

# Consultation on temporary changes to reporting the outcomes of proactively settled complaints

October 2021

## Contents

1. Introduction .....	2
2. Background – data publication .....	3
3. Uphold rates and proactive complaint resolution .....	3
4. Proposed temporary amendment to outcome reporting.....	4
5. How the initiative would work in practice .....	5
6. Potential risks and mitigations.....	6
7. Next steps.....	11

## How to respond

We welcome stakeholders' thoughts on our proposals. Please send your responses, to reach us by 5.00pm on Monday 18 October 2021, to: [consultations@financial-ombudsman.org.uk](mailto:consultations@financial-ombudsman.org.uk). Please also use this email address to contact us if you have any questions about the consultation or responding to it.

We'll publish a list of respondents and an anonymised summary of responses as part of our consultation process. If you think there's a reason your name should not be published, please let us know – we won't automatically take a standard email disclaimer as an indication that your name shouldn't be included. Our legal responsibilities around freedom of information mean we cannot guarantee responses can be kept confidential.

## Next steps

Consultation opens:	Monday 4 October 2021
Deadline for responses:	Monday 18 October 2021
Decision:	We will consider stakeholders' responses and publish our decision and any associated plans by 1 November 2021.

# 1. Introduction

This consultation sets out the temporary amendments that we propose to make to the way we report business-specific complaints data, in particular the “uphold rate”.

The Covid-19 pandemic brought unprecedented disruption for lives and livelihoods across the UK. It also resulted in a substantial increase in customer demand for the Financial Ombudsman Service’s help, and significant additional operational challenges for both financial businesses and our own Service. In our plans for 2020/21, we anticipated receiving 145,000 new non-PPI complaints, but ended the financial year having received over 237,000, an increase of more than 60%. While we closed 99% of the volume of non-PPI complaints we set out to resolve last year, this increase in demand left us with more outstanding cases than we had expected. We began this financial year with around 90,000 complaints waiting to be investigated.

Some businesses struggled during the pandemic to respond to complaints within eight weeks, which led to more complaints being referred to the Financial Ombudsman Service. Operational pressures on businesses have also contributed to delays in their ability to respond to our requests for information, making the progression of some complaints more difficult. The result has been too many customers waiting too long for an answer to their complaint.

As we pass the end of the second quarter of the financial year, we are on track to exceed the complaint resolution target set out in [our plans](#) for this year. However, this would still see us end 2021/22 with a significant queue, so we are actively exploring – and implementing – a range of initiatives and innovations to enable us to move even faster and help more customers get the answers they need. This includes:

- Engaging with businesses differently to move complaints along more quickly
- Initiatives to free up investigators’ time, such as routing calls through other teams
- Focused triage in some areas of our casework, for example in fraud and scams

We believe these initiatives, and others, will help us work through the additional volume of pandemic-driven complaints.

As part of that effort, we are now seeking stakeholders’ views on whether a targeted intervention to temporarily amend our approach to publishing firm-specific outcome data could make a further contribution to speeding up the resolution of complaints. This consultation paper sets out our suggested approach, and we would welcome stakeholders’ thoughts on the proposals outlined below.

## 2. Background – data publication

Since 2009, the Financial Ombudsman Service has published complaints data about individual financial businesses and products. For financial products, we publish yearly complaints data in our [annual complaints data publication](#) and [quarterly complaint statistics](#) on our website. Alongside this, we publish complaints data on [individual financial businesses](#) twice a year.

The biannual data we publish on individual firms includes the percentage of resolved complaints where we find in favour of the customer, commonly known as the ‘uphold rate’ or ‘change in outcome rate’. This data covers businesses that have had at least 30 new cases and 30 resolved cases in the six-month reporting period.

The way the uphold rate is calculated is straightforward. Complaints are recorded as having had a “change in outcome” if the complaint is resolved by the Financial Ombudsman Service with a more favourable outcome for the customer. Complaints are recorded as having had “no change in outcome” if we resolve the complaint having found the business to have done nothing wrong, or if we agree that any outcome proposed by the business prior to our involvement was fair. The “uphold rate” reflects the percentage of complaints resolved as a “change in outcome”.

We publish this data as it increases transparency, helps to inform consumer choice, and provides an incentive to businesses to improve their complaint handling.

