

# Temporary changes to reporting the outcomes of proactively settled complaints

Consultation feedback statement  
November 2021

## Contents

1. Executive summary and decision .....	2
2. Temporary amendment to outcome reporting .....	4
3. How the initiative would work in practice .....	10
4. Risks and mitigations .....	12
a) Prioritising and protecting vulnerable customers .....	12
b) Maintaining fairness .....	14
c) Data integrity and transparency .....	16
d) Risks identified in our 2016 data publication consultation .....	18
e) Other risks and comments .....	19
Annex: Organisations responding to our consultation .....	22

# 1. Executive summary and decision

In October 2021, we published a consultation paper<sup>1</sup> setting out the temporary amendments we proposed to make to the way the Financial Ombudsman Service reports business-specific complaints data, particularly the ‘uphold rate’.

As we described in the paper, the Covid-19 pandemic resulted in a substantial increase in customer demand for our help: in 2020/21 we received in excess of 60% more non-PPI complaints than we had budgeted and planned for. So, although we are on track to exceed the complaint resolution target set out in [our plans](#) for this year, this significant additional pandemic-driven demand would still see us end 2021/22 with a large number of complaints waiting to be investigated.

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. Alongside this, we were keen to hear stakeholders’ thoughts on a targeted intervention to amend temporarily our approach to publishing firm-specific outcome data, and whether this could further act as an incentive to speed up the resolution of complaints.

The consultation was open between 4 October and 18 October 2021, and we received 64 submissions from stakeholders – 42 responses that addressed the specific consultation questions, and a further 22 responses with more general feedback or views on particular points. We are grateful to all the organisations and individuals that contributed their thoughts – a list of responding organisations can be found in the Annex at the end of this document. Some respondents asked not to be included and are therefore not listed in the Annex.

## Decision

A majority of those participating in the consultation supported our central proposal, and we can confirm that we will be implementing a time-limited change to the way in which we publish outcome data.

We are also making a modification to our original proposal. In their consultation feedback, a number of stakeholders – both financial businesses and organisations representing consumers – expressed reservations about the approach to relaying proactive offers to customers. The proposal envisaged that the Financial Ombudsman should present proactive offers from businesses ‘neutrally’ to customers – that is to say, to make clear that in putting the offer forward, we could not

---

<sup>1</sup> Financial Ombudsman Service (2021), [Temporary changes to reporting the outcomes of proactively settled complaints](#).

confirm whether we thought the offer a fair one or not. A range of stakeholders were concerned about how this approach could inadvertently present a risk to fair and consistent outcomes for consumers, as well as impact the ultimate effectiveness of the initiative.

We have reflected on this feedback and agree that it would be better for all parties for the Financial Ombudsman to review the fairness and reasonableness of any offer communicated through this process. We will make the necessary arrangements to ensure that any proactive offer made through this process is reviewed by the Financial Ombudsman. Where it appears to be fair and reasonable, we will put it forward to the customer. Where we do not consider it obviously fair and reasonable, we will challenge it.

The rest of this feedback statement summarises the responses to the consultation we received from stakeholders, how that has shaped the decisions we have made, and how we will implement our plans. For clarity and coherence, the summary of feedback doesn't include all the individual points respondents made, but focuses on common or contrasting themes and issues raised. This includes feedback we received during our wider engagement with stakeholders over the course of the consultation period, as well as direct responses to the specific consultation questions. Where stakeholders did answer the specific consultation questions, using the listed answer options, we provide the overall proportion agreeing or disagreeing with the questions.

## 2. Temporary amendment to outcome reporting

### What we asked – overall feedback on proposal

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

#### Comments received

The consultation set out a proposal to record separately for a limited period of time, complaints proactively resolved by businesses. The majority of stakeholders participating in the consultation supported the proposal. Of those respondents answering this specific consultation question, 64% strongly agreed or tended to agree with the proposal. 31% said that they tended to disagree or strongly disagreed. Stakeholders used the breadth of this first question to share a variety of perspectives, including those summarised below.

