

Temporary changes to outcome reporting in our business-specific complaints data

Feedback statement

April 2023

Contents

1. [About us](#)
2. [Introduction](#)
3. [Overview](#)
4. [Detailed consultation feedback and our response](#)
 - [Organisations responding to our consultation](#)

About us

We were set up by Parliament under the *Financial Services and Markets Act 2000* (FSMA) to resolve individual complaints between financial businesses and their customers fairly and reasonably, quickly, and with minimal formality.

Information about the types of cases we can consider, who we can help and the awards we can make, can be found on our web page.

We share the insight we gain from resolving thousands of disputes a year to improve outcomes for all customers of financial services products.

Introduction

Our core purpose is to resolve disputes between financial services businesses and their customers in a fair, informal and efficient way. We have long produced fair and high-quality outcomes, but we know that we need to do more to provide these outcomes quicker.

Working with financial services businesses in a pragmatic and transparent manner is a key part of producing the right outcomes for all parties. We have heard from financial services businesses that amending how we record proactively settled cases would be proportionate and fair, as well as a strong incentive to resolve cases even earlier. In 2021/22, we ran a five month pilot, which led to around 100 businesses making nearly 7,000 offers to resolve complaints and securing around £22m in consumer redress.

As such, we are keen to undertake a further trial to see if this initiative is suitable as a more permanent change that will generate faster resolutions whilst maintaining fair and high-quality outcomes.

We thank all the respondents to the consultation for sharing views and we look forward to working with all stakeholders on this initiative going forward.

Abby Thomas

Chief Executive and Chief Ombudsman

Overview

Background

- We have worked with financial services businesses to resolve cases proactively where the financial business wishes to put forward a settlement offer and we believe it is a fair offer that is appropriate to pass on to the complainant.
- Whilst this can benefit all parties, financial businesses believe recording these cases as uphelds in favour of consumers is a disincentive to working with us in this way.
- In October 2021, as part of our work on reducing our backlog, we consulted on a temporary initiative to amend how we record proactively settled cases that meet certain conditions. This was warmly received by stakeholders.
- During the five months the initiative was live, around 100 businesses made nearly 7,000 offers to resolve complaints. This had a substantial impact on our queue, eased operational pressures at businesses, and helped complainants get fair answers quicker – including over 2,000 victims of scams who were reimbursed the money they lost.
- Many respondent businesses felt this change should be adopted permanently to resolve cases quickly and as early as possible. This view was raised in both our 2022 funding discussion paper and 2023/24 plans and budget consultation.
- We also committed to review the possibility of differentiated case fees at a later date, to encourage businesses to work with us to achieve a prompt resolution.

Consultation proposals

- The consultation proposed a trial for the 2023/24 financial year on the following basis:
 - To create a separate category in our business-specific complaints data to record complaints resolved by a fair and reasonable offer from a business within 14 days of us requesting the business' complaints file as "proactively settled"
 - If we receive an offer from a financial business within the 14 days, we will review the offer to determine if it is fair and reasonable. If we believe it is, we will share the offer with the complainant. If we do not think it is fair and reasonable, we will inform the parties and investigate the complaint as normal.
 - If the complainant accepts the offer, the complaint will close and be recorded as "proactively settled". If it is declined, we will investigate the complaint as normal.
 - If we review the complaint and find the offer fair and reasonable and it forms the basis of the resolution, we will record the outcome as "proactively settled".
 - As all the complaints will be chargeable under the FSMA definition, a standard case fee would continue to apply to all complaints settled in this way.
 - In principle, this initiative will only apply to complaints for which we either: (i) first request the business file on or after 1 April 2023 (and on or before 31 March 2024); or (ii) requested the business file less than 14 days before 1 April 2023.

The key difference from the previous consultation and implementation is this initiative only applies to new cases with the service from, or for less than 14 days, 1 April 2023. The previous initiative only applied to cases that were already with our service by the time the initiative started, due to the focus at that time on reducing the backlog.

