



**Financial  
Ombudsman  
Service**

## **consultation**

### **– *Financial Ombudsman Service complaints data publication***

**October 2016**

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#### **responses**

We welcome your thoughts on our review of how we publish complaints data. Please send your views and comments – to reach us by 5pm on 1 November 2016 – to:

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Or write to:

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We may want to publish the responses we receive to this consultation paper. In the interests of transparency, we encourage non-confidential responses.

If you do send us a confidential response, it would be helpful if you could tell us why you consider the information confidential. We cannot guarantee that confidentiality can always be maintained. We will not regard an automatic confidentiality disclaimer generated by your IT system, of itself, as binding.

We are subject to the Freedom of Information Act 2000, so information provided in response to this consultation may be subject to publication, disclosure or release to other parties.

## **1. introduction**

- 1.1. This consultation paper sets out the conclusions of our review into how we publish complaints data and asks for feedback on our proposals.

## **2. background**

- 2.1. In our plans for 2016/17 we committed to reviewing how we publish data about the complaints we see. We publish complaints data in our *annual review*, quarterly complaints statistics in *ombudsman news* and twice a year we publish complaints data on individual financial businesses.
- 2.2. Each year in our *annual review* we publish details of the number of complaints we receive about all of the different financial products we cover. This includes breakdowns of the types of complaints we see and the proportion of complaints we uphold across different products and sectors.
- 2.3. In autumn 2009 we began publishing complaints data about individual financial businesses. Data is published every six months and shows the number of new cases received about individual businesses and the percentage of resolved cases where we have made a change in favour of the consumer, commonly referred to as the “uphold rate”.
- 2.4. The data covers financial businesses that have had at least 30 new cases and 30 resolved cases in the six month period being reported on. We use 30 as the minimum number of cases as this is widely regarded as the minimum sample size to produce statistically meaningful data. In addition to the overall uphold rate for each business, we also publish the uphold rate for that business under six major product groupings (banking and credit; mortgages and home finance; general insurance; PPI; investments; and life & pensions and decumulation) where we have resolved 30 complaints or more.
- 2.5. Since August 2010 we have published quarterly complaints figures in *ombudsman news*. These figures show the number of new enquiries, new cases and ombudsman decisions, along with the percentage of cases upheld in favour of the consumer. We publish figures for all products where we have had 30 new and 30 resolved cases in that quarter.
- 2.6. We believe that publishing complaints data increases transparency, helps to inform consumer choice and incentivises businesses to improve their complaints handling. In short, it supports our statutory objective to resolve complaints quickly and informally.

### **stakeholder feedback**

- 2.7. Feedback from our stakeholders suggests that our complaints data is regarded as an important benchmark for the quality of complaint handling in financial services. And it is evident from our conversations with industry that the publication of

complaints data about individual businesses is a driver for improvements in complaint handling.

- 2.8. We have seen an increase in demand from stakeholders - through media enquiries, Freedom of Information (FOI) requests, and responses to our annual plan and budget consultations - for more detailed information about the complaints we see. For example, we saw 211 FOI requests relating to complaints data in 2015/16, a 40% increase on the previous year.
- 2.9. Consumer groups have told us it would be useful to see complaints data for individual businesses broken down by narrower product types, such as current accounts and credit cards, in order to inform consumer choice. For example, in response to our 2015/16 plan and budget consultation, Which? encouraged us to break down complaints data as far as possible by firm and product type in order to help identify specific areas for improvement.
- 2.9 We have also had feedback from trade bodies asking for a sector-by-sector breakdown of complaints data. For example, the Financial and Leasing Association said in its response to our 2015/16 plan and budget consultation that its members wanted to see much more granular complaints data about their respective markets, so they can identify trends and themes at an earlier stage and take appropriate action.
- 2.10 In March 2016 the Financial Advice Market Review (FAMR) recommended that we consider publishing more detailed information about the complaints we see about independent financial advisers. We accepted FAMR's recommendations and committed to considering these changes as part of this review.
- 2.11 Consumer expectations of how they access our service and what constitutes "quick" and "informal" are also changing. This reflects wider changes in how consumers access financial services. For example, people are increasingly using digital channels to access services. We have been working closely with businesses to ensure that we keep up with customers' changing needs and expectations. For example, by streamlining our processes and minimising formality in order to deliver a better experience for customers, and to support our statutory objective to resolve complaints quickly and informally.
- 2.12 We want to ensure that as we continue to develop new ways of working that the way we publish complaints data remains fit for purpose. For example, since July 2015 the ombudsman service has been able to look at cases before the business has issued its final response, provided both the business and consumer agree. Complaints resolved in this way were reported in our H2 2015 and H1 2016 data under a separate category showing the number of cases only. We did not report these complaints as upheld or not upheld, as the business had not had a chance to give its final answer, so there was no initial outcome to compare it to.
- 2.13 This review considers what further changes to the complaints data we publish might be.

