



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 16A

CONSUMER PROTECTION AND COMPETITION

Textual Amendments

- F1** Pt. 16A inserted (24.1.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Financial Services Act 2012 \(c. 21\), ss. 43, 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/113, art. 2\(1\)\(b\)\(c\)](#), [Sch. Pts. 2, 3](#); [S.I. 2013/423, art. 3, Sch.](#)

Super-complaints and references to FCA

234C Complaints by consumer bodies

- (1) A designated consumer body may make a complaint to the FCA that a feature, or combination of features, of a market in the United Kingdom for financial services is, or appears to be, significantly damaging the interests of consumers.

[But a complaint may not be made to the FCA under this section if it is a complaint ^{F2}(1A) which could be made to the Payment Systems Regulator by a designated representative body under section 68 of the Financial Services (Banking Reform) Act 2013 (complaints by representative bodies).

“Designated representative body” and “the Payment Systems Regulator” have the same meaning in this subsection as they have in that section.]

- (2) “Designated consumer body” means a body designated by the Treasury by order.
- (3) The Treasury—
- (a) may designate a body only if it appears to them to represent the interests of consumers of any description, and

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- (b) must publish in such manner as they think fit (and may from time to time vary) criteria to be applied by them in determining whether to make or revoke a designation.
- (4) Sections 425A and 425B (meaning of “consumers”) apply for the purposes of this section, but the references to consumers in this section do not include consumers who are authorised persons.
- (5) In this section—
 - (a) “market in the United Kingdom” has the meaning given in section 140A;
 - (b) the reference to a feature of a market in the United Kingdom for financial services has a meaning corresponding to that which a reference to a feature of a market in the United Kingdom for goods and services has (by virtue of section 140A(3)) for the purposes of Chapter 4 of Part 9A.

Textual Amendments

F2 S. 234C(1A) inserted (1.3.2014) by *Financial Services (Banking Reform) Act 2013 (c. 33)*, ss. 68(6), 148(5); S.I. 2014/377, art. 2(1)(a), Sch. Pt. 1

234D Reference by scheme operator or regulated person

- (1) A relevant person may make a reference to the FCA where it appears to that person that either the first set of conditions or the second set of conditions are satisfied.
- (2) Each of the following is a “relevant person”—
 - (a) the scheme operator;
 - (b) a regulated person.
- (3) The first set of conditions is—
 - (a) that there may have been—
 - (i) in the case of a reference by the scheme operator, a regular failure by one or more regulated persons to comply with requirements applicable to the carrying on by them of any activity, or
 - (ii) in the case of a reference by a regulated person, a regular failure by that person to comply with requirements applicable to the carrying on by that person of any activity, and
 - (b) that as a result consumers have suffered, or may suffer, loss or damage in respect of which, if they brought legal proceedings, a remedy or relief would be available in the proceedings.
- (4) The reference to the failure by a regulated person (“R”) to comply with a requirement applicable to the carrying on by R of any activity includes anything done, or omitted to be done, by R in carrying on the activity—
 - (a) which is a breach of a duty or other obligation, prohibition or restriction, or
 - (b) which otherwise gives rise to the availability of remedy or relief in legal proceedings.
- (5) It does not matter whether—
 - (a) the duty or other obligation, prohibition or restriction, or
 - (b) the remedy or relief,

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arises as a result of any provision made by or under this or any other Act, a rule of law or otherwise.

- (6) The second set of conditions is—
- (a) in the case of a reference by the scheme operator, that one or more regulated persons have, on a regular basis, acted or failed to act, in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant,
 - (b) in the case of a reference by a regulated person, that the regulated person has, on a regular basis, acted or failed to act in such a way that, if a complaint were made under the ombudsman scheme in relation to that conduct, the ombudsman would be likely to determine the complaint in favour of the complainant, and
 - (c) in either case, that—
 - (i) if the complaint would fall within the compulsory jurisdiction^{F3} ..., the ombudsman would be likely to make an award under section 229(2)(a) or give a direction under section 229(2)(b), or
 - (ii) if voluntary jurisdiction rules made for the purposes of section 227 provide for the making of an award against a respondent or the giving of a direction that a respondent take certain steps in relation to a complainant, and the complaint would fall within the voluntary jurisdiction, the ombudsman would be likely to make such an award or give such a direction.
- (7) “Consumers” has the meaning given in section 1G.
- (8) “Regulated person” means—
- (a) an authorised person;
 - (b) an electronic money issuer, as defined in section 1H(8);
 - (c) a payment service provider, as defined in section 1H(8).

