



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 16A

CONSUMER PROTECTION AND COMPETITION

[^{F1}Super-complaints and references to FCA

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.

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.
- (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—

Status: Point in time view as at 24/01/2013.

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- (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—
 - (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—

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- (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.
- (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—

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- (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).]

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