

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (DESIGNATED CONSUMER**  
**BODIES) ORDER 2013**

**2013 No. 3191**

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order designates consumer bodies that may bring ‘super-complaints’ to the Financial Conduct Authority (FCA) on behalf of consumers of financial services. These are complaints brought by a representative body that a financial services market in the United Kingdom appears to be significantly damaging the interests of consumers. Such complaints benefit from a ‘fast track’ procedure, under which the FCA must publish a response within ninety days, stating how it proposes to deal with the complaint and the reasons for its proposals.

**3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 This order is being made under 234C of the Financial Services and Markets Act 2000 (‘FSMA’), which makes provision for consumer bodies designated by the Treasury to make complaints to the FCA.

4.2 This will be the first time that bodies have been designated to make such complaints to the FCA. Under section 234C(3) FSMA the Treasury may designate a body only if it appears to them to represent the interests of consumers of any description. The Treasury must also publish criteria to be applied by them in determining whether to make or revoke a designation (234C(2)).<sup>1</sup>

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

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<sup>1</sup> *Guidance for bodies seeking designation as super-complainants to the Financial Conduct Authority*, March 2013, available at: [www.gov.uk/government/publications/guidance-for-bodies-seeking-designation-as-super-complainants-to-the-financial-conduct-authority](http://www.gov.uk/government/publications/guidance-for-bodies-seeking-designation-as-super-complainants-to-the-financial-conduct-authority)

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- What is being done and why

7.1 The purpose of permitting designated bodies to make super-complaints is to encourage well-researched and substantial complaints to be made on behalf of groups of consumers who would not find it as easy to make such complaints individually. The policy is intended to secure more effective representation of consumers of financial services by enabling complaints about the financial services industry to be brought directly to the FCA, who are best placed to investigate and respond to them. Previously, complaints by representative bodies about financial services could only be brought to the Office of Fair Trading.

7.2 A complaint may be made when a designated consumer body considers that one or more features of a market (such as the market structure or the conduct of firms operating within it) is significantly harming the interests of consumers. The market may be regional, national or supranational (where the UK forms part of that market). The FCA must publish a response to a super-complaint within ninety days, stating how it proposes to respond to the complaint and giving reasons for its proposals. Anyone can make a complaint to the FCA about market failure, but only bodies designated under this order will be able to make 'super-complaints' which benefit from this 'fast track' procedure.

7.3 On the 12 March 2013 the Treasury invited applications from bodies that wish to be designated to make complaints under 234C ('super-complainants'), and published criteria that applicants should meet.<sup>2</sup> The Treasury received applications from the National Association of Citizens Advice Bureaux, The Consumers' Association, the General Consumer Council for Northern Ireland and the National Federation of Self Employed and Small Businesses, and determined that all the applicants should be designated.

7.4 There is likely to be some public interest in designation because it will be the first time that complaints can be brought by representative bodies directly to the FCA, and the first time a representative of small and medium sized enterprises (SME) will be awarded the status of super-complainant. However, since the identity of the applicants is already public information, public interest is likely to be low.

- Consolidation

7.5 None

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<sup>2</sup> As above, footnote 1.

## 8. Consultation outcome

8.1 From 15 October to 24 December 2012 the Treasury consulted on draft secondary legislation to be made under the Financial Services Act 2012<sup>3</sup>. This included consultation on the criteria to be met by applicants to be super-complainants. A summary of the consultation responses and Government response was published in February 2013<sup>4</sup>.

8.2 Respondents welcomed the fact that consumer bodies will be able to make super-complaints to the FCA. There was a balance of opinion on enabling representatives of SMEs to be designated as super-complainants. One respondent suggested that HMT should seek comments on the applications. The Government responded to this concern by ensuring the criteria include safeguards to ensure that the ‘super-complaint’ process is not misused by SME representatives. These include a requirement that any complaint submitted to the FCA by a super-complainant demonstrates that detriment to consumers arises from the matter to which it relates, and a requirement that candidates to be super-complainants show that they are managed and controlled in such a way that they can be expected to act with independence, impartiality, and integrity. The Treasury also has the ability to remove designation if it considers a body not to be acting in the interest of consumers. The Treasury also agreed to publish the applications on the Gov.uk website, inviting stakeholders to comment over a 12 week period.

8.3 The applications were published on the Gov.uk website on the 31 July 2013 with an invitation for any interested stakeholders to comment. Over the 12 week period, five responses were received. The opportunity to comment was announced in a press release and key stakeholders were directly contacted by email. The stakeholders contacted were those who had expressed interest in, or responded to, the October 2012 consultation on the criteria and guidance for applicants to be a super-complainant.

8.4 Of the five responses, two were supportive of the applications and three raised concerns. These included concerns about how the applicants would manage conflicts of interest and about whether the applicants were overly reliant on external sources of expertise. In the opinion of the Treasury none of the concerns posed barriers to the applicants being approved, and the Treasury continues to be of the view that the applicants meet the published criteria for designation

## 9. Guidance

9.1 Guidance about how to make an application to be designated as a ‘super-complainant’, and setting out the criteria to be met, is available on the Gov.uk website.<sup>5</sup>

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<sup>3</sup> *A new approach to financial regulation: draft secondary legislation*, October 2012, available at:

[www.gov.uk/government/consultations/a-new-approach-to-financial-regulation-draft-secondary-legislation](http://www.gov.uk/government/consultations/a-new-approach-to-financial-regulation-draft-secondary-legislation)

<sup>4</sup> *Guidance for bodies seeking designation as super-complainant to the Financial Conduct Authority: summary of consultation responses and Government response*, February 2013, available at:

[www.gov.uk/government/consultations/a-new-approach-to-financial-regulation-draft-secondary-legislation](http://www.gov.uk/government/consultations/a-new-approach-to-financial-regulation-draft-secondary-legislation)

<sup>5</sup> As above, footnote 1.

9.2 The FCA has also published guidance for designated consumer bodies on making a super-complaint to the FCA. This includes the approach expected from the designated body in relation to the making of the complaint and what the complaint should include.<sup>6</sup>

## **10. Impact**

10.1 There will be no impact on businesses, charities or voluntary bodies.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment is not required for this SI because there will be no impact on businesses, charities or voluntary bodies.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The intended outcome of this Order is a stronger consumer voice to combat detrimental effects on consumers arising from financial services markets in the UK.

12.2 The Treasury has the power to review designation at any time, and may remove a designation or designate a new body.

## **13. Contact**

Rebecca Scott at the Financial Services Tel: 020 7270 5569 or email: [rebecca.scott@hmtreasury.gsi.gov.uk](mailto:rebecca.scott@hmtreasury.gsi.gov.uk) can answer any queries regarding the instrument.

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<sup>6</sup> FG13/1: *Guidance for designated Consumer Bodies on making a Super-Complaint under s234C*, June 2013, available at: [www.fca.org.uk/your-fca/documents/finalised-guidance/fg13-01-designated-consumer-bodies](http://www.fca.org.uk/your-fca/documents/finalised-guidance/fg13-01-designated-consumer-bodies)