

APPG for fair business banking

Response to FCA consultation on SME access to the Financial Ombudsman Service

About the APPG

An All Party Parliamentary Group (APPG) is a cross-party interest group of parliamentarians. The APPG for Fair Business Banking is a platform through which businesses, professionals and trade bodies can discuss issues regarding commercial banking and its role in the life cycle of a business, and through which parliamentarians can access information on banking, finance and related issues, including business rescue and insolvency, on behalf of constituents. As a cross-party group, with a large membership of both MPs and peers, the APPG is an effective vehicle to effect meaningful change via the parliamentary system. The Group does not have charitable status, or official status in the House, nor is it funded by Parliament. It relies wholly on the participation and contribution of parliamentarians, industry members and stakeholders committed to creating a strong platform for business in the UK to thrive.

Establishment of an effective and accessible Dispute Resolution forum

Among the core goals of the APPG is the establishment of an effective and accessible Dispute Resolution forum for businesses which find themselves in dispute with a financial services provider. We are in the final stages of a joint inquiry with the APPG on Alternative Dispute Resolution into suitable mechanisms that can be employed to provide a long-term dispute resolution platform for businesses in such disputes. The work of the APPG on Fair Business Banking is of therefore of great relevance to this consultation and vice versa.

Challenging misconceptions about businesses

A large part of the work of the APPG involves challenging existing views and perceptions about private businesses.

The term "private businesses" encompasses not just all of the small and medium-sized enterprises (SMEs) that are so often called the "lