

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email: Sarah.Fortt@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to the FCA's Call for Input: SME access to the Financial Ombudsman Service

The Panel welcome the opportunity to respond to the FCA's call for input on SME access to the Financial Ombudsman Service.

Please see Annex A below, with the Panel's response to specific questions posed.

Yours sincerely,

Helen Charlton

Chair, Financial Services Consumer Panel

Annex A – Responses to Questions

Question 1 - Do you think the current size thresholds for SMEs to be able to refer a complaint to the Financial Ombudsman Service are appropriate?

The Panel previously welcomed the changes to the FOS business remit to include the investigation of complaints from SMEs within specific size thresholds. These changes were implemented in 2019. In many ways it is fortunate that the FCA’s post-implementation review of those changes has been delayed due to the potential impact of the pandemic on SMEs. It is clear that since 2019 much has changed. The impact of Covid-19 and evidence that SMEs experienced increased harm during and since the pandemic have led to a significant increase in the incidence of harm and complexity of cases coming to the FOS from SMEs, particularly in areas such as banking and insurance. These are likely to increase as government business support loan scheme repayments fall due and from businesses that were mis-sold bounce back loans.

The Panel would not want to see SMEs with potential claims for harm caused by FCA regulated firms, being denied access to the FOS through application of those thresholds.

SMEs’ experience of financial services will vary greatly and so some are much more likely to be aware of and confident in dealing with FOS than others. The blunt metrics used to define an SME do not take sufficient account of this. While we accept the need for clarity and certainty around eligibility, this cannot be at the expense of providing access to redress for SMEs that now have a more flexible business model and/or face a period of increasing uncertainty.

Post-Covid many small businesses across many different markets have turned to short-term lending and have changed their business models to reflect the increased uncertainties they face. The Panel has significant concerns about the current size thresholds for SMEs being out of touch with the realities of changing business models and of fluctuations in turnover. The FOS is likely to see a potential increase in queries and complaints about how lenders have responded to the particular needs of SMEs.

Question 2 - Do you have a view on what the threshold criteria should be?

The Panel challenge whether the headcount in the FCA’s definition for SMEs reflects current business practices. As mentioned in Question 1 above, business practices have changed to reflect technological change, additional costs and uncertainties across many markets which the current definition of SMEs might not account for. Many high-growth and/or seasonal businesses are likely to take on temporary staffing resource, and other businesses operating in uncertain times may be reluctant to commit to taking on full-time staff so may take a more flexible approach to staffing. It would be unfair if, for example, a business that met the fixed criteria for SME fell foul and had its ability to access the FOS removed because of seasonal or other temporary changes to its staffing numbers.

Question 3 – What do you think the thresholds should be? What benefit would come from the thresholds you suggest? What is the impact or disadvantages of the current thresholds?

No comment

Question 4 - Have there been changes to the way SMEs operate that you think we should take into account when considering whether the current thresholds are set at the appropriate level?

Please see our responses to Questions 1 and 2 above.

When this threshold was set in 2019, it was estimated that over 97% of SMEs were eligible for FOS access and those not covered were considered more likely to be able to

take matters to court themselves. Part of the PIR would be to see whether this was still the case and whether there were new types of businesses that were excluded.

Question 5 – What are these changes in the way SMEs operate?

Please detail: What are the causes that have led to changes? How have they impacted on SMEs? Whether they impact on specific categories of SMEs? What impact do these changes have on the appropriateness of the thresholds?

Please see our responses to Questions 1 and 2 above.

Question 6 - Do you think that the Financial Ombudsman Service's remit should be extended to enable it to consider complaints from SMEs that are currently considered too large?

Please provide the reason for your answer?

See our comments in response to Questions 1 and 2 above. SMEs who are customers of financial services should have access to FOS. This is a key factor in building confidence in the financial services sector and the application of a set of rigid threshold conditions to businesses that are more likely to flex in and out of the threshold over time, even during the course of one year, is harmful to confidence in financial services markets as underpinned by the provision of easy access to redress.

The FCA and FOS should understand the experience of SMEs who consider themselves small (i.e., without resources to take matters to court) but are denied FOS rights. It is crucial that the FCA understands how SME business models have changed in terms of the application of the threshold conditions and must gather insight from those SMEs most likely to be subject to these changes. In particular, the FCA needs to understand how the financial resilience of SMEs has changed as this will impact on the ability of businesses which may on paper have financial resources but in practice would be unable to access those resources to pursue court action as opposed to running and building the resilience of those businesses.

Question 7 - Are you aware of any unintended consequences that have arisen from the extension of the Financial Ombudsman Service's jurisdiction? e.g. in 2018 some interested parties were concerned it could lead to a reduction in access to finance for SMEs.

The Panel would like to raise a concern on the potential blurred lines between SME and individual finances where individuals are being held liable for SME debt and are unable to access FOS redress.

Briefly outline what these unintended consequences are?

N/A