Responses

- We received responses from 56 stakeholders, including financial businesses, industry trade bodies, consumer representatives and consumer groups.
- Most responses were welcoming of the proposal, with key reasons being:
 - The initiative encourages fair early resolutions
 - It removes a barrier to settling cases early
- Key challenges included
 - The suitability of the initiative for ongoing case handling purposes rather than just backlog reduction
 - A perception that it was unfair to charge a full case fee for these cases
 - The risk that it may lead to a focus on uphold rates rather than fair outcomes
 - The risk that financial businesses circumvent rules around complaints handling
 - Potential lack of transparency around data and insight
 - The duration of the response window: 14 days was felt by some to be too short to review a complaint and make an offer
- Other responses highlighted:
 - The service must monitor firm and representative use of the initiative
 - Financial businesses would need time to make changes to internal systems
 - Guidance from FOS is crucial in educating all parties

What we are taking forward

As a result of the consultation and feedback received, we will proceed with a slightly modified initiative for the 2023/24 financial year, which will see us report cases as “proactively settled” where the following criteria are met:

- As noted above, the initiative only applies to complaints which we (i) request the business file on or after 1 April 2023 (and on/before 31 March 2024); or (ii) requested the business file less than 14 days before 1 April 2023.
- Within 21 days of us requesting the respondent’s business file, the business may offer to settle the complaint, but we must be clearly informed within 14 days that an offer is coming. This is a change from the 14 days to make an offer which we consulted on.
- If we receive an offer from a financial business within the 21 days, we will review the offer to determine if it is fair and reasonable. If we believe it is, we will share the offer with the complainant. If we do not think it is fair and/or reasonable, we will inform the parties this is the case and that we intend to investigate the complaint as normal.
- If the complainant accepts the offer, the complaint will close and be recorded as “proactively settled”. If the complainant declines the offer, we will begin investigating the complaint as normal and the usual ‘change in outcome’ or ‘no change in outcome’ will apply.
- If we review the complaint and find the offer fair and reasonable and the customer accepts our initial findings, we will record the outcome as “proactively settled”.
- We will continue to engage with financial businesses as to our expectations around this initiative, as well as general obligations under the DISP complaints handling rules, and closely monitor how the initiative is utilised.

- We will work with the FCA to share how we are monitoring business behaviour under this initiative and look at what data and insight we can share.

Detailed consultation feedback and our response

We consulted for two weeks in March 2023 and we received 56 responses, with a list of respondents included on [page 12](#).

This summary does not include all the individual points made but brings feedback together to focus on common or contrasting themes and issues. Some themes and points are raised in multiple questions and so we will highlight where it has been raised previously and refer to prevent duplication.

This summary also builds on feedback we had heard from stakeholders as part of our ongoing engagement since the original trial was first developed in late 2021.

We've split the below section into feedback from our stakeholders and then our response to that feedback.

What we asked:

Q1: Do you agree or disagree with this proposal?

Comments received:

- Most respondents were supportive of this proposal, stating that it provides the right incentives for financial businesses to review cases earlier, whilst guaranteeing fair outcomes for all parties.
- Respondents highlighted that whilst financial businesses should get the right answer before cases reach our service, mistakes can occur or situations can change, and having another chance to review cases earlier is a good thing.
- Although most respondents were supportive, there were some concerns raised.
- It is felt that financial businesses could be disincentivised from handling complaints properly and actively circumvent their responsibilities under the DISP complaint handling rules, using this initiative to mask in house problems or to 'out-source' complaints handling to the service.
- One respondent highlighted a concern that this initiative may not be voluntary.

Our response and next steps:

- It is very helpful to receive so much feedback on our proposals and it is good to see so much support. We agree with the feedback that this initiative will not only lead to faster resolution, but that the safeguards we have put in place to review offers, will ensure that the right outcomes are being reached.
- This initiative is voluntary as we don't expect that all cases can or should be reviewed in this way. This is one of the reasons that we will review offers before they are put to consumers. Businesses are free to make offers on any cases they feel it is appropriate. But if we don't think it is fair, or there is complexity which requires further investigation, then these cases should not be included.
- It was suggested by one respondent that this is being done to reduce backlogs at the service rather than focus on customer outcomes. Although backlog reduction was the reason for the 2021/22 initiative, that is not the aim here. We have long seen cases that can be resolved early on, and we believe it is correct to trial a formal process for earlier

resolution with proportionate incentives and appropriate safeguards. We believe this will lead to both better and faster resolutions, which will in turn reduce the risk of future backlogs.