- Stakeholders acknowledged the need for us to think differently about reducing the number of people waiting for an answer to their complaint. A number of businesses confirmed that our proposal would indeed provide an incentive to resolve complaints proactively. There was a shared sentiment among both representatives of consumers and financial businesses that customers would benefit from earlier answers, although others underlined that this should not come at the expense of fairness.
- Some questioned whether the proposal went far enough, or would last long enough, and argued for longer-term changes to our reporting instead. While a trade body welcomed the proposal, it felt more wholesale changes to our reporting were needed to encourage firms to act more proactively. In contrast, some firms and trade bodies commented that the proposal wouldn't incentivise businesses to resolve complaints proactively. Those who had managed well during the pandemic, along with those who already maintained lower uphold rates, felt that revisiting outcomes they considered were already fair would not be productive.
- Assurances were sought by some stakeholders that, where a firm did proactively offer to settle a complaint, such offers would not set a precedent for future cases. There was an acknowledgment from some respondents that an increased offer might encourage a consumer to settle a complaint, but also concern that increased offers could be seen as setting an unrealistic benchmark that might induce increased claims management company (CMC) activity.

- Other firms and trade bodies felt the scope of the proposal could make it challenging for smaller firms to be able to participate effectively. One smaller firm commented that it would need to recruit more staff to have enough resource to review complaints alongside its usual work, for which it would bear an unreasonable cost.
- A common theme in the feedback from financial businesses which both agreed and disagreed with the central proposal was the question of the attendant case fee. A significant number of respondents questioned the fairness of charging a full fee on each complaint when the implied expectation was that the bulk of the work in reviewing these complaints would be borne by firms rather than the Financial Ombudsman. Many suggested not charging a fee for cases resolved proactively, or charging a reduced fee.
- Some respondents sought further clarity around the detail of how we proposed to present the data in our publications. There was concern from some firms that businesses with larger volumes of complaints might benefit more than others, and there were calls for data to be contextualised to give a clearer picture and reflect that some business had already proactively settled significant volumes of cases. One large bank commented on the importance of context, so as not to give a misleading impression of the data to external stakeholders. Other firms questioned whether the intended reporting of cases settled in this way would still imply the business having done something wrong; others questioned the benefit of publishing this data at all.
- Conversely, organisations representing consumers were wary that the proposal might lead to the loss of important insight from our investigations, hampering our ability to share that insight to prevent detriment and to make decisions on new issues, such as those arising from the Covid-19 pandemic. As we cover later in this statement, concerns were also expressed about the potential for some businesses to take advantage of the proposal to close complaints cheaply, putting fair outcomes at risk – particularly for vulnerable consumers.

### **Our response and next steps**

We are grateful for all the feedback respondents shared with us. We were pleased to see broad support for our proposal, and the range of stakeholders commenting that they would be interested in utilising it to try to resolve more complaints. At the same time, the consultation also identified areas of challenge we need to address to ensure the maintenance of fairness throughout this process.

As a number of stakeholders acknowledged, the proposal reflects the unique challenges presented by the pandemic, and an opportunity to get quicker outcomes to the increased number of customers waiting as a result. We are absolutely focused on bringing down customer waiting times: this proposal is one of a number of interventions we are making targeting that. It was clear from the feedback we received that this focus was welcomed by stakeholders, and the potential of this initiative to make a positive contribution recognised. However, while it is vital we remain focused on resolving outstanding complaints as quickly as possible, we agree with stakeholders that we must not compromise on fairness in doing so. We acknowledge there is a balance to strike in achieving this aim and, as we explain in more detail later in this statement, will make a modification to our proposal to ensure we achieve that. In refining our plans, we have carefully considered how best to mitigate issues stakeholders raised with us, and address these throughout this feedback statement.

We confirm that we will:

- Record separately in our business-specific complaints data any complaint proactively settled by a firm under this proposal before the Financial Ombudsman has issued its opinion on the complaint.
- Implement a 'cut-off' date of 31 October 2021 for complaints to be in scope under this proposal, meaning any complaint deemed chargeable by the Financial Ombudsman on or after 1 November 2021 will not be in scope.
- Revert to how we currently record the outcomes of complaints from 1 April 2022 onwards.

## **What we asked – time-limiting the proposal**

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?

## **Comments received**

There was strong agreement from stakeholders that, if taken forward, the proposal should be time-limited: 60% of those answering this specific consultation question strongly agreed/tended to agree with this, while 19% strongly disagreed/tended to disagree. A number of those who disagreed with the central proposal nevertheless considered that, if it was implemented, it should be for a limited period.

