

# **Rationed Redress: Institutional Equilibrium and the Limits of Consumer Justice in UK Financial Regulation**

## **Abstract**

Contemporary critiques of UK financial redress emphasise delay, inconsistency and regulatory hesitation, treating these as operational deficiencies within an otherwise consumer-oriented system. This article advances a different claim. It argues that the redress framework, structured around the Financial Conduct Authority and the Financial Ombudsman Service, systematically constrains consumer justice rather than imperfectly delivering it. Drawing on institutional economics and regulatory theory, the article conceptualises this arrangement as one of rationed redress, in which access to justice is formally preserved but substantively filtered through procedural design, institutional discretion and systemic constraint. Through analysis of regulatory rules, complaint-handling practices and case law, the article demonstrates how the disaggregation of claims, the absence of appellate development, temporal delay and procedural asymmetry collectively produce a bounded form of redress compatible with financial stability. It concludes by arguing that reform must engage not with superficial inefficiencies, but with the equilibrium conditions under which justice is currently distributed.

## **I. Introduction**

The United Kingdom's financial redress system is frequently presented as a model of accessible consumer protection. Individuals who consider themselves to have been treated unfairly by financial institutions are able, at least in formal terms, to pursue complaints directly with firms and, if dissatisfied, to escalate those complaints to an independent ombudsman without incurring cost. The system appears to offer a coherent and comprehensive framework in which rights are articulated, procedures are established and adjudication is available without recourse to the courts. On its surface, it reflects many of the characteristics associated with effective consumer protection in modern regulatory systems.

Yet this formal architecture sits in persistent tension with the practical experience of those who engage with it. Complaints are often protracted, sometimes extending over

many months or even years. Outcomes can vary across cases that appear, from the perspective of complainants, materially similar. Regulatory intervention frequently seems to follow, rather than anticipate, the emergence of widespread consumer harm. These features are commonly explained by reference to administrative limitation, evidential difficulty or the inherent complexity of financial disputes. However, those explanations do not fully account for the consistency with which these patterns recur across sectors and over time.

This article proceeds from the proposition that the UK financial redress framework is not best understood as one that imperfectly delivers consumer justice, but rather as one that conditions the circumstances under which such justice can be realised. The Financial Conduct Authority and the Financial Ombudsman Service do not operate as external correctives imposed upon the financial system. They are embedded within it and their actions are shaped by the same constraints that govern the institutions they oversee. Within this context, consumer protection becomes one objective among several, and its realisation is mediated through competing considerations of market stability, institutional continuity and economic impact.

To capture this dynamic, the article introduces the concept of **rationed redress**. This does not suggest that access to justice is denied. On the contrary, the system provides formal avenues through which consumers may seek resolution. Rather, the argument is that access is structured in such a way that the likelihood, timing and extent of redress are filtered through mechanisms that regulate both the volume of claims and their consequences. Justice is neither absent nor fully realised. It is distributed within limits that reflect the equilibrium of the system itself.

The argument developed here is therefore not that the FCA and FOS are insincere when they speak in the language of fairness, accessibility and consumer protection. It is that these commitments operate within a framework whose institutional design constrains what can be delivered in practice. The gap that matters is not simply the gap between promise and performance, but the gap between the formal architecture of redress and the substantive conditions under which it is actually made available. Once that distinction is recognised, many features ordinarily treated as regrettable failures begin to appear as the expected outputs of a system designed to reconcile justice with limits.

## **II. Dual Mandates and the Structure of Constraint**

The Financial Conduct Authority operates under a statutory framework that assigns it multiple objectives, including the protection of consumers, the maintenance of market integrity and the promotion of effective competition. These objectives are formally co-equal, yet their coexistence produces constraint rather than balance, requiring the

regulator to mediate continuously between imperatives that may diverge in practice. Consumer protection is therefore pursued within a broader field of institutional considerations that shape both the timing and intensity of intervention.

This constraint becomes most visible in the context of widespread or systemic misconduct, particularly within consumer credit markets. Obligations under the Consumer Credit Sourcebook, such as the requirement to undertake adequate creditworthiness assessments, are designed to prevent harm at the point of lending. Where such obligations are not met across a large volume of transactions, the logical regulatory response might appear to be immediate enforcement coupled with coordinated redress. In practice, however, the FCA rarely proceeds in this manner. Instead, it tends to adopt a phased approach in which patterns of harm are first identified through complaint data, then examined through supervisory engagement and thematic review, and only subsequently translated, if at all, into formal intervention.