- This builds on our implementation of the recommendations made in our [Board commissioned independent review](#), which have materially improved our service standards by reducing the number of cases over twelve months old from 32.7k to 11.6k as of March 23. This includes 7.5k cases which are adjourned due to reasons beyond our control such as pending litigation. Information about the ongoing changes at the service and our 2023/24 strategic priorities can be found in our most recent [plans and budget document](#).
- We understand concerns about business behaviour and the risks of businesses circumventing DISP complaint handling rules. We will be monitoring business behaviour and we will highlight our expectations and share any specific concerns with financial businesses throughout the trial.
- We have discussed this initiative with the FCA and are considering what, if any, data and/or insight that it will be helpful to share.
- We do not believe this initiative will act as a disincentive to financial businesses stopping cases coming to our service. A case fee will be chargeable and the case will still be included in the number of cases that come to our service. As mentioned above, we will review both the offers made and the behaviours that we see from financial businesses, and share this with the regulator where appropriate, so it is still in the best interests of financial businesses to resolve cases effectively before coming to our service.
- It is worth highlighting that this is still a trial to see if this initiative can and should be used on a permanent basis. If we do not believe the right outcomes are being driven by this initiative, then we will not implement this change permanently. We also reserve the right to end the initiative early if we have concerns about the behaviours we are seeing. Whilst we currently have no reason to expect this will happen, it is a contingency we will plan for.

What we asked:

Q2: Are there any amendments you would suggest we make to this proposal?

Comments received:

- A number of respondents felt very strongly that we should not be charging a full case fee for something that we not investigating fully.
- We have also had several representations that 14 days is not enough to effectively review a complaint and that 21 or 28 days is a more realistic timeframe.
- A prevailing theme was the desire for the process to be clearly mapped and defined, to avoid confusion or ambiguity. For example, the process around requesting an extension, or whether counter-offers could still be recorded as proactively settled.
- Some respondents commented that the quick proposed turnaround from consultation to 'going live' allowed no time for necessary internal system changes.
- One respondent questioned our ability to effectively record offers, due to additional manual work that was undertaken to clarifying which cases were proactively settled during the 2021/22 initiative.

Our response and next steps:

- We understand the views and strength of feeling about a lower case fee for these cases. We are currently undertaking a wider review about differential case fees, including charging by case stage, and as such, it is not the right time to undertake a separate piece of funding work. However, as part of this initiative, we will be collecting data which may prove helpful to ascertaining the feasibility of different price points for early closures in future (although no conclusions about this can be reached at this stage). Our aim is to consult on differential case fees in the 2024/25 plans and budget consultation later this year.
- With regards to giving financial businesses 14 days to make an offer, as explained in the consultation, this aligns with our standards complaints process where we ask for a businesses complaints file within 14 days.
- However, based on feedback from stakeholders and reviewing information from the original trials, we can see that allowing slightly longer is likely to generate a better quality of offer.
- As such, we will allow financial businesses 21 days from the date we have requested their business file to make an offer – however, we must be clearly informed within 14 days that an offer is forthcoming. This will enable us to better plan for, and monitor, offers.
- We will be issuing further information which will provide information on how offers should be submitted and the process to progress them.
- It is correct that we had to do unexpected additional reconciliation around the offers made in the original trial. We have learnt from this and are putting additional resource and processes in place to ensure it does not occur again.
- With regards to the question about counter-offers, we have decided that they will be excluded from the process and that a business should make the most appropriate offer in the circumstances and if this is not accepted, then the case will be worked under our usual process. However, questions or clarifications about an offer, within reason, will be considered as part of the original offer, rather than a counter-offer.
- We are excluding counter-offers to prevent confusion and complexity, as well as preventing the risk of financial businesses trying to ‘game’ or undermine the system by presenting initial low offers, which are then increased, as a negotiating tool.
- We understand the request for guidance mapping the process. As with much of our casework, many questions will depend on the circumstances of individual cases, and we are happy to work with financial businesses to answer questions as they arise. As mentioned previously, we are generating guidance for our website and we will update stakeholders when this is available.
- Finally, whilst we understand that financial businesses may need to make changes, there was a similar turnaround time with the previous initiative which was similar to this one and many businesses were able to implement the changes needed in time. Given that this initiative is voluntary, we believe this will enable businesses that are ready to participate straight away and businesses not ready from 1 April 2023 will still have opportunity to participate throughout the financial year once they are ready.