### **3. the review**

- 3.1. In carrying out this review we have considered evidence from a number of sources. In order to gauge the demand for change, and the type of changes that stakeholders would find useful, we reviewed evidence including responses to our [2008 consultation](#) on publishing complaints data on individual businesses, previous responses to our plan and budget consultations, media enquiries and freedom of information requests. We also had informal discussions with stakeholders, looked at how our publication data is used by stakeholders and how other ombudsman schemes and regulators across different sectors publish complaints data.
- 3.2. This presented us with a number of options to consider. In order to weigh up the merits of each option, we developed a set of principles to assess whether the proposed changes would support our statutory objective to resolve complaints quickly and informally. These principles were:
  - Fairness: any new measures should be a fair reflection of the quality of complaints handling.
  - Simple: complaints data should remain as simple as possible for the ombudsman service to verify. It should also remain easy to understand for our stakeholders.
  - Incentives: our complaints data should avoid creating any perverse incentives.
- 3.3. Where possible we have used data from previous reporting periods to model what any changes would look like in practice.
- 3.4. Below, we have set out our assessment of the different options we have considered, and the changes we are proposing. We would welcome your comments, in particular on any further practical issues we should consider and any further suggestions for changes.

### **4. options considered**

#### **changes in outcome**

- 4.1. Our complaints data - in particular the uphold rate - is a well-established benchmark for complaints handling in financial services. We consider that one of the main reasons for this is its simplicity.
- 4.2. However, we have had feedback from stakeholders - both in response to our 2008 consultation and more recently in responses to previous plan and budget consultations – arguing for more nuanced measures that reflect the complexity of the work we do.
- 4.3. When we consulted in 2008 a number of respondents said we should distinguish between cases where there had been a small and a significant change in favour of

the consumer. For example, it was argued that where the ombudsman service has largely agreed with the business on the substantive issues of the case, but has recommended a small increase in compensation, this should be considered a small change in outcome. Cases where the business had rejected the complaint or offered significantly inadequate compensation should be considered a substantive change in outcome. From our dialogue with industry we know that some businesses maintain this view, so we have again considered the case for distinguishing between different outcomes.

- 4.4. We have looked at this again, but have not been able to identify a method for distinguishing between outcomes in a way that is meaningful, fair, or easy to verify without a disproportionate administrative burden, both for the ombudsman service and businesses.
- 4.5. We do not consider that it would be suitable to set a figure or percentage above which a change in redress would become substantial. For example, a change of £100 on a case where the business had initially offered £1,000 could be considered small, but it is hard to argue this for a change of £100 where the business had offered £50. Similarly, a 10% increase on an initial offer of £100 could be considered small, whereas a 10% increase on an offer of £100,000 would be significant. A small change in redress might not be significant for some consumers, but for others – such as those in financial difficulty – the impact could be huge.
- 4.6. Furthermore, instead of awarding a specific amount of redress, we may direct the firm to do something such as reconsidering an application or claim on a different basis. In some cases, the consumer just wants an acknowledgement of what went wrong, how this impacted upon them and an apology from the business.
- 4.7. In the absence of a clear framework, distinguishing between small and significant changes in outcome would require subjective judgements on a case-by-case basis by our case handlers. This could lead to inconsistencies in data and to significant time and resource being expended on discussing outcomes and data verification.