Those in favour of a time limit cited a range of reasons, including that it would:

- Encourage quicker resolutions – being beneficial both for customers and financial businesses' own operations.
- Limit the period during which uphold rate performance data would be impacted.
- Reflect that the proposal was a 'one-off' intervention.
- Mitigate the inevitable uncertainty as to the proposal's ultimate effectiveness.

Some respondents, including a number of financial businesses and their representative bodies, either disagreed that the proposal should be time-limited or argued that the timeframe suggested in the consultation should be longer – enabling more complaints to be resolved in this way and easing the challenge of resourcing it.

This was also reflected in the mixed response from stakeholders on the question of whether the suggested timeframe would be effective in reducing the number of customers currently waiting for an answer (Question 2b). Half (50%) of those answering this consultation question agreed, whilst a quarter (26%) disagreed. Stakeholders recognised the desirability of moving quickly to reduce customer waiting times, but identified some practical challenges too, making a number of points:

- A longer time period would have made it easier to balance operational challenges and mobilise resources. Some suggested extending the timeframe into the following financial year, or to the end of H1 2022 – not purely for more time to resolve the cases but to generate a cleaner reporting period for the first half of the year.
- Too short a window could impact on fair outcomes if it led to cases being 'rushed through'.
- A large bank argued that not all cases would, in fact, need to be reviewed as there were areas it was already clear it would not be appropriate to settle cases, and that early receipt of the appropriate data would help mitigate against the challenges of a shorter window.
- A number of stakeholders requested that a separate way of recording these cases in the future should be considered, if it was successful, though a trade body did caution against this, feeling it should not be seen as a longer term strategy to reduce waiting times.

### **Our response and next steps**

We recognise that this proposal has an important, and difficult, balance to strike between ensuring financial businesses have an appropriate amount of time to engage fully in the process, that customers do not wait longer for an answer than they need to, and that any impact on the outcome data we publish is minimised.

One of the core objectives of the proposal is to secure quicker answers for customers. We understand the arguments for extending the timeframe, but believe that increasing it would risk lengthening customer waiting times. Having reviewed stakeholders' feedback, we continue to believe the timeframe is reasonable but will work to support businesses engaging in the initiative for whom it presents challenges.

In their submissions many stakeholders – both those representing consumers and financial businesses themselves – reaffirmed the value of the data we publish, including the insight relating to firms' uphold rates. Following consideration of the consultation responses, we continue to believe that the proposed timeframe is the best approach to minimising any impact on our data publications. All of the in-scope complaints will have been resolved by the end of the H1 2022 reporting period.

A number of responses argued that this approach should be a longer-term feature of our reporting structure, and that it would facilitate more early resolutions. As we made clear in our consultation, the intervention is intended as a specific short-term response to the significant increase in demand for our help caused by the Covid-19 pandemic. We will, though, look to take relevant insight from the operation of the measure, including its impact in delivering quick and fair answers to customers.

We therefore confirm that:

- The week commencing 1 November, we will send businesses that qualified for H1 2021 data publication<sup>2</sup> a listing of in-scope cases. In addition, we encourage any business that wasn't included in the H1 2021 data publication that would like to see its list of in-scope cases to contact us at: [technical.desk@financial-ombudsman.org.uk](mailto:technical.desk@financial-ombudsman.org.uk).
- We will then offer support and actively work with businesses that want to use this opportunity to help them settle cases in a fair and reasonable way.
- In order to prevent any delays for customers, we will continue to progress cases in scope, but we will allow businesses additional time to review cases where they identify in advance that they are likely to make proactive offers.

---

<sup>2</sup> The Financial Ombudsman's half-yearly complaints data shows the number of complaints received about individual financial businesses where we received at least 30 new complaints, and resolved at least 30 complaints, in each six-month period. 249 businesses featured in our complaints data for H1 2021, with uphold rates for individual businesses ranging from 2% to 92%. The full data can be viewed on our [website](#).

## What we asked – restricting the scope of the proposal

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?

### Comments received

A significant majority of stakeholders supported the proposal to restrict the scope of eligible complaints to those cases which hadn't been assessed by the Financial Ombudsman by a defined date: 81% of those answering this specific consultation question agreed, compared to 12% who disagreed. Stakeholders supported the logic of the proposed approach and its practical benefits.