What we asked:

Q3: To what extent do you agree that the Financial Ombudsman Service should review the fairness of an offer made under this process?

Q4: Are there any additional risks towards fairness that haven't been identified, or mitigations that we should consider putting in place, should this proposal be implemented?

Comments received:

- A majority of respondents were supportive of our proposal to review the fairness of offers made as this is at the heart of the role of the service. This will mitigate the risk of unfair offers and provides reassurance about the offer. It will also allow feedback or guidance to be provided to financial businesses.
- It was mentioned this did not hinder the resolution of complaints in the original trial.
- However, one or two respondents did state the process would work better if offers were presented directly to consumers or if we passed them on without comment.
- It was also suggested there was a particular benefit for vulnerable consumers in us reviewing the offer, as they may be more likely to feel pressured into accepting a lower offer.
- By reviewing offers, respondents felt that we could gain useful insight as to how businesses make offers, and we could utilise and share this insight with financial businesses and the FCA.
- However, a number of respondents questioned how we will review the fairness of an offer without a business file.
- Concerns were also raised about the length of time we can take to look at a new case and the need for infrastructure to identify, monitor and progress any offers.
- Questions were also asked about how long our service had to review offers.
- As with previous questions, respondents questioned if financial businesses who make lots of offers may be missing or hiding problems within their own complaints handling.
- Respondents are also keen to ensure that there is no potential for consumers or their respondents to game the system or use this incentive to bargain for more redress.

Our response and next steps:

- It is good to see that so many respondents agree with our proposal that we review offers before putting them to consumers, as we did with the original trial.
- We agree with all the respondents who set out that this is key to our role in dispute resolution and that it will mitigate risks of unfair offers, provide reassurance to customers, as well as provide a source of insight that can be utilised to provide feedback and learnings to stop complaints arising initially.
- In terms of the practicalities as to how we will review the fairness of an offer without a full investigation, when a financial business provides us with an offer, we will expect them to be able to explain and evidence why the offer is appropriate and this will likely depend for each case. We will be happy to provide feedback to financial businesses if we see areas where improvements can be made.
- As this trial follows on from the previous trial, we believe we already have the infrastructure in place to oversee and manage offers. We learnt a lot of lessons from the previous trials and as such, are ensuring that these are implemented before we begin.

As with all our case handling, we will work with financial businesses as we go along and if further improvements are identified during the trial, we will embed them as we go along.

- We agree that it is important that our review needs to be timely. As such, we will aim to review the majority of offers within five days of receipt, and either pass them on to consumers or send them back to financial businesses. We believe this is proportionate and in keeping with our new service standards.
- As well as having clear timescales to review offers, financial businesses are keen to ensure that there is consistency of review. We have a robust quality assurance programme which reviews initial determinations and final decisions, and we will be looking to undertake similar, proportionate quality checks on reviewed offers. This, alongside internal guidance for case handlers, will ensure that stakeholders can expect high quality and consistent outcomes from our service.
- We agree that there could be a risk of financial businesses ‘over utilising’ the initiative and that this could be detrimental to customers. As stated in question one, we are putting processes in place to monitor the use of the initiative (as well as the offers received) and if we have concerns we will work with both financial businesses and the FCA where appropriate.
- Whilst we understand concerns about consumers or professional representatives trying to leverage the initiative to gain higher amounts of redress, we do not think that the risk is any higher than with any other complaint coming to our service. As with all complaints, if financial businesses think customers are not acting in good faith, this can be shared as part of a response. If there is any evidence of bad behaviour by professional representatives, we will remind them of our expectations and their obligations as regulated businesses, and if appropriate, we will share evidence of any poor conduct with the relevant regulator.

What we asked:

Q5: To what extent do you agree or disagree with our assessment of the risks to data integrity and transparency?

Q6: Are there any additional mitigations for this risk that we should consider putting in place, should the proposal be implemented?

