not have been raised sooner.

Q15: Do you agree that the FCA should have more flexibility, when investigating a potential MRE, to take steps that are designed to avoid disruption and uncertainty for consumers and firms? In addition to the proposals made above, do you think there are other tools for the FCA which should be considered?

Members support giving the FCA more flexibility in investigating potential mass redress events, recognising that earlier interventions could reduce disruption for consumers and firms and deliver swifter outcomes.

Q16: Do you agree that there should be a simpler legal test for the FCA to satisfy in deciding that a section 404 redress scheme is needed to respond quickly and effectively to an MRE?

Opinions differ on whether a simpler legal test for establishing a section 404 redress scheme would be appropriate. Some members support simplification as a way to enable quicker and more effective redress where systemic issues exist, recognising that lengthy processes can delay fair outcomes for consumers and prolong uncertainty for firms. Others, however, caution that redress schemes must remain tailored to the specific circumstances of each case. They are concerned that oversimplification risks undermining fairness by removing the nuance required to reflect the complexity of different products and consumer experiences. Members therefore stress the importance of striking the right balance: while reforms should allow timely intervention in mass redress events, they must not do so at the expense of proportionate and case-appropriate solutions.

Q17: Do you agree that the FCA should be able to direct the FOS to handle complaints consistently with relevant redress schemes, or to direct the FOS to pass related complaints back to firms, to be dealt with by those redress schemes?

Finally, members support the proposal that the FCA should be able to direct the FOS to handle complaints consistently with relevant redress schemes, or alternatively to pass complaints back to firms where this is more appropriate. They view this as an important safeguard to ensure consistency between individual FOS determinations and broader redress exercises, thereby preventing conflicting outcomes

Conclusion

The Equity Release Council and its members welcome this review as a timely opportunity to strengthen the fairness, consistency and proportionality of the UK's complaints framework. The reforms proposed by HM Treasury address many long-standing concerns, particularly around alignment with FCA rules and the introduction of a formal referral mechanism.

We would emphasise three areas as critical to a successful outcome: preserving transparency through continued publication of Ombudsman decisions alongside thematic guidance; addressing the imbalance in appeal rights between firms and consumers; and ensuring referral processes between FOS and FCA are transparent, properly resourced and timely. By implementing reforms in these areas with care, government and regulators can give both consumers and firms the confidence that disputes will be resolved fairly, consistently and without unnecessary delay.

The Council stands ready to support HM Treasury, the FCA and the FOS in working through the detail of these changes, drawing on our experience of monitoring Ombudsman decisions in the later life lending market and the insights of our diverse membership.