Accompanying comments to this question also contained some additional considerations and questions about scope, timings and the overall impact. These included:

- Some businesses questioned how they would identify eligible cases, and a large bank requested clarification of how we would define an 'opinion' for the purposes of the proposal.
- Some stakeholders, including a financial business and a trade body, asked how the proposal would be communicated to consumers, querying how those who may already have waited for some time for an answer might respond to a potential further delay as firms considered making a proactive settlement.
- Some stakeholders queried the exclusion of cases that had already been assessed, arguing this could be confusing for businesses and consumers and risked not maximising the potential benefit of the proposal.

### Our response and next steps

We appreciate stakeholders' strong support for the proposal and confirm our intention to limit the scope of eligible complaints to those in which the Financial Ombudsman hasn't issued its opinion by 31 October 2021. We do not think it would be right to extend the scope to cover complaints where the Financial Ombudsman has expressed an opinion to both parties, or for outcomes in these complaints not to be published. This could incentivise the wrong behaviours and significantly undermine our outcome data.

For the purposes of this proposal we define an 'opinion' as a written communication with both parties, that expresses a view on the fairness of an outcome, and that provides ombudsman referral rights. This is something easily reportable through our systems and will also enable us to clearly define to specific businesses what cases are in scope.

As we regularly update consumers, we do not intend to issue any separate communication about this process – but when we receive an offer that we think is fair we will explain that the relevant business has reviewed the case again. We will indicate whether that offer appears reasonable or not and consumers will remain able to challenge offers made through this process.

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

#### **What we asked – operating process**

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

#### **Comments received**

We received some mixed feedback to this question. Of the stakeholders giving a specific answer to the question, 43% agreed with the operating process, 34% disagreed, and 21% neither agreed nor disagreed. Some of the concerns and questions particularly raised by stakeholders in accompanying comments included the following:

- Several firms and their representative groups questioned the justification of charging a full case fee when the implied expectation was that the bulk of the work in reviewing these complaints would be borne by financial businesses rather than the Financial Ombudsman.
- Many respondents welcomed the principle of the Financial Ombudsman providing data and insight to accompany case listings, but sought clarity as to what could be supplied.
- It wasn't clear to some respondents, representing both businesses and consumers, whether participation in the proposal would be optional.
- Some respondents representing financial businesses felt that we should not continue to investigate complaints that were in scope until the business had had the opportunity to review the complaint again.
- Some businesses felt that the scope of the proposal should be extended to include complaints subject to further mediation, such as counter-offers proposed by consumers.

#### **Our response and next steps**

We welcome the opportunity to address stakeholders' questions to provide further clarity.

The question of the case fee was consistently raised by industry respondents. It was clear there was considerable strength of feeling on this issue, and we have consequently given this point a

great deal of consideration. Having done so, we believe continuing to charge our case fee is appropriate, for the following reasons:

- As we discuss in more detail in our response to question 8 later in this statement, having amended our proposal in light of feedback, the Financial Ombudsman will now review for fairness the proactive offers made by firms. This requires adequate resourcing.
- The Financial Ombudsman will be working with businesses to provide data and insight behind these complaints to assist them with reviews of their stock.
- The Financial Ombudsman we will be liaising with customers in relation to their complaints, to put forward proactive offers and to provide updates on their complaints.

The central aim of this proposal is to provide fair answers to customers sooner. To stop an ongoing investigation would not represent a good journey for any customer – especially if that investigation is likely to provide a quicker answer – so we will continue to investigate complaints that are already being looked at by one of our case handlers.

Firms will be under no obligation to review their stock. However, any complaint resolved by an offer made by a firm before our opinion – subject to the complaint being ‘in scope’ as defined above – will be recorded separately in our business-specific complaints data, regardless of whether the offer came from a wholesale review. We also intend to apply this to complaints resolved where a counter-offer has been agreed by both parties.

We want to ensure financial businesses are well equipped to review their stock and our operational contact team will be ready to assist in this regard. We would also encourage firms to utilise the wide range of content on our website to help resolve complaints quickly and fairly, including the wide range of published decisions and case studies.

The operational process will work in the following way:

- Businesses will inform the Financial Ombudsman of their intention to settle a complaint in the defined population proactively.
- The Financial Ombudsman will review the offer put forward to check that it appears fair and reasonable and in line with the outcome we would have given.
- If the offer does appear to be fair and reasonable, the Financial Ombudsman will communicate the proposed settlement to the customer.

