



Financial Services Act 2012

2012 CHAPTER 21

PART 2

AMENDMENTS OF FINANCIAL SERVICES AND MARKETS ACT 2000

Consumer protection and competition

43 Provisions about consumer protection and competition

After section 234B of FSMA 2000 insert—

“PART 16A

CONSUMER PROTECTION AND COMPETITION

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.
- (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
 - (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.

Status: This is the original version (as it was originally enacted).

- (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.

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,
 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—

Status: This is the original version (as it was originally enacted).

- (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 or the consumer credit jurisdiction, 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).

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.
- (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.

Status: This is the original version (as it was originally enacted).

- (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

234H Power of FCA to make request to Office of Fair Trading

- (1) The FCA may ask the Office of Fair Trading (“the OFT”) to consider whether a feature, or combination of features, of a market in the United Kingdom for financial services may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the United Kingdom or a part of the United Kingdom.
- (2) The OFT must, within 90 days after the day on which it receives the request, publish a response stating how it proposes to deal with the request and in particular—
 - (a) whether it has decided to take any action, or to take no action, in response to the request, and
 - (b) if it has decided to take action, what action it proposes to take.
- (3) The response must state the OFT's reasons for its proposals.
- (4) The Treasury may by order amend subsection (2) by substituting any period for the period for the time being specified there.
- (5) In this section—
 - (a) “market in the United Kingdom” has the meaning given in section 140A(1);
 - (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.”