This sequencing reflects a deeper institutional calculus. The consequences of intervention are assessed not only in relation to past misconduct but in terms of their prospective impact on the financial system. Large-scale retrospective redress has the potential to impose concentrated liabilities on firms, which may in turn affect capital adequacy, lending behaviour and market confidence. The regulator is therefore placed in a position where acting too decisively risks destabilising the system, while acting too slowly risks permitting harm to continue.

What emerges is a form of managed intervention in which regulatory action is calibrated to ensure that its effects remain absorbable within the system. Consumer detriment is acknowledged, but its correction is structured in a way that distributes impact across time and institutions. In this sense, the FCA does not simply balance competing objectives. It operates within a framework in which the scope of feasible justice is itself conditioned by systemic constraint. The question is not only whether intervention is justified, but whether it can be accommodated without producing consequences that extend beyond the immediate domain of consumer protection.

There is an important political economy dimension to this arrangement. Financial markets are not ordinary markets from the perspective of the state. They are infrastructural to credit creation, household borrowing, investment and broader economic confidence. Regulators operating within this environment do not simply regulate transactions. They regulate flows on which wider forms of economic stability depend. It follows that the costs of intervention are rarely treated as confined to the firms whose conduct is in question. They are assessed in relation to the possible effects on the system as a whole. Consumer justice, in such a setting, becomes structurally subordinate to the requirement that correction be delivered in a manner consistent with stability.

### III. Embedded Regulation and Institutional Alignment

The FCA operates within, rather than outside, the financial system it regulates. Its work depends upon continuous engagement with regulated firms, from whom it derives data, insight and operational feedback. Consultation processes invite industry participation in the development of regulatory policy, while supervisory relationships create ongoing channels of communication through which information, expectations and practical constraints are exchanged.

Over time, this embeddedness produces a degree of institutional alignment. Regulators and industry participants come to share frameworks for understanding risk, proportionality and feasibility. Decisions about intervention are shaped not only by normative considerations but by a shared sense of what is operationally viable within the system. This is not necessarily a matter of capture in any crude or conspiratorial sense. It is, rather, a consequence of institutional proximity. The more regulation depends on detailed understanding of market practice, the more it is likely to internalise the categories through which those markets describe themselves.

This matters because the language of practicality is never neutral. Proposals that would impose substantial retrospective liabilities or disrupt established business models are often presented, and received, as raising questions of proportionality, implementation difficulty or unintended consequence. Those questions may be entirely real. The difficulty is that they also function as boundaries on regulatory imagination. They define the range of interventions that appear serious, responsible or feasible. A response that would radically redistribute liability, even where morally attractive, may become institutionally implausible long before it is formally rejected.

The effect is subtle but profound. The regulator does not need to deny the existence of consumer harm in order to constrain the form of its response. It need only operate within a shared field of assumptions about what the system can absorb. This is one reason why the language of public commitment can coexist so easily with cautious institutional behaviour. The commitment is genuine within the terms of the framework, but the framework itself limits what can count as deliverable justice.

This embeddedness also helps explain why change often arrives through reinterpretation rather than rupture. The regulator is more likely to refine expectations, issue guidance, consult on rule clarification or monitor complaint patterns than to impose immediate, system-wide correction. That preference is not merely administrative. It reflects the fact that institutions embedded in a system tend to preserve its underlying logic even when they seek to adjust its outcomes.

## IV. The Disaggregation of Systemic Harm

Within this institutional framework, the role of the Financial Ombudsman Service assumes particular importance. The FOS provides an accessible forum for dispute resolution, applying a standard of what is fair and reasonable in all the circumstances. This allows it to consider law, regulation and industry practice while responding to the specific context of each complaint. It is often presented, and often functions, as a practical alternative to litigation, particularly for consumers who lack the resources to pursue formal legal action.