## 3. Uphold rates and proactive complaint resolution

Our engagement with financial businesses suggests that they continue to place a strong emphasis on their respective uphold rates, which are seen as an important benchmark not only as an individual metric, but also as a comparative measure across industry, helping to drive improvements in complaint handling.

As part of our objective to resolve complaints quickly and with minimum formality, the Financial Ombudsman Service regularly engages with businesses across the sectors we cover to discuss opportunities to resolve complaints without the need for detailed individual investigations on each case. Financial businesses can be willing to do this for various commercial or operational reasons, most commonly to clear backlogs, or where they wish to align more closely with our approach, or to maintain customer satisfaction.

However, due to the way we record outcomes, resolving cases in this way will increase businesses’ published uphold rates. Businesses have previously told us they can be reluctant to resolve complaints in this way due to potential negative public connotations of a higher recorded

uphold rate. Although there are of course other considerations that will sit behind a business's decision to settle a complaint, this factor might act as a disincentive to resolving complaints proactively.

In recognition of the unprecedented events of the past year, and the increased number of customers waiting for an answer and possible redress, we therefore propose temporarily to adjust the way we report cases resolved in this way, to encourage financial businesses to settle some of their complaints proactively and pragmatically.

#### **4. Proposed temporary amendment to outcome reporting**

For a defined group of complaints already referred to the Financial Ombudsman Service, we propose to create a separate category to record any complaint within this population that is proactively settled by a business before the Financial Ombudsman Service has issued its opinion. Complaints settled in this way would not – for a restricted period – be recorded as having either a change in outcome or no change in outcome, but instead would be reported as a separate category when we publish our business-specific complaints data. Complaints proactively settled this way would therefore not contribute to a business's overall uphold rate during the defined period during which this approach would be in place.

As this proposal is targeted at reducing queues that have been made worse by the Covid-19 pandemic, we intend this to be a temporary amendment to assist in resolving complaints built up during this time. Although the pandemic is still ongoing, feedback from financial businesses suggests that most have now adapted to the operational challenges it presented, and our own complaints data shows that new complaint volumes have fallen significantly since the height of the pandemic and have stabilised at lower levels for several months. We therefore intend to report separately on any complaint proactively resolved in this way until the end of the financial year, 31 March 2022, after which point we would revert to recording outcomes as we do currently.

With this in mind, should the proposal proceed, we would identify a clear 'cut-off' date for complaints that can be recorded in this manner, which we would confirm when setting out our response to the consultation feedback. We envisage this cut-off date would be shortly after we have set out our response.

This means that any complaint referred to the Financial Ombudsman Service after a certain time will not be in scope to be recorded separately in this way. In order to prevent the disruption of complaints where we have already given our answer, and to avoid businesses benefitting from settling cases the Financial Ombudsman Service has already upheld, we propose that complaints

in scope for recording in this way be limited to those where the Financial Ombudsman Service hasn't issued an opinion as at the defined cut-off date.

We believe this would incentivise financial businesses to settle complaints proactively and pragmatically at an earlier stage, helping to bring closure to affected customers while also reducing the operational strain on both firms and the Financial Ombudsman Service.

**Question 1: Overall, to what extent do you agree or disagree with our proposal to separately record complaints resolved proactively by businesses?**

Please indicate whether you: Strongly agree; Tend to agree; Neither agree nor disagree; Tend to disagree; Strongly disagree; or Don't know. Here and for subsequent questions, please also share any additional comments or feedback you have.

**Question 2: 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]

**Question 3: 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]

## **5. How the initiative would work in practice**

In order to allow businesses time to pragmatically settle complaints, we intend to ring-fence some eligible complaints until the point a business tells us if it wants to settle or not. This means that complaints not yet being investigated would not be allocated to a case handler for investigation during this time, to allow businesses time to review their stock. Of course, where we believe allocation to an investigator will facilitate the progression of a case, we will do so. Those complaints that had been allocated to case handlers as of the cut-off date, but where no opinion had been given, would continue to be investigated, while still falling under the scope of this proposal should the business wish to make an offer to settle the complaint prior to the Financial Ombudsman Service issuing its opinion.

The Financial Ombudsman Service will assist businesses with their review by providing context about their open stock of complaints. For example, by providing product-specific uphold rates, businesses can more readily identify those areas of complaints which the Financial Ombudsman Service would be more likely to uphold, allowing them to quickly redress customers who would otherwise have had to wait longer for an answer.

