



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### [<sup>F1</sup>PART 16A

#### CONSUMER PROTECTION AND COMPETITION

##### *Super-complaints and references to FCA*

#### [<sup>F1</sup>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

*Status: Point in time view as at 01/04/2014.*

*Changes to legislation: Financial Services and Markets Act 2000, Section 234D is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (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—
    - (i) if the complaint would fall within the compulsory jurisdiction<sup>F2</sup> ..., 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

- 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.](#)
- F2** 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)**

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