However, this flexibility also produces a structural effect. Where harm arises from systemic practices, such as repeated failures to assess affordability, the issue is not addressed collectively. Instead, it is processed through individual complaints, each requiring separate evidential reconstruction and adjudication. The consumer's financial circumstances, the sequence of transactions and the conduct of the firm must all be reassembled case by case. Even where the pattern is obvious in aggregate, the route to redress remains individualised.

This process fragments the visibility of harm. A widespread problem is translated into a succession of distinct disputes. Individual decisions may acknowledge failures in particular cases, but the systemic character of those failures does not necessarily acquire corresponding institutional force. It also distributes liability incrementally. Rather than facing a single moment of reckoning in which the full scale of conduct must be addressed, firms encounter a flow of separate cases, each producing a discrete obligation. This has obvious implications for financial exposure. Liability becomes staggered rather than concentrated.

The individualised character of ombudsman adjudication also inhibits the development of consistent standards. Because decisions do not operate as binding precedent, principles applied in one case do not necessarily determine the outcome of another, even where factual similarities are substantial. Consumers and firms alike therefore operate within a landscape of partial guidance rather than settled doctrine. That flexibility is often defended as essential to fairness in individual cases. Yet it also serves to prevent the consolidation of systemic accountability.

The cumulative effect is that systemic misconduct is rendered administratively manageable. It does not disappear, but it is processed in a form that limits its capacity to generate immediate and coordinated response. From an institutional perspective, this can be understood as containment through disaggregation. The scale of the problem is translated into units that the system can absorb. The question that follows is not simply whether particular ombudsman outcomes are fair, but whether a framework

built around individualised adjudication can adequately respond to harm that is, in substance, collective.

## **V. Procedural Design and the Filtering of Claims**

The procedural framework governing complaints further structures the operation of redress. Rules concerning time limits, evidential expectations and complaint handling stages are formally neutral. Yet neutrality at the level of rule design does not guarantee neutrality in effect. These rules operate in a context marked by sharp asymmetries between firms and consumers.

Consumers typically engage with the system as one-off participants. They may have limited access to historical records, incomplete understanding of regulatory obligations and little experience in assembling a formal case. Firms, by contrast, are repeat actors. They possess structured complaint systems, detailed account data, compliance functions and institutional familiarity with the expectations of dispute resolution bodies. Even where the ombudsman process is designed to be accessible, these background differences matter.

Within this environment, procedural requirements function as filters. Time limits may exclude claims where awareness of the underlying issue arises only belatedly. Evidential burdens may be difficult to satisfy where documentation is incomplete or where the relevant conduct occurred over an extended period. The requirement that complainants first exhaust internal complaint stages before escalating externally may discourage persistence, particularly where firms use the full period available to respond. A process that is formally open can therefore still narrow the practical range of claims that reach determination.

It is important to be precise here. The claim is not that procedure is fraudulent or that it exists solely to exclude. Procedure is necessary to any system of dispute resolution. The point is that procedure always distributes burdens, and the distribution of those burdens matters. Where one side enters the process with institutional memory, internal data and repeat-player advantage, rules that appear evenly framed can have markedly unequal effects.

This helps to explain why formal accessibility often coexists with low confidence among consumers. The issue is not simply whether a complaint may be made. It is whether the pathway from grievance to remedy can be navigated without disproportionate cost, uncertainty or attrition. When procedure operates as a series of small frictions, its effect is cumulative. It may not forbid redress, but it can ration it by increasing the cost of sustaining a claim to conclusion.

## **VI. Finality and the Containment of Legal Development**

The absence of a conventional appellate structure within the ombudsman framework further shapes the redress landscape. Decisions are binding on firms if accepted by consumers, but they do not ordinarily generate the sort of authoritative legal development associated with court judgments. Judicial review is available in principle, yet limited in scope and rarely a realistic route for ordinary complainants.

This institutional design has important consequences. It constrains the emergence of settled legal doctrine in areas where disputes are numerous but individually modest in value. Problems that recur across many cases do not necessarily produce corresponding appellate clarification. Instead, they are resolved within a system that values flexibility and informality over doctrinal consolidation.

The advantages of this structure are obvious. It lowers barriers to participation and avoids the costs of legalisation. Yet it also contains the transformative potential of disputes. A case resolved through the ombudsman may produce justice for a particular complainant, but it is less likely to generate a rule capable of reshaping conduct across a sector. The system therefore resolves claims while limiting the capacity of those claims to alter the legal environment in which future disputes will arise.

This containment matters because it prevents the accumulation of individual complaints into a coherent body of binding principle. In practical terms, firms may face repeated adverse determinations without confronting a definitive legal standard that compels systemic change. Consumers may succeed in particular cases without seeing their underlying grievances translated into broader regulatory or judicial transformation. The system therefore moderates the relationship between dispute and doctrine. It allows redress, but limits the extent to which redress can become jurisprudentially disruptive.

## **VII. Time and the Regulation of Behaviour**

Time is often discussed as though it were simply an unfortunate attribute of an overburdened administrative system. In reality, it functions as a structural component of redress. The distribution of complaints over extended periods allows firms to manage liabilities gradually, reducing the risk of sudden financial disruption. Rather than confronting immediate and concentrated exposure, firms respond to a continuing flow of claims that can be absorbed over time through provisioning, settlement and operational adjustment.

For consumers, prolonged timelines alter the dynamics of participation. The effort required to sustain a complaint increases as time passes, while uncertainty regarding outcome may discourage persistence. Some complainants withdraw, others accept outcomes they might otherwise contest and still others are deterred from initiating complaints altogether. Delay is therefore not merely a neutral temporal fact. It shapes behaviour.

These effects are not evenly distributed. Consumers with greater resources, stronger incentives or higher levels of confidence may be better able to remain engaged. Others may disengage earlier, not because their claims are weaker, but because the burdens of endurance are greater. Time thus introduces an additional layer of selection into the system. It influences not only how many claims are pursued, but which kinds of claimants are likely to see the process through to completion.

From a systemic point of view, this temporal structure performs an important function. It regulates both liability and participation without requiring formal limits on access. The system need not deny claims outright if it can shape the pace at which claims are processed and the willingness of complainants to persist. Time becomes a mechanism of indirect management, softening the disruptive potential of redress while preserving the appearance of openness.

## **VIII. Legitimacy and the Management of Visibility**

The system maintains legitimacy through the visibility of its procedures and outcomes. Consumers are able to access the process without cost, decisions are communicated in accessible terms and aggregate data concerning complaint volumes and outcomes is published. These features contribute to the perception of a system that is responsive and fair, reinforcing confidence in its operation.

However, this visibility is neither comprehensive nor neutral. While certain aspects of performance are made transparent, others remain less apparent. The number of complaints abandoned before resolution, the proportion excluded through procedural time limits and the degree of variation in outcomes across similar cases are not always readily observable. As a result, the public presentation of the system reflects only a partial view of its operation.

This distinction between what is formally visible and what remains less visible is significant. The system demonstrates accessibility and responsiveness at the level of individual cases, yet the aggregate effects of its processes are more difficult to discern. Patterns of attrition, inconsistency or procedural exclusion do not appear with the same clarity as individual upheld decisions. The result is not necessarily a

misrepresentation of outcomes, but a structuring of visibility in which certain dimensions of performance are emphasised while others recede.

Legitimacy, in this sense, is sustained through managed visibility. The system does not conceal its processes, but it presents them in a form that supports confidence without fully exposing the distributional consequences of its operation. This is a critical distinction. Public commitments to fairness and accessibility may be sincerely made, yet the observable indicators through which those commitments are judged do not always capture the deeper ways in which access is shaped and constrained. The problem is not that the system says one thing and consciously does another. It is that the most visible elements of its performance do not exhaust the reality of how justice is distributed within it.

## **IX. Accessibility and Its Limits**

The accessibility of the Financial Ombudsman Service is widely regarded as one of the defining strengths of the UK redress framework. By providing a free and relatively informal forum for dispute resolution, it enables consumers to pursue complaints without the financial and procedural barriers associated with litigation. This represents a significant expansion of access to justice within the financial sector and should not be dismissed lightly.

However, accessibility must be considered in relation to the structure within which it operates. A system may be accessible in formal terms while still shaping, and in certain respects limiting, the outcomes that it produces. The ability to bring a complaint does not determine the likelihood of success, the consistency of decision-making or the extent of compensation awarded. Those outcomes are influenced by procedural rules, evidential expectations, institutional practice and the asymmetries that consumers encounter once they have entered the system.