If the proposals were implemented, they would work in the following way:

- Businesses would inform the Financial Ombudsman Service of their intention to settle a complaint in the defined population pragmatically.
- The Financial Ombudsman Service would then communicate the proposed settlement to the customer.
- If the customer were to accept the offer, the complaint would close, and it would be reported on separately in the way described.
- If the customer were to decline the offer, the Financial Ombudsman Service would investigate the complaint and record the outcome as usual. This would also be the case if the business declined to make an offer at all.
- As all the complaints in scope under this proposal will be chargeable, a case fee would continue to apply to all complaints settled in this way.

**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]

## **6. Potential risks and mitigations**

### **a) Prioritising and protecting vulnerable customers**

We understand that allowing businesses a period of time to review complaints to identify cases they might settle under the proposal could have a negative impact on customer waiting times. Any such impact could especially be felt by vulnerable complainants, or where complaints have already been with the Financial Ombudsman Service for some time.

To mitigate this potential impact, we would encourage businesses to first make decisions on cases involving vulnerable customers to aid the progression and prioritisation of those complaints. Nevertheless, we are conscious that circumstances might dictate that it would be prudent or necessary to move forward with these complaints ourselves in some cases, whether that be because of vulnerability, or another relevant reason. We therefore propose to reserve the right to

proceed with the consideration of any complaint in scope under this proposal, which would in turn mean we record the outcome of that complaint in the usual way.

**Question 5: 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]

**Question 6: 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]

**Question 7: Are there any additional safeguards for vulnerable customers that we should consider putting in place, should the proposal be implemented? [Please specify]**

[Yes; No; Don't know]

## **b) Maintaining fairness**

As outlined in section 5 above, the Financial Ombudsman Service intends to communicate offers to customers once we receive them from businesses. As the complaints in scope under this proposal would be ones on which we haven't yet given our opinion, in some cases we may not be able to say whether we think an offer would be in line with what we would have recommended, had we looked at the complaint.

Where a customer complains they have lost a defined sum – for example, a loss related to a scam – it is usually simple to quantify the loss and what redress should look like (in this case, the amount lost to the scam). In these cases, it should be clear whether an offer can be considered fair redress.

Where a customer alleges something that can't easily be quantified, such as poor customer service, there is not necessarily a clear indication of what fair redress should look like. This may give rise to businesses presenting offers to complainants which are short of what the Financial Ombudsman Service might recommend, in the hope of settling complaints more cheaply.



This scenario is not a new one for the Financial Ombudsman Service. During the course of any complaint referred to us, businesses are free to make an offer to settle the complaint at any stage before an ombudsman's decision, and this often happens prior to us beginning our investigation. As it is ultimately the customer's decision to accept an offer or not, we are mindful not to 'endorse' any offer which we've not yet determined is a fair one. To do this, we make three things clear to the customer:

- The decision to make the offer was the business's alone.
- The Financial Ombudsman Service cannot confirm whether we think the offer is a fair one.
- Accepting the offer is optional, and the Financial Ombudsman Service will continue to consider the complaint should the customer so wish.

Our correspondence to customers informing them of offers made under this proposal will emphasise these three points, presenting the offer in a neutral way. This will allow customers to determine for themselves their preferred course of action with a full understanding of the options available to them.

The Financial Ombudsman Service's primary function is to give an independent opinion on unresolved disputes between customers and businesses, and we are conscious that some customers rely on what we say before determining whether a settlement put forward by a business is fair. There is no guarantee that a complaint will be resolved simply because a business has put forward an offer to settle it.

A key measure of success for this proposal will be the number of complaints proactively settled. While businesses may be willing to settle a number of complaints under the proposal, whether those offers resolve complaints would ultimately depend on customers' willingness to accept. As this could potentially impact the effectiveness of the proposal, we would welcome stakeholders' thoughts on this point.

**Question 8: 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]

**Question 9: Are there any additional mitigations that we should consider putting in place, should the proposal be implemented? [Please specify.]**

[Yes; No; Don't know]

### c) Data integrity and transparency

Following a lengthy period of review and consultation, the Financial Ombudsman Service began publishing complaints data in 2009. This decision was taken to improve transparency, incentivise businesses to improve, and to help financial customers make a more informed purchasing decision. A further [consultation](#) was undertaken in 2016 to review our data publication, but ultimately no fundamental changes were subsequently introduced. Given that, for the most part, our method of reporting complaints data hasn't changed, we appreciate that any proposition to deviate from this is likely to attract interest.

