Complaints Commissioner

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31 July 2026

Final report by the Complaints Commissioner

Complaint number 202500704

The complaint

1. On 20 March 2026, you submitted a complaint to my office about the FCA's oversight of the Financial Services Ombudsman ("**FOS**"). Your view is that DISP 3.6.4R (from the FCA Handbook) obligates the FOS to take into account relevant regulator's rules, guidance and standards, which includes PRIN 2.1.1R of the FCA Handbook ("**the Principles**"). You maintain that the FOS, however, often applies a fair and reasonable test which is inconsistent with FCA rules and the Principles; accordingly, your complaint is that the FCA is not ensuring that the FOS applies the Principles in its decision making.

2. **Outcome – Not upheld**. The FCA's oversight function does not extend to giving the FOS or its Ombudsmen directions on the interpretation of DISP and other rules. However, I consider that its response to you could reasonably have been clearer and more complete. I have also included detail in this report of the ongoing work relating to the interactions between the FCA and the FOS and in relation to the "fair and reasonable" test.

Background

3. You raised a complaint with the FCA on 3 December 2025. You alleged that the FCA was unwilling, had failed, or neglected to ensure FOS applied the Principles when considering cases and in its decision making. In addition, you stated that this had affected you personally because if the FCA had ensured the FOS was applying the Principles rather than using the "fair and reasonable" test, the outcome of your FOS complaints would, in all likelihood, have been different.

4. The FCA responded to your complaint in its Decision Letter dated 6 January 2026. The FCA said that after carefully considering your complaint, it could not investigate the allegations under the [Complaints Scheme (November 2023)](). This was because your complaint related to the way in which the FOS dealt with and determines individual complaints, including the standards it applies, which was outside of the scope of the Complaints Scheme (see paragraph 2.9(d)).

5. The FCA provided, in its Decision Letter, some information about the role of the FCA, the role of the FOS and the FCA oversight of the FOS.

6. You were unhappy with the FCA decision and subsequently raised your complaint with my office on 20 March 2026.

Analysis

7. It is apparent to me that your complaint raises what you consider to be a gap in the regulatory framework. You refer to the Principles and suggest that DISP 3.6.4R contains an obligation on the FOS to apply them in its decisions. You suggest that the FCA ought to ensure, but is not ensuring, the FOS applies the Principles in its decisions. You have also said that during the course of the FCA's investigation into your complaint you raised queries with the FCA which it has not answered about the interaction between the fair and reasonable test the FOS applies and the Principles. You ask: *"Is every action which is in breach of the Principles ipso facto unfair or unreasonable? Or can clear breaches of the FCA Principles be fair and reasonable for the FOS?"*

8. I will start by saying that the FCA is correct in stating in its Decision Letter that under the current regulatory framework, *"the FCA has no power…to direct the standards applied"* in individual FOS decisions. I am aware that your complaint is not in relation to your specific individual cases, but I must be clear that it is correct that the FCA's oversight function does not extend to giving the FOS or its Ombudsmen directions on handling particular complaints, making operational decisions and its interpretation of DISP and other rules.

9. On the issue of how the FOS make decisions, including the application of 'good industry practice' the FCA has explained to this office, since the issuance of your Decision Letter dated 6 January 2026, that, "[t]*he*

Ombudsman will review a complaint based on what is in its opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R). In considering what is fair and reasonable in all the circumstance of the case DISP 3.6.4R says that the Ombudsman will take into account:

Relevant factors:

a. *law and regulations;*

b. *regulator's rules, guidance and standards;*

c. *codes of practice; and*

d. *(where appropriate) what it considers to be good industry practice at the relevant time*".

10. The FCA's position is that the FOS has wide discretion to apply any relevant standard under DISP 3.6.4.R and, where appropriate, to form a view of industry best practice based on its experience. The FCA does not oversee how the FOS applies DISP or the relevant factors listed above. Nor does the FCA have any legal powers to direct the FOS in its decision-making process - doing so would undermine the FOS' statutory independence.

11. You noted in your response to the Preliminary Report that your question about whether the FOS can determine that *"clear breaches of the FCA Principles"* are nevertheless fair and reasonable had not been answered by this office or the FCA. This is a question about how the FOS applies DISP and the relevant factors in its decision-making. Consequently, it relates to the actions or inactions of the FOS and not the FCA and therefore does not fall under the Complaints Scheme. This means that it cannot be considered by my office.