Textual Amendments

- F3** Words in s. 234D(6)(c)(i) omitted (26.7.2013 for specified purposes, 1.4.2014 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment\) \(No. 2\) Order 2013 \(S.I. 2013/1881\)](#), arts. 1(2)(6), **10(11)**

234E Response by FCA

- (1) The FCA must within 90 days after the day on which it receives a complaint under section 234C or a reference under section 234D publish a response stating how it proposes to deal with the complaint or reference, and in particular—
- (a) whether it has decided to take any action, or to take no action, and
 - (b) if it has decided to take action, what action it proposes to take.
- (2) The response must—
- (a) include a copy of the complaint or reference, and
 - (b) state the FCA's reasons for its proposals.

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- (3) The Treasury may by order amend subsection (1) by substituting any period for the period for the time being specified there.

234F Section 234E: exceptions

- (1) This section applies where the FCA has received a reference under section 234D from a person who is a relevant person as a result of subsection (2)(b) of that section.
- (2) The duty to respond in section 234E does not apply if the FCA considers that the reference is frivolous, vexatious or has been made in bad faith.
- (3) The FCA must within 90 days after the day on which it receives the reference inform the person who made it—
- (a) that the duty to respond under section 234E does not apply by virtue of this section, and
 - (b) of its reasons for reaching the conclusion in paragraph (a).
- (4) The Treasury may by order amend subsection (3) by substituting any period for the period for the time being specified there.

234G Guidance

- (1) The guidance given by the FCA under section 139A—
- (a) must include guidance about the presentation of a reasoned case for a complaint under section 234C or a reference under section 234D, and
 - (b) may include guidance about such other matters as appears to the FCA to be appropriate for the purposes of section 234C or 234D.
- (2) Guidance given under this section is to be taken to be general guidance as defined in section 139B(5).

Competition]

^{F5}234H Power of FCA to make request to [^{F4}Competition and Markets Authority]

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Textual Amendments

- F4** Words in s. 234H heading substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 128\(5\)](#) (with art. 3)
- F5** S. 234H omitted (1.4.2015) by virtue of [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 8 para. 2](#); S.I. 2014/2458, art. 3(b)(v)

[^{F6}234I The FCA's functions under Part 4 of the Enterprise Act 2002

- (1) The functions to which this subsection applies (“the concurrent functions”) are to be concurrent functions of the FCA and the Competition and Markets Authority (referred to in this Part as “the CMA”).

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- (2) Subsection (1) applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (market investigations), so far as those functions—
 - (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
 - (b) relate to the provision of financial services.
- (3) But subsection (1) does not apply to functions under the following sections of the Enterprise Act 2002—
 - section 166 (duty to maintain register of undertakings and orders);
 - section 171 (duty to publish guidance).
- (4) So far as is necessary for the purposes of, or in connection with, subsections (1) and (2)—
 - (a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be read as including references to the FCA, and
 - (b) references in that Part to section 5 of that Act are to be read as including references to section 234M of this Act.
- (5) But subsection (4) does not apply—
 - (a) in relation to section 166 or 171 of that Act, or
 - (b) where the context otherwise requires.
- (6) Section 130A of the Enterprise Act 2002 has effect in relation to the FCA by virtue of subsections (1) and (2) as if—
 - (a) in subsection (2)(a) of that section, the reference to the acquisition or supply of goods or services of one or more than one description in the United Kingdom were a reference to the acquisition or provision in the United Kingdom of financial services, and
 - (b) in subsection (2)(b) of that section, the reference to the extent to which steps can and should be taken were a reference to the extent to which steps that might include steps under Part 4 of that Act can and should be taken.
- (7) Before the CMA or the FCA first exercises any of the concurrent functions in relation to any matter, it must consult the other.
- (8) Neither the CMA nor the FCA may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other.

Textual Amendments

- F6** Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 8 para. 3](#); S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

234J The FCA's functions under the Competition Act 1998

- (1) The functions to which this subsection applies are to be concurrent functions of the FCA and the CMA.