- Depending on the complexity of the complaint, we may need more time to investigate the fairness of the offer – but we expect most cases to resolve quickly after the offer is received.
- If the customer accepts the offer, the complaint will close, and it will be reported on separately in the way described. This would also be the case if acceptance were reached on a counter-offer put forward by the customer.
- If the customer declines the offer, the Financial Ombudsman will investigate the complaint – but if we agreed the offer was fair this would still be recorded separately.
- A case fee will continue to apply to all complaints settled in this way.

## 4. Risks and mitigations

Our consultation highlighted some particular risks we had identified when developing and refining our proposals. This section sets out the feedback we received from stakeholders about these risks and appropriate mitigations.

### a) Prioritising and protecting vulnerable customers

#### What we asked

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?

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?

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

#### Comments received

There was very strong support from stakeholders for our suggestion that complaints involving vulnerable customers should be prioritised in taking the proposal forward. Of those responding to the specific consultation questions in this section, 76% agreed with the prioritisation of vulnerable customers, 71% agreed that the Financial Ombudsman should reserve the right to proceed with the consideration of in-scope proposals, and 48% had further comments on additional safeguards.

Organisations representing consumers strongly agreed that prioritising complaints involving vulnerability was necessary, as did many financial businesses – observing that this was already (or

should be) common practice. A number commented on the importance of firms and the Financial Ombudsman sharing a consistent definition and understanding of vulnerability, and recognition of its diversity and fluidity, in delivering effective prioritisation.

Most stakeholders agreed with the Financial Ombudsman reserving the right to proceed with certain complaints where necessary, but sought clarity on the circumstances that might result in this approach, and what criteria might apply. Some businesses felt the circumstances should be exceptional, some that the list of in-scope complaints should not change at all, and some that complaints featuring vulnerable customers should be handled separately for better protection. The importance of good communication in this area was emphasised by several businesses.

With respect to additional safeguards, many stakeholders expanded on similar points. Strong communication would ensure a clear line of sight between firms and the Financial Ombudsman in the identification of vulnerable customers and in securing them quick support. A flexible approach would enable the escalation of newly-apparent or changing vulnerability. A clear process would avoid duplication and confusion. Building on existing good processes between firms and the Financial Ombudsman would help ensure to ensure quick, effective and fair outcomes.

### **Our response and next steps**

We are grateful for all stakeholders' responses and suggestions to these questions – it is clear from the contributions that there is a strong and shared focus on vulnerable customers, and widespread agreement that this initiative should prioritise those in most need. It is crucial we all take the correct steps and measures to ensure we translate this common agenda into an effective approach.

In order to do that, the Financial Ombudsman will:

- Work with individual businesses to identify vulnerable customers and establish time-sensitive deadlines for the prioritisation and review of their complaints.
- Where an offer is made to resolve a complaint featuring a vulnerable customer, the case will be reviewed by one of our specialist teams dealing with customers requiring additional support. This will help to ensure that vulnerable customers receive fair treatment and any additional support they need as part of this process.
- If a business chooses not to make a proactive offer to settle a complaint involving a vulnerable customer, we expect it to cooperate fully and quickly with the subsequent investigation.

## **b) Maintaining fairness**

### **What we asked**

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?

Question 9: Are there any additional mitigations that we should consider putting in place, should the proposal be implemented?

### **Comments received**

Our consultation proposed that we should present neutrally any proactive offers to customers from businesses to settle a complaint, in line with our established practice. However, we were mindful that customers – understandably – can rely on what we say before deciding whether an offer is fair. Customers' willingness to accept proactive offers would be a key determinant of our proposal's ultimate effectiveness and, as such, we asked for stakeholders' thoughts on this point.

We received a broad range of responses, and mixed views, on the neutral positioning of offers. Although half (50%) of those answering the specific consultation question said that they tended to agree or strongly agreed, that support was nuanced in some cases. 24% of those answering the question disagreed with the proposal. Having reflected on stakeholders' feedback and the concerns expressed, including about the protection of vulnerable customers, we intend to modify our proposal as we set out in more detail below.

Where respondents supported our proposal, they tended to cite the transparency and straightforwardness of the process, enabling customers to make their own choice. One stakeholder felt that any investigation by the Financial Ombudsman could defeat the object of the proposal, and others that it could inevitably slow the pace of the process.

However, stakeholders also expressed a range of concerns with the proposed approach – including some of those who tended to agree in principle. These concerns, which were expressed both by financial businesses and industry trade bodies, and by organisations representing consumers, tended to centre on the following issues:

- Without greater support from the Financial Ombudsman, there was a risk to fair and reasonable outcomes for consumers. The process might generate “low ball” redress offers

that consumers might accept without knowing if they were fair, or alternatively lead to reasonable offers being rejected.

- There was particular concern that vulnerable consumers might feel additional pressure to accept an unfair offer, to meet an immediate financial need.
- A financial business commented that the proposal was likely to be fair to some, but not all – with other businesses also pointing out some consumers’ need for greater support.
- Even if presented neutrally, offers communicated by the Financial Ombudsman might be *assumed* to carry an endorsement, despite any disclaimer.
- Without the Financial Ombudsman’s view, consumers might anyway seek further guidance from us before accepting or rejecting a complaint, leading to delays.
- Consumers might reject offers on the basis that they had ‘nothing to lose’, believing that a settlement offer would represent a ‘floor’ of compensation when the complaint was subsequently investigated by the Financial Ombudsman.
- Without a review or ‘sense check’ from the Financial Ombudsman, the process would lose the opportunity to gain additional learning and insight for wider sharing.

In order to mitigate some of these risks, some trade bodies and large businesses proposed that we develop a methodology or issue further guidance to ensure offers were consistent and broadly in line with our expectations. Given the issues raised, and the widely-shared view that the Financial Ombudsman should play a more involved role in handling proactive settlement offers, we have revised our planned process.

### **Our response and next steps**

As with other areas of this consultation, we recognise there is a balance between ensuring we do all we can to reduce waiting times and maintaining fairness for all our customers. While the Financial Ombudsman has well-established approaches for handling offers, and regularly engages with businesses across key areas of casework, we have heard – and welcome – the wide range of feedback on these consultation questions. We have reflected on our position as a result, and agree that it would be better – for all parties – for the Financial Ombudsman to review the fairness and reasonableness of any offer communicated through this process. We believe this is appropriate because:

- Customers come to the Financial Ombudsman to understand whether they have been treated fairly and receive an independent view. It is important that if a business makes an offer, all customers – but particularly those in vulnerable circumstances – have confidence that they have received a fair outcome.
- It is equally important that customers understand *why* that outcome is fair – this not only

provides a better chance of a satisfactory outcome, but also reduces some of the operational risks that businesses have highlighted. Not reviewing offers before communicating them could lead to further work for all organisations.

- We do not expect businesses to use this process deliberately to “under offer” or “low ball”. However, we recognise that well-intentioned awards may nevertheless fall short of our expectations. It is important for both businesses and consumers in those cases that the appropriate outcome can be reached.
- Finally, we do not wish to lose opportunities to prevent future unfairness arising. By reviewing all offers through this process we will gain stronger casework insight to share with our wide range of stakeholders.

We have consequently made the necessary arrangements to ensure that any proactive offer made through this process will be reviewed by the Financial Ombudsman. Where it appears to be fair and reasonable, we will put it forward to the customer. Where we do not consider it obviously fair and reasonable, we will let both parties know.

## **c) Data integrity and transparency**

### **What we asked**

Question 10: To what extent do you agree or disagree with our assessment of the risks to data integrity and transparency?

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

### **Comments received**

Respondents provided a variety of opinions on our assessment of the risks to data integrity and transparency. Of those responding to the specific consultation question, 50% agreed with our assessment of the risks, while 24% disagreed.

A number of stakeholders were concerned about how the proposal might result in the potential loss of valuable insight. A consumer body commented that information about new types of complaints, especially those brought as a result of the pandemic, could be overlooked if complaints were settled without our involvement. Concerns were also raised that our data might become less meaningful or transparent, and that comparisons – between firms and over time – would become more difficult. A number of financial businesses stressed the desirability and importance of contextualising the outcome data we publish to mitigate risks that it could be misconstrued or

misunderstood. One advocated the full suspension of published data during the initiative. One organisation said that some firms might look to take advantage of the proposal to improve their data profile in a way that would not be beneficial to consumers. An alternative perspective offered by one business was that there would, in effect, be no loss of data transparency or insight: the number of proactively settled complaints would simply be read as 'upholds'.

Some stakeholders had specific questions about how and when the data would be published in practice: how existing reporting headings would be used, and whether the total number of proactively-resolved complaints – or the percentage of complaints eligible for proactive settlement – would be published. A trade body representing credit businesses commented on perceived wider issues surrounding the integrity of our published data, and argued for a wider review. Another stakeholder recommended that we consider some of the practicalities of reporting as the deadline date for this temporary process ending draws closer. It was also suggested that we undertake a review at the end of the process to understand its impact.