## questions

**1. Do you agree with our conclusion that it would not be practical to distinguish between different types of change in outcome?**

**2. If not, please suggest how different types of change in outcome could be defined in a way that would avoid subjectivity and be simple to verify.**

## frequency

- 4.8. Some stakeholders have fed back that it may be useful for us to publish complaints data more frequently. We have looked at the merits of this and don't consider that the benefits warrant the extra resource it would require.

- 4.9. Publishing complaints data for individual firms requires a significant amount of resource. The data is audited and then verified with each firm. For the reporting period ending 30 June 2016, we published data for 221 firms, 60 of which contacted us with a range of queries about the data.
- 4.10. More frequent publication would also mean that fewer businesses would be captured by the data. For example, had the data for 2015 been published on a quarterly basis, then between 139 and 147 firms would have been captured. As it was, we published data for 220 firms in H1 2015 and 222 firms in H2 2015.
- 4.11. We therefore propose that we continue to publish complaints data naming individual firms every six months and quarterly complaints figures showing the number of new enquiries, new complaints, ombudsman decisions and the uphold rate against different products.

## questions

### **3. Do you agree that we should continue to publish complaints data naming individual businesses every six months and product-based complaints data quarterly in *ombudsman news*?**

#### **changes to the Financial Conduct Authority (FCA) complaints return**

- 4.12. On 30 June 2016, the FCA's updated complaint handling rules came into effect. These included changes to the complaints return form that businesses are required to complete twice a year.
- 4.13. The five main product groupings against which firm-level data is reported by the FCA remain the same (banking and credit cards; decumulation, life and pensions; general insurance and pure protection (which includes PPI); home finance; and investments). These - along with PPI - are the product groupings that we use for our six-monthly complaints data naming individual businesses.
- 4.14. The FCA has added some more product types to its complaints return form, such as warranties, pet insurance and assistance to give it more granular data. It has also changed the wording on some product categories – for example, changing motor to motor and transport. We already record complaints against 163 product types, with all of those against which more than 30 complaints have been resolved appearing in our quarterly statistics in *ombudsman news*.
- 4.15. We have identified one change to the FCA complaints return that impacts on the way that the ombudsman service records and reports on complaints. Endowments have been moved from decumulation, life and pensions to investments. In H1 2016 we received a total of 1,021 new complaints about endowments products. This represents 37% of the 2,761 new complaints we received in the decumulation, life and pensions product grouping. We therefore propose that we reflect this change in our own complaint reporting, which would apply from the current reporting period of 1 July – 31 December 2016.

## questions

### **4. Do you agree with our proposal to move endowment complaints into the investments product grouping to reflect changes to the FCA complaints return?**

#### **new cases per 1,000 customers**

- 4.16. Under the new complaints handling rules, the FCA will now include in its reporting how many complaints financial businesses have received per 1,000 customers. This brings financial services in line with other sectors, such as telecoms and energy.
- 4.17. We believe that applying a similar measure to our complaints data would add context and allow for more meaningful comparisons between firms. It may also act as an incentive for firms to improve their complaint handling so that fewer complaints are referred to the ombudsman service.
- 4.18. While businesses are required to share the number of customers they have across different complaints categories as part of the FCA's complaints return, they would be under no obligation to share this information with us without further changes to dispute resolution rules (DISP).
- 4.19. Furthermore, the rules governing the sharing of information between the FCA and Financial Ombudsman Service do not allow for the FCA to disclose information about the number of customers businesses have to us.
- 4.20. In order to implement this new measure, it would be necessary for businesses to agree to share details of the number of customers they have across different products areas with us on an individual basis.

## questions

### **5. How do you think we might overcome the practical considerations identified above?**

#### **more granular data**

- 4.21. We currently publish complaints data for individual businesses broken down by six major product groupings (banking and credit; mortgages and home finance; general insurance; PPI; investments; and life & pensions and decumulation). As mentioned in paragraph 2.4, an uphold rate is only shown if we have resolved 30 complaints or more against that business in that product grouping.
- 4.22. We have received feedback from stakeholders that they would like to see us publish complaints data for individual businesses by product type – for example, current accounts or travel insurance – as this would be more meaningful for consumers, could help them to shop around and therefore help improve competition.