12. In response to my Preliminary Report, you have also commented that your complaint concerns the FCA's use of guidance rather than directive powers. You suggest that the FCA has power to issue guidance to the FOS, that issuing guidance is one of the FCA relevant functions and that the FCA failed to exercise this relevant function through its failure to issue guidance to the FOS to ensure it applies the Principles when deciding complaints. I do not agree. The Complaints Scheme clearly sets out the circumstances in which we cannot investigate a complaint, and this includes where it does not relate to

the FCA's 'relevant functions', specifically including, *"complaints about the exercise of our legislative functions – such as rule-making and issuing general guidance"* (see paragraph 2.9(c)). As a result, whilst I have responded to your complaint as fully as I can in relation to the FCA and FOS interaction, I am unable to investigate allegations about the FCA failing to issue general guidance to the FOS about the way it deals with complaints.

13. Where a complainant is dissatisfied with how the FOS has applied DISP or the relevant factors, the available routes are therefore through the FOS's own processes, referral to the Independent Assessor where applicable, or legal proceedings. As the FOS is a public body, the FOS and its ombudsmen are subject to being judicially reviewed by the court under its supervisory jurisdiction. As the FOS website suggests, a judicial review usually focuses on the process an ombudsman has used to make their decision, not on the facts and evidence of the dispute itself.

14. Having said that, I can understand your frustration with the response provided by the FCA which gave very little information about either the current or proposed future regulatory position. It also did not mention the consultations which are being undertaken by both the FCA and HM Treasury. I provide the following information which you may find useful.

Proposals to Reform the FOS

15. Between July 2025 and May 2026, the FCA and the FOS conducted a public consultation, (*CP26//9 – Modernising the Redress System*[1]) that sought views on how to improve the way in which the current system works. This included, but was not limited to, clearer guidance on the fair and reasonable test.

16. The FCA consultation was issued ahead of government legislation to deliver reforms in the Financial Services and Markets Bill. Between July and October 2025, the government consulted[2] on proposals to reform the FOS, which broadly focused on changes to the following areas in the FOS's legislative framework:

[1] CP25/22: Modernising the redress system

[2] Review of the Financial Ombudsman Service - Consultation response - GOV.UK

- the determination of complaints brought to the FOS;
- time limits for referring complaints to the FOS; and
- the approach to mass redress events

17. The government summary of its consultation included the following:

"Under FSMA 2000, the FOS must determine complaints "by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case" (the Fair and Reasonable test). Through its review and the consultation, the government has heard concerns that this allows the FOS significant discretion in its decision making, and that the test is insufficiently linked to the regulatory standards set by the FCA – this can create uncertainty for consumers and firms. The government therefore proposed to amend the test to align it more closely with FCA rules. The consultation proposed that, where FCA rules are relevant to a complaint, compliance with those rules, consistent with the FCA's intention for what those rules should achieve, would mean that the FOS would be required to find a firm has acted fairly and reasonably."

18. The government published its response to this consultation in March 2026, setting out the final package of measures to provide greater certainty and consistency for firms and consumers who use the FOS, and in May introduced legislation to deliver the reforms as part of the Financial Services and Markets Bill. This Bill is intended to achieve the following:

    a. Adapt the fair and reasonable test to ensure that, where firms have met their obligations under FCA rules, they must be found to have acted fairly and reasonably by the FOS.

    b. Introduce a referral mechanism to require the FOS to seek a view from the FCA on matters of interpretation where the FOS considers there may be ambiguity in what FCA rules require or issues that may have wider industry implications.

    c. Introduce a time limit of 10 years for bringing complaints to FOS, with exceptions at the FCA's discretion.

d. Make structural changes to provide greater consistency in decision making by giving the Financial Ombudsman (formerly the Chief Ombudsman) overall responsibility for determinations.

e. Make it easier for firms and consumers to understand and learn from FOS determinations by introducing a requirement for the FCA and the FOS to publish regular thematic reports.

f. Ensure the FCA, as part of its responsibility for setting the regulatory response to mass redress events, has the tools it needs to respond to these events quickly and effectively.

g. Give the government responsibility for appointing the FOS Chair and approving the appointment of the Financial Ombudsman.

19. In response to my Preliminary Report, you stated that your complaint should be, "*judged and upheld in relation to the FCA's failure as it continues today, not in accordance with the government's proposed legislation*". I have investigated and responded to your complaint as the position stands today. The additional information set out above is included because, in my view, it is relevant context for the concerns you raise about the interaction between the fair and reasonable test and FCA rules, and because it shows that work is underway to address aspects of the regulatory framework. I recognise, however, that those proposals do not assist you with the complaints that you have already brought to the FOS.

20. You also contend that the proposed legislative changes will "*further protect financial firms from complaints*". It is not my role under the Complaints Scheme to comment on the merits of government consultations or proposed legislative changes, and I have referred to them only to explain the wider context relevant to your complaint.

21. For the reasons set out above, I **do not uphold** your complaint that the FCA failed to ensure the FOS was applying the Principles because it is not within the FCA's remit to do so, although it could have been more helpful in providing you with useful information.

The Complaints Commissioner

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31 July 2026