There is therefore a distinction between formal accessibility and substantive realisation. Consumers may be able to engage with the system yet encounter constraints that affect how their claims are processed and resolved. The absence of financial barriers does not eliminate other forms of limitation, including informational disadvantage, procedural complexity and the effects of time. Accessibility facilitates participation, but it does not guarantee that participation will translate into comprehensive or consistent redress.

In this respect, the system's strengths and limitations are closely intertwined. The same features that make it open to consumers also contribute to the form in which redress is administered. Informality lowers barriers, but can also limit doctrinal development. Individualised adjudication makes participation possible, but may fragment systemic

harm. Ease of access can coexist with substantive constraint. Understanding this relationship is essential to assessing not only whether the system is open, but what that openness ultimately enables and what it leaves structurally untouched.

## **X. The Equilibrium of Rationed Justice**

The dynamics examined throughout this article point towards the existence of a broader equilibrium within which the redress system operates. If justice is neither fully realised nor entirely absent, it becomes necessary to consider why it stabilises at this particular level. The answer lies in the interaction between the need to maintain legitimacy and the requirement to preserve systemic stability.

A system that failed to deliver meaningful redress would struggle to retain public confidence. Consumers who perceive that complaints are futile are less likely to engage with formal mechanisms and more likely to seek alternative forms of recourse, whether political, legal or informal. The availability of accessible procedures and visible outcomes therefore plays an important role in sustaining legitimacy. The system must demonstrate that grievances can be heard, that misconduct has consequences and that routes to remedy exist.

At the same time, the expansion of redress is subject to structural limits. Large-scale compensation arising from systemic misconduct has implications that extend beyond individual firms, potentially affecting capital adequacy, lending behaviour and wider market conditions. The regulator must therefore consider not only the justice of individual outcomes but the aggregate consequences of those outcomes when replicated across the system. A system that delivered justice without regard to these consequences would threaten the conditions on which it depends.

The equilibrium that emerges reflects the need to reconcile these pressures. The system delivers sufficient redress to demonstrate responsiveness, yet does so in a manner that disperses liability and moderates impact. Consumer dissatisfaction is neither eliminated nor permitted to escalate beyond manageable bounds. Instead, it is contained within a range that preserves both legitimacy and stability.

In this sense, the system does not maximise justice. It produces a level of redress that is politically acceptable and economically sustainable. Rationing is therefore not incidental but central to its operation. Justice is made available, but within limits calibrated to the wider demands of institutional and financial continuity.

## **X.A The Persistence of Equilibrium and the Limits of Disruption**

The identification of equilibrium raises a further question. If the current configuration of redress produces constrained and uneven outcomes, why does it persist? Why has the system not evolved, either through regulatory reform or external pressure, into a more expansive model of consumer justice?

One answer lies in the distribution of incentives within the system itself. The costs associated with constrained redress are dispersed across a large population of consumers, each of whom experiences harm individually and often at relatively modest scale. By contrast, the costs associated with expanding redress are concentrated, both financially and institutionally, on regulated firms and, indirectly, on the stability of the financial system. This asymmetry affects not only economic outcomes but the dynamics of pressure for change. Diffuse dissatisfaction does not necessarily produce organised and sustained reform pressure, whereas concentrated exposure creates strong incentives for resistance.

A further factor concerns the institutional pathways through which change might occur. The redress system is structured in a manner that limits escalation. Individual complaints are resolved within the ombudsman framework, legal development is contained by the absence of systematic appellate review and regulatory intervention is mediated through processes that emphasise consultation and proportionality. These features do not prevent change, but they shape its trajectory, favouring incremental adjustment over structural transformation.

The system also reproduces its own legitimacy through the mechanisms already described. Accessibility, the visibility of outcomes and the provision of individualised decisions create an ongoing demonstration that the system is functioning. Even where outcomes are uneven in aggregate, the presence of successful complaints and the availability of recourse sustain confidence at a level sufficient to avoid widespread disengagement. In this sense, legitimacy does not depend on the maximisation of justice, but on the maintenance of a credible appearance of responsiveness.

Taken together, these factors suggest that the equilibrium identified in this article is not temporary but relatively stable. It persists not because it is normatively optimal, but because it aligns with the distribution of incentives, the structure of institutional processes and the requirements of systemic stability. Disruption of this equilibrium would require not only recognition of its limitations, but a reconfiguration of the conditions that sustain it.

This perspective also clarifies why critique alone rarely produces transformation. To identify the ways in which justice is constrained is not yet to alter the institutional logic that constrains it. The challenge of reform is therefore deeper than the correction of inefficiency. It lies in changing the incentive structure and decision architecture that make rationed redress both durable and governable.

## **XI. Reconfiguring the Conditions of Redress**

If the limitations of the redress system arise from its structural configuration, then meaningful reform must engage with that configuration rather than focusing solely on procedural refinement. Adjustments to timelines or guidance may improve efficiency at the margins, but they are unlikely to alter the underlying dynamics through which redress is conditioned and distributed.

One possible avenue for reform lies in strengthening the relationship between patterns observed in ombudsman determinations and regulatory intervention. Where large volumes of complaints reveal consistent forms of misconduct, mechanisms could be developed to translate those patterns into coordinated responses, reducing reliance on individualised adjudication as the primary mode of redress. This would involve recognising systemic harm at the level at which it occurs rather than allowing it to remain fragmented across individual cases.

A further consideration concerns the asymmetry of information between firms and consumers. Enhancing obligations on firms to disclose relevant data in complaint processes may alter the evidential balance, reducing the extent to which outcomes depend on the consumer's ability to reconstruct past circumstances. Similarly, the introduction of more consistent interpretive frameworks could mitigate variation in outcomes across similar cases, addressing concerns regarding inconsistency without eliminating flexibility.

These forms of reform do not seek to replace the existing system but to recalibrate its operation. They aim to adjust the conditions under which redress is delivered rather than assuming that increased procedural efficiency alone will produce substantively different outcomes. The central issue is not simply how the system functions, but how its structure shapes what it is capable of delivering.

## **XII. The Limits of Reform**

Any effort to reform the redress system must take account of the constraints within which it operates. The tension between consumer protection and financial stability is not incidental, but a defining feature of the regulatory environment. Measures that

significantly expand redress may generate consequences that extend beyond individual cases, affecting firm behaviour, market dynamics and the availability of financial services.

For this reason, reform is likely to be incremental rather than transformative. Proposals that seek to alter the distribution of redress must be evaluated not only in terms of their immediate benefits to consumers, but also in relation to their broader systemic effects. The regulator operates within a framework that requires these considerations to be balanced, and this balance imposes limits on the extent to which change can occur.

This does not render reform ineffective, but it does shape its trajectory. Adjustments can be made to the mechanisms through which redress is delivered, potentially improving consistency, transparency and accessibility. However, the underlying equilibrium, in which justice is delivered within the bounds of systemic constraint, is unlikely to be entirely displaced. The challenge lies not in eliminating this equilibrium, but in understanding its parameters and exploring how they might be recalibrated.

### **XIII. Conclusion**

The UK financial redress system does not fail in a simple or straightforward sense. It operates within a structured equilibrium that shapes the distribution of justice. The concept of rationed redress captures this condition, drawing attention to the ways in which access to justice is mediated by institutional design, procedural mechanisms and economic constraint.

Understanding the system in these terms shifts the focus from improving performance within existing structures to questioning the parameters that define those structures. It invites a reconsideration of how consumer protection is conceptualised and pursued within a regulatory framework that must continually balance justice against stability.

The significance of that shift should not be understated. So long as the system is understood primarily through the language of delay, inconsistency or administrative shortcoming, the remedies proposed are likely to remain procedural and limited. Once it is recognised that those features may be the expected outputs of a framework designed to ration justice within acceptable bounds, the terms of analysis change. The central question ceases to be whether the system is working as intended and becomes, instead, whether what it is intended to do is adequate to the demands of consumer justice.

That question cannot be resolved by technical adjustment alone. It is ultimately a question about the political and economic settlement within which redress is delivered.

Until that settlement is confronted directly, justice within the UK financial redress system will remain available, but bounded, visible, but partial, formal, but rationed.