- 4.23. Whilst we agree that it may be useful for consumers if we published complaints data broken down by narrower product types, there are a number of practical considerations to take into account:
- 4.24. Statistically meaningful data (30 complaints or more) would only be available for the biggest firms. For example, based on the reporting period 1 January – 30 June 2016, we would only have statistically meaningful data for 13 businesses for current accounts and 8 businesses for savings accounts. This would only facilitate comparisons between the biggest providers and would do little to encourage consumers to consider switching to a smaller provider.
- 4.25. Furthermore, the business that the complaint is recorded against will not necessarily be a consumer-facing brand. For example, in insurance, where complaints are recorded against the underwriter.

## **questions**

### **6. Given the above, do you consider it worthwhile to publish more granular data on individual businesses?**

#### **average resolution time**

- 4.26. As referenced above, we have been working with businesses to streamline our processes and deliver a better customer experience. We have looked at how to reflect where businesses have worked with us to get fair, pragmatic answers to consumers more quickly. Reporting on the average time it takes to resolve complaints from individual businesses is one option for doing this. It would be a simple measure for stakeholders to understand and may incentivise businesses to resolve complaints more quickly and informally.
- 4.27. We have identified a number of practical challenges to implementing this in a way that is fair and simple to administer.
- 4.28. We recognise that the length of time it takes to resolve a complaint is not entirely in the control of the business the complaint is about. For example, it may be the case that we need clarity on an issue before being able to progress cases, such as PPI cases affected by the Supreme Court judgment of Plevin v Paragon Personal Finance Limited. In some instances, this may affect a large number of complaints with a particular business or businesses, which could significantly impact on the average resolution time for those firms. In such instances we do not consider that this would be a fair reflection of the firm's complaint handling.
- 4.29. Similarly, a particularly complex case that takes a long time to resolve would have a disproportionately large impact on average resolution time for a smaller firm. And, firms whose products typically result in more complex complaints – for example, financial advisers – would naturally have higher average resolution times.

- 4.30. One way of addressing this would be to exclude cases considered to be highly complex from this measure. However, this may generate additional discussions with businesses arguing for cases that have taken a long time to resolve to be classified as highly complex. This could divert case handler resources away from resolving complaints and could actually impede rather than facilitate the speedy resolution of cases.
- 4.31. We also believe that there would be considerable practical challenges in verifying average resolution time data. For example, if a business was to challenge its average resolution time, it would be necessary to check the resolution times of all closed cases against that business in order to identify any discrepancies, which would be extremely resource intensive.

## **questions**

### **7. Do you agree with our assessment of the practical considerations for implementing average resolution time as a measure?**

#### **“informally” resolved cases**

- 4.32. An alternative option for incentivising businesses to resolve complaints quickly and informally would be to create a separate category for cases that are resolved before one of our case handlers has issued a formal view. Such cases could be reported as a number only with no outcome recorded. While such a measure would incentivise businesses to work with us to resolve complaints informally, we have identified a number of practical issues.
- 4.33. The first, and most obvious, question is to define at which point our involvement in a case becomes “formal”. We usually consider this to be when one of our ombudsmen has issued a decision. However, just one in ten of the cases we see are resolved by an ombudsman’s decision. Therefore, if we were to record all “informally” resolved cases as a number we would no longer have outcome data for 90% of the cases we resolve. This would result in significantly less insight for our stakeholders as it would mean we wouldn’t report on the outcome of the majority of the complaints we resolve.
- 4.34. We are also concerned that such a measure could create perverse incentives. For example, it could feasibly result in businesses unfairly rejecting complaints then settling those that are referred to the ombudsman service informally in order to avoid them being reported as upheld. This would undermine one of the main incentives created by outcome data – to improve front-line complaint handling.