### **Our response and next steps**

Our outcome data is widely considered a benchmark for complaint handling performance. As we acknowledged in our consultation, we understand the potential risk of making changes to the formula by which we calculate outcome data. Indeed, this is an inherent tension in the proposal we have put forward. From stakeholders' contributions, we know that many share concerns about the potential risks, but also understand the trade-offs.

Having reviewed stakeholders' thoughtful perspectives, we continue to believe that a number of factors mitigate the potential risks in this area, whilst pragmatically ensuring our ability to reduce customer waiting times. These were summarised in our original consultation:

- Having already resolved a substantial volume of complaints in the financial year so far, any data based on the outcomes of these complaints (which will be recorded in the traditional way) is meaningful in its own right, and will 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 will be preserved.
- By reporting the number of complaints resolved pragmatically by businesses, rather than excluding them from our data publication process altogether, an important element of transparency is retained.
- Imposing a strict limit on the time period for the proposal will reduce its longer-term impact on the comparability of outcome data and the insight it gives customers and stakeholders.

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

### **What we asked**

Question 12: To what extent do you agree or disagree with our assessment of the risks and mitigations highlighted in our 2016 data consultation?

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?

### **Comments received**

There was general agreement from respondents towards our assessments of these risks. Of those responding to the specific consultation question, 74% agreed and just 5% disagreed. Many respondents commented on the differences between the current proposal and those put forward in 2016. One business commented that the temporary nature of the current initiative would negate the previously identified risks. A trade body, while agreeing that the proposals in the current consultation were different to 2016, did not agree with the description of the 2016 risks and felt more could be done to incentivise firms to settle more complaints proactively.

Informed by responses to the 2016 consultation, we particularly invited comments from stakeholders on the risk that smaller firms, being comparatively less likely than larger firms to have the resource or capacity to participate in this initiative. A number of stakeholders from smaller financial firms agreed with this point, commenting on the practical barriers presented by the resourcing that would be needed to identify and settle cases under the proposal alongside managing new incoming complaints. A body representing firms added that many of its smaller members had expressed concerns they might not benefit from the proposal. Other stakeholders noted that practical challenges applied to larger firms too: whilst these firms were likely to have greater resources available to resolve cases in this way, they also had much larger volumes of complaints to review.

Many respondents highlighted the importance of publishing accurate data, including the uphold rate. A consumer body suggested firms would have little incentive to improve their complaints handling if resolved complaints weren't factored into the uphold rate whilst one respondent said there could be a risk of businesses rejecting complaints unfairly without the accountability of published decision rates. A body representing firms highlighted the potential impact of smaller firms ending up with higher uphold rates if settlements were agreed on certain cases that might otherwise have had outcomes that were unchanged. To mitigate this, it was suggested we only

publish figures above a certain threshold, consider a longer timescale to allow smaller firms to implement changes, or increase the time for submission of new complaint files to allow resource to be used towards the proposal suggestions.

Some respondents raised concerns that the proposal would be undermined if timescales around how long firms are expected to take in presenting their decisions or revised offers, and how long consumers had to consider whether to accept or reject them, weren't set out clearly. One body representing consumers added its concern that consumers could have to wait several more months for an answer on their complaint under the current proposed timescales.

### **Our response and next steps**

Whilst we saw general agreement from respondents with our assessment of the risks and mitigations highlighted in our 2016 data consultation, we welcome stakeholders' comments on the possible impact for smaller firms and suggestions for how any potential disadvantage could be mitigated. To address some of the specific concerns raised, we can confirm that we intend to:

- Give clear timeframes for when we expect businesses to offer on complaints, but to show flexibility where we believe some additional time may be in the interests of all parties – remaining mindful that consumers should not wait longer as a result of this process.
- Offer what additional support we can to help smaller businesses take advantage of this process. We encourage any business that feels they may need additional support to contact us at: [technical.desk@financial-ombudsman.org.uk](mailto:technical.desk@financial-ombudsman.org.uk).

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

### **What we asked**

Question 14: Are there any additional risks to mitigate should the proposal be implemented, or any unintended consequences that might arise?

Question 15: Do you have any further comments or thoughts about the proposals set out in this consultation paper?