Our outcome data is considered a benchmark for complaint handling performance in financial services. The consistency of the data makes it easy for comparisons to be made both between different businesses and across periods of time. Its simplicity makes it a useful metric for determining performance.

We understand the potential risk of making changes to the formula by which we calculate outcome data. Reporting on some complaints separately and outside of the usual method could lead to a perception that the data itself, no longer encompassing all resolutions, is less useful or insightful. It could also lead to difficulties in making comparisons between businesses or across time periods.

However, we believe that a number of factors mitigate the potential risk here, whilst pragmatically ensuring our ability to further reduce customer waiting times:

- We have already resolved a substantial volume of complaints, approximately half the total number of complaints that we set out to resolve by the end of this financial year. We believe any data based on the outcomes of these complaints – which will be recorded in the traditional way – is meaningful in its own right, and would provide a strong indication of a business's complaint handling performance. While reporting some complaints separately wouldn't paint a full picture, we believe the integrity of our data and the insight it generates would be preserved.
- If the proposal were to be implemented, it wouldn't represent the first time we have reported some complaints separately. Following our consultation in 2016, we do not publish an uphold rate for certain PPI complaints affected by the **Plevin v Paragon Personal Finance Limited** judgment. This measure was introduced so as not to create a misleading picture of how firms had handled complaints where no mis-sale had taken place, but where redress was paid in line with the FCA's Plevin guidance.
- By proposing to report the number of complaints resolved pragmatically by businesses, rather than excluding them from our data publication process altogether, an important element of transparency would be retained.

- Imposing a strict limitation on the time period for the proposal would also reduce its longer-term impact on the comparability of outcome data and the insight it gives stakeholders.

**Question 10: 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]

**Question 11: Are there any additional mitigations for this risk that that we should consider putting in place, should the proposal be implemented? [Please specify.]**

[Yes; No; Don't know]

#### **d) Risks identified in our 2016 data publication consultation**

Our consultation in 2016 committed to reviewing the way we publish data and put forward various proposals. One of those proposals under consideration was similar to what has been proposed in this paper. We therefore believe it relevant to highlight some concerns raised by stakeholders at that time around the particular point in question.

The 2016 consultation discussed a proposal to record complaints that had been resolved 'informally' separately and outside of the scope of a firm's uphold rate. In our feedback statement we pointed out that the definition of informal, in the context of complaints being resolved, applied to any resolution that was not an ombudsman's decision. We also noted that ombudsmen's decisions accounted for only one in ten resolutions, which would result in most complaints not being recorded with an outcome. We believe, however, that the proposal set out above clearly defines the complaints we would consider in scope under this proposal and mitigates the concerns raised in the 2016 consultation exercise.

Respondents to the 2016 consultation also raised a concern that such a measure could result in businesses unfairly rejecting complaints, then settling those referred to the Financial 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.

We do not believe this concern applies to the proposal we've set out here. As proposed, any new complaint referred to the Financial Ombudsman Service after the 'cut-off' date would be subject to the usual reporting standards, so businesses would still have an incentive to improve their own complaint handling.

One response to the 2016 consultation suggested that smaller firms, which are less likely to have the resource or capacity to undertake such an exercise, could have been unfairly disadvantaged as opposed to larger businesses, such as high street banks. In principle, the same risk might apply to the proposal we are now putting forward, and we would particularly welcome stakeholders' perspectives on this point.

**Question 12: 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]

**Question 13: 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?**

**[Please specify.]**

[Yes; No; Don't know]

## **e) Other risks and comments**

Finally, we would be grateful to hear stakeholders' thoughts on whether there are any other risks relevant to our proposals that we haven't identified but should consider mitigations for, or whether the proposals might give rise to any unintended consequences.

**Question 14: Are there any additional risks to mitigate should the proposal be implemented, or any unintended consequences that might arise? [Please specify.]**

[Yes; No; Don't know]

**Question 15: Do you have any further comments or thoughts about the proposals set out in this consultation paper? [Please specify.]**

[Yes; No; Don't know]

## **7. Next steps**

We look forward to receiving stakeholders' feedback on the proposals we have put forward, and any additional comments not directly covered by the questions in the consultation paper. Following the close of the consultation period on 18 October 2021, the Financial Ombudsman Service will consider all the feedback received and publish a decision confirming how it will proceed by 1 November 2021.



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