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- (2) Subsection (1) applies to the functions of the CMA under the provisions of Part 1 of the Competition Act 1998, so far as relating to any of the following that relate to the provision of financial services—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
 - (b) conduct of the kind mentioned in section 18(1) of that Act,
 - (c) agreements, decisions or concerted practices of the kind mentioned in Article 101(1) of the Treaty on the Functioning of the European Union, and
 - (d) conduct which amounts to abuse of the kind mentioned in Article 102 of the Treaty on the Functioning of the European Union.
- (3) But subsection (1) does not apply to functions under the following provisions of that Act—
- section 31D(1) to (6) (duty to publish guidance);
 - section 38(1) to (6) (duty to publish guidance about penalties);
 - section 40B(1) to (4) (duty to publish statement of policy on penalties);
 - section 51 (rules).
- (4) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the CMA in Part 1 of the Competition Act 1998 are to be read as including references to the FCA.
- (5) But subsection (4) does not apply—
- (a) in relation to sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act, or
 - (b) where the context otherwise requires.

Textual Amendments

- F6** Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), [Sch. 8 para. 3](#); S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

234K Duty to consider exercise of powers under Competition Act 1998

- (1) Before exercising a power listed in subsection (3), the FCA must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2) The FCA must not exercise such a power if it considers that it would be more appropriate to proceed under the Competition Act 1998.
- (3) Those powers are—
 - (a) the power under section 55J(2) to vary or cancel a Part 4A permission;
 - (b) the power under section 55L to impose a requirement on an authorised person with a Part 4A permission, or to vary a requirement imposed under that section;
 - (c) the power to take action under section 88E;
 - (d) the power to take action under section 89U;
 - (e) the power to give a direction under section 192C;
 - (f) the power to impose a requirement under section 196.

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Textual Amendments

F6 Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 8 para. 3**; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

234L Provision of information and assistance to a CMA group

- (1) For the purpose of assisting a CMA group in carrying out a relevant investigation, the FCA must give the CMA group—
 - (a) any relevant information which the FCA has in its possession, and
 - (b) any other assistance which the CMA group may reasonably require in relation to any matters falling within the scope of the investigation.
- (2) A “relevant investigation” is an investigation carried out on a reference made by the FCA under section 131 of the Enterprise Act 2002 by virtue of section 234I.
- (3) “Relevant information”, in relation to a relevant investigation, is information—
 - (a) which relates to matters falling within the scope of the investigation, and
 - (b) which—
 - (i) is requested by the CMA group for the purpose of the investigation, or
 - (ii) in the FCA's opinion, it would be appropriate to give to the CMA group for that purpose.
- (4) A CMA group, in carrying out a relevant investigation, must take into account any information given to it under this section.
- (5) In this section “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

Textual Amendments

F6 Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 8 para. 3**; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

234M Function of keeping market under review

- (1) For the purpose of the functions conferred on it by sections 234I to 234L the FCA is to have the function of keeping under review the market for financial services.
- (2) The function conferred by subsection (1) is to be carried out with a view to (among other things) ensuring that the FCA has sufficient information to take informed decisions and to carry out its other functions effectively.

Textual Amendments

F6 Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 8 para. 3**; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

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234N Exclusion of general duties

- (1) Section 1B (the FCA's general duties) does not apply in relation to anything done by the FCA in the carrying out of its functions by virtue of sections 234I to 234L.
- (2) But in the carrying out of any functions by virtue of sections 234I to 234L, the FCA may have regard to any of the matters in respect of which a duty is imposed by section 1B if it is a matter to which the CMA is entitled to have regard in the carrying out of those functions.

Textual Amendments

F6 Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 8 para. 3**; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

234O Supplementary provision

- (1) If any question arises as to whether, by virtue of section 234I or 234J, any functions fall to be, or are capable of being, carried out by the FCA in relation to any particular case, that question is to be referred to, and determined by, the Treasury.
- (2) No objection is to be taken to anything done under the Competition Act 1998 or Part 4 of the Enterprise Act 2002 by or in relation to the FCA on the ground that it should have been done by or in relation to the CMA.]

Textual Amendments

F6 Ss. 234I-234O inserted (1.11.2014 for the insertion of ss. 234J, 234M for specified purposes and for the insertion of ss. 234N, 234O, 1.4.2015 in so far as not already in force) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), s. 148(5), **Sch. 8 para. 3**; S.I. 2014/2458, arts. 2(b)(aa)(i), 3(b)(v)

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