### **Comments received**

Respondents shared a wide range of helpful comments and thoughts in relation to these questions. Many acknowledged the impact of the pandemic and broadly supported our efforts to drive efficiencies and were keen to help us pilot new ways of working to combat delays caused by

Covid-19. However, respondents also raised a number of additional risks to mitigate if the proposal were to be implemented, as well as unintended consequences that might arise.

Several respondents said there was a risk of customers receiving and accepting a lower offer than they might otherwise have received, especially those in financial difficulty or who didn't want to wait any longer. One respondent suggested we sample some offers to determine their fairness, and another said we should consider how we would handle offers which don't close before 31 March 2022.

One respondent suggested there was a risk that consumers would choose for us to investigate their complaint anyway if we didn't judge whether offers were fair, with two business respondents suggesting a precedent could be set for consumers rejecting offers in the future. Other respondents added that customers may have to wait longer for an answer than they would if the Financial Ombudsman were to investigate and that a lack of clarity around which cases were in scope may cause confusion and delay.

A number of respondents shared concerns that we could see higher volumes of complaints brought by CMCs if firms are seen to be upholding more complaints, making it difficult for us to provide an effective service. And another trade body raised the possibility that CMCs may seek to prevent the early resolution of complaints.

Some stakeholders felt that businesses' resources could be negatively impacted by the proposal, while a body representing consumers cautioned that the proposal risked masking what it described as important capacity issues at the Financial Ombudsman driven by the increase in demand for its services.

Some respondents took the opportunity to repeat calls for us to reconsider our case fee arrangements to incentivise more firms to take part and offset businesses' costs.

Concerns were raised by a range of stakeholders about how the proposal might impact the consistency of our data publishing, recognising that our published uphold rates are an important measure for the industry that they didn't want to see diluted. Similar points were raised with respect to the potential impact on our ability to share insight from the complaints we see.

The length of the consultation period was commented on as potentially affecting the ability of some organisations, particularly consumer-focused organisations which are often resource constrained, to respond.

And finally, as noted earlier in this feedback statement, some organisations expressed concerns about whether settling cases would set a precedent for future complaints. We do not expect businesses to be bound by pragmatic decisions taken through this initiative, but we would expect businesses to continue to work with the Financial Ombudsman to proactively resolve cases – as many have done prior to the consultation.

### **Our response and next steps**

While most of the issues highlighted here have been addressed elsewhere in this summary, we are again grateful for all the considered feedback stakeholders gave in response to these and other questions. It has demonstrated general support for the proposal, but we have also used it to make adjustments to address particular areas of concern and we are confident we have adequately managed and mitigated the risks outlined in the responses. Where appropriate, we'll talk to stakeholders about specific feedback they raised or questions they asked.

## Annex: Organisations responding to our consultation

AA Underwriting Insurance Co. Ltd.	Jaja Finance
Association of British Insurers (ABI)	Lloyd's
Admiral	Lloyds Banking Group
Aegon UK plc	LV=
AJ Bell	M&G
Aviva	Markerstudy Insurance Service Ltd.
AXA Insurance UK plc and AXA PPP Healthcare Ltd.	Mercedes-Benz Financial Services
Barclays	Monese
BMW Group Financial Services GB	Money Advice Trust
Building Societies Association (BSA)	Moneybarn
British Vehicle Rental and Leasing Association (BVRLA)	MoneySavingExpert.com
Cabot Credit Management Group	Monzo
Citizens Advice	Morses Club
Close Brothers	National Savings & Investments
Clydesdale	Nationwide Building Society
Computershare Investor Services plc	NatWest Group plc
Consumer Credit Trade Association	NFU Mutual
Creation Financial Services	PayPal
DAS Legal Expenses Insurance Company Ltd.	Revolut Ltd.
Direct Line Group	Royal & Sun Alliance Insurance Ltd.
E-sure	Royal London
Everyday Loans	Santander
FCA Financial Services Consumer Panel	Soteria Insurance Ltd.
Finance and Leasing Association (FLA)	tifgroup
Goodwin Barrett	UK Finance
Hargreaves Lansdown	Virgin Media Mobile Finance
HSBC	Volkswagen Financial Services
Interactive Investor	Which?
IPA/AXA – Home and Motor	Wise
IPA/AXA Partners – Travel	Yorkshire Building Society
	Zurich



Financial Ombudsman Service  
Exchange Tower  
E14 9SR