## **questions**

### **8. Do you agree with our assessment of the risks attached to a category for ‘informally’ resolved cases?**

#### **Financial Advice Market Review (FAMR) recommendation**

- 4.35. As mentioned above, we have committed to considering how to implement one of the recommendations of the FAMR, published in March 2016, as part of this review. FAMR recommended that we should consider publishing additional complaints data about financial advisers. It specified that this should include a breakdown of cases where advice was given more than fifteen years before the complaint was made, and a breakdown of financial adviser uphold rates by product.
- 4.36. We have already taken the first steps in implementing this recommendation. We published financial adviser uphold rates by product in our 2015/16 *annual review*, which was published in May. We also published the equivalent data for other sectors.
- 4.37. The reporting period for our *annual review* (1 April – 31 March) does not coincide with the reporting periods for our complaints data for individual businesses (1 January – 30 June and 1 July to 31 December). We propose publishing complaints data by sector every six months in *ombudsman news* in addition to the yearly figures in the *annual review*.
- 4.38. In future *annual reviews*, and editions of *ombudsman news*, we also intend to publish a breakdown of cases for each sector where the event being complained about occurred more than fifteen years before the complaint was made.

## questions

### **9. Do you agree with our plans to publish sector-based complaints data every six months in *ombudsman news* and once a year in our *annual review*?**

#### **Plevin-affected PPI cases**

- 4.39 In November 2014 the Supreme Court handed down its judgment in the case of Plevin v Paragon Personal Finance Limited. In this case, the court decided that an undisclosed commission on a PPI policy could, in some circumstances, result in an unfair relationship under the *Consumer Credit Act 1974*.
- 4.40 Uncertainties around the Plevin case have made it difficult to progress a significant number of our PPI cases. As of 5 September 2016 111,000 of our 153,000 PPI cases were affected.
- 4.41 Cases we have not upheld for a mis-sale, but which are potentially affected by Plevin and may therefore receive some compensation on the narrower grounds of unfair commission, are difficult for us to progress until the FCA has published its final guidance. This means that a higher proportion of the cases we have been closing have been upholds.

- 4.42 Under our current approach to data publication, cases where we have found that no mis-sale had taken place, but where we ask the business to pay redress on Plevin grounds, will be recorded as upheld in favour of the consumer.
- 4.43 For Plevin-affected cases already with the service, it may be useful to distinguish between PPI cases we have upheld for a mis-sale and those where we have directed a firm to pay redress on Plevin grounds. In a mis-sale case, the consumer will typically receive compensation based on a refund of all of the premiums paid, plus 8% simple interest. In a Plevin case where there was no mis-sale, the consumer is unlikely to receive the same level of compensation. It could be argued that distinguishing between these outcomes in our complaints data would be a fairer reflection of how businesses have dealt with these cases – particularly for cases handled by businesses before the FCA’s guidance on how to handle Plevin cases is finalised. It may also help to manage consumer expectations on the likelihood of receiving full redress.
- 4.44 Whilst we are wary of making exceptions to our current approach, we consider that the distorting impact of Plevin cases on our complaints data may be exceptional enough to warrant it. We would also propose, however, that any exception would be limited to complaints received by financial businesses before the date of the FCA’s final guidance (expected December 2016). Whilst we acknowledge that the FCA’s guidance would not take effect until early 2017, it will give businesses clarity and enable them to begin settling cases immediately should they choose to.

## questions

### **10. We would welcome your views on the merits of distinguishing between cases we have upheld for a mis-sale and those we have upheld because of Plevin.**

## 5. summary

- 5.1. We are not proposing any changes to our current metrics for reporting complaints data. We have not identified any changes that would support our statutory objective to resolve complaints quickly and informally whilst adhering to the principles of fairness, simplicity and creating positive incentives.
- 5.2. We believe there are benefits to adding context to complaints data about individual businesses by including the number of complaints per 1,000, as recently introduced by the FCA. However, we have identified some practical issues that need to be overcome in order to implement this measure and look forward to hearing the thoughts of our stakeholders on how to address these.
- 5.3. We intend to move endowments from the decumulation, life and pensions product grouping to the investments product grouping in order to reflect changes made by the FCA to its complaints return. This change will be effective immediately and apply from the current reporting period (1 July – 31 December 2016) onwards.

5.4. We will continue to publish additional data about financial advisers – and other sectors – in our *annual review*. As of our *annual review* for 2016/17, we will include details of cases where the event being complained about happened more than 15 years before the complaint. We will also publish six-monthly data in subsequent issues of *ombudsman news*.

**6. next steps and timings**

6.1. Following the close of the consultation period on 1 November the service will consider feedback and publish what we plan to do by 1 December.