

Consumer Redress: The current position and looking ahead

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The current position

The existing toolkit

- Complaints handling
- FOS decision making
 - Individual vs mass complaints
 - The “wider implications” process
- FSA powers
 - Issuing “guidance”/ Guidance on complaints handling
 - Putting pressure on firms to agree voluntary measures
 - Powers never used:
 - Restitution orders
 - HMT redress schemes

Problems

- System is not geared towards handling mass complaints
- No proper adjudication as to the law/ regulations
- Pressure on FOS to avoid/ find ways of handling “spikes” of complaints
- “Wider implications process” not an answer
- Not satisfactory for:
 - Consumers
 - Firms
 - FOS/ regulators

New proposals

Background: Government policy

- Civil Justice Council proposals for Collective Action
- Ministry of Justice response

FOS/ wider implications process

- Consensus that IWI process needs to be revamped
- See Lord Hunt's report
- Proposals in HMT Regulatory Reform white paper
- Doesn't address the adjudication issue

Proposals in FS Bill

- The FS Bill would:
 - Revamp s.404, giving FSA the power to impose a redress scheme
 - Based upon consultation alone
 - Liability only where there is a legal cause of action
 - Same not true of redress
 - Firms to determine liability/ redress, but:
 - FSA can give examples; and
 - new FOS role
 - Safety valve: judicial review
 - Permit a class action (opt in/ opt out)
 - Court certification, but regulators can argue for/ against it
 - The Bill provides only a framework
 - Some unexplained differences from CJC's proposals
- Overall direction of travel

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