Comments received:

- There is a general consensus that our data will maintain its integrity despite the change, and that it would continue to give our service the insight it needed to be aware of, and be able to act upon, regarding good and bad industry practice.
- Some respondents felt extra granularity is needed as to how businesses make offers would assist our service, the FCA, and the industry as a comparative tool.
- Those that disagreed felt that the uphold rate would be diluted by proactive settlements, and ‘proactively settled’ would be considered the same way as ‘upheld’.
- Stakeholders queried if the general 30 resolved cases and 30 new cases threshold for data publication will still apply or if there is an additional threshold.
- There was concern that by recording these cases as resolved early, both ourselves and our stakeholders will lose the benefit of insight and data about these cases, which in turn could impact the transparency of the work done by the service. There could also be a risk of fewer published final decisions meaning that financial businesses have fewer opportunities to understand and align with our approach.

- As raised in other questions, concerns were listed that financial businesses who settle a lot of complaints through this mechanism could actually be masking poor complaint handling.
- Again, as previously stated, it was suggested that if the data shows financial businesses are more likely to settle early or are being more generous with their awards, professional representatives may increase referrals or use this initiative to try and negotiate more redress.

Our response and next steps:

- Again, it is reassuring to hear that respondents believe that our data will not only maintain its integrity, but this additional granularity will be a helpful comparator and provide additional insight for ourselves and stakeholders as to how businesses make offers. As such, we will be able to share learnings with stakeholders to make offer fairer and potentially prevent complaints arising in the first place.
- As mentioned previously, we will scrutinise this data to share insights and any concerns we have about business behaviour and use of the initiative.
- Similar to the original trial, we will continue to publish data for financial businesses who have received 30 cases and resolved 30 cases and not have a specific threshold for proactive resolutions to ensure clear and consistent data publication.
- We will make it clear as part of our data publication what the difference is between “proactively settled” and “upheld” so that those who use our data can make informed decisions.
- Again, as stated in the previous question, we do not believe that this initiative poses a risk to consumers or their representatives trying to ‘game’ the system but if we do see any evidence of this behaviour, we will work with representatives and if necessary, the relevant regulator to prevent this.

What we asked:

Q7: Do you have any other comments or thoughts about the proposals set out in this consultation paper?

Comments received:

- A number of stakeholders highlighted that a two week consultation is unusual and makes it difficult for respondents to have the time to properly consider, scrutinise and respond to proposals.

Our response and next steps:

- We appreciate stakeholders’ concerns and acknowledge that a short consultation is not ideal. However, as previously stated, we have long worked with financial businesses in many guises on early proactive resolution, which includes our previous consultation and initiative in 2021/22 and the subsequent conversations and inclusion in other documents, including recent plans and budget consultations.
- As such we felt that a short consultation period, including proactively reaching out to a range of stakeholders, would not be a barrier to ensuring that we received a full range of views. As we hoped, we received a significant number of responses from a full range of stakeholders. We were pleased with both the quality and quantity of the engagement from stakeholders and thank them for their participation.

- Although the consultation period has ended, we are keen to continue our engagement with stakeholders and receive feedback about the trial as it continues.

Organisations who responded to the consultation

Respondents who have agreed to have their names published are as follows;

Aegon	James Hay Partnership
Age Partnership	Legal & General
AJ Bell	Lloyds Banking Group
Association of British Insurers (ABI)	M&G
Association of Consumer Support Organisations	Monzo
Association of Mortgage Intermediaries	NS&I
Assurant	Nationwide
Aviva	NatWest
AXA	NewDay
Bamboo Loans	NFU Mutual
Barclays	NHBC
BMW Financial Services	Phoenix Group
Bott and Co Solicitors	Revolut
Butterworths Solicitors	Royal London
CB Payments	Saga
CJS Solicitors	Santander
Close Brothers	Scottish Friendly
Consumer Credit Association	St James's Place
Consumer Credit Trade Association	The Co-operative Bank
Credit Services Association	TLW Solicitors
Domestic & General	Trading 212
esure	UK Finance
Finance and Leasing Association	Unum
Financial Services Consumer Pane	Which?
Gain Credit	Wise
HSBC	Yorkshire Building Society
Individual respondent	
Interactive Investor	
Innovate Finance	



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