

Application for status of super-complainant to the Financial Conduct Authority (FCA): opportunity to comment

Response from the Financial Ombudsman Service

16 October 2013

The Financial Ombudsman Service welcomes the opportunity to comment on the current applications.

about us

The Financial Ombudsman Service was established by law to resolve individual disputes between consumers and financial businesses – fairly, reasonably, quickly and informally. We are an independent and impartial service and can look at complaints about a wide range of financial matters – from banking and insurance to mortgages and investments.

Our approach is to determine each complaint by reference to what is, in our opinion, fair and reasonable in all the circumstances of the case. In doing so, we are required to take into account the relevant law, regulators' rules, guidance and standards, codes of practice and (where appropriate) what we consider to have been good industry practice at the time.

our response

We are supportive of the new powers under FSMA 2012 for designated bodies to be able to make a 'super-complaint'.

The role of the ombudsman

The ombudsman service already shares information with the FCA on a regular basis; we have a duty to do so, arising from the unique insight our role gives, and we take this role in supporting the FCA seriously. Given this regular, structured exchange that already happens, we hope it will not be necessary for us to use the power under section 234D. But in any case, there are some things about us and our role that lead us to support a more diverse range of potential super-complainants.

Crucially, we are not a consumer or a business champion. We would never come to the FCA with a 'consumer voice' or 'business voice' on the major issues those groups face or the remedies they would like to see. But we think it's important that those voices have a place in the super-complaint process.

This is particularly important because we only see the most intractable complaints - currently less than 10% of all financial services complaints – from those consumers who are determined and motivated to pursue their case, and about issues we are able to consider under the rules by which this service operates. While we can provide insight to the regulator about the issues we see, this forms only a small part of the overall picture.

The contribution of other super-complainants

For these reasons, it is vital that the regulator is able to hear direct from groups that can meaningfully represent consumers and businesses about any problems they are encountering within the financial services industry, in order to get the full story. As well as giving the FCA a fuller picture, this will be useful to us too as it may provide insight into why some rejected complaints make it to the ombudsman and others don't.

It will of course be important to think carefully about the range and overall number of potential super-complainants, given the considerable additional work that super-complaints could impose on the FCA. Where possible it would also be good to apply well-defined, transparent processes and criteria in determining who they will be.

It is for the FCA to design and apply these processes and criteria, and we cannot speak confidently across the whole sector. But based on our own experience we do know that currently Citizens Advice, Which? and the Consumer Council for Northern Ireland all make a valuable contribution to our consumer liaison work and have demonstrated a collaborative and responsible style. We therefore fully support their applications for super-complainant status.

Consumers are not the only group who will need a voice. While large businesses probably already have appropriate access to the FCA, we consider it is also important for representatives of small businesses to have access to the super-complaint process, perhaps particularly in light of the recent cases involving interest rate hedging products which are not always within our jurisdiction to consider. While the same points about process and criteria apply, based on our experience we therefore also support the Federation of Small Businesses in its application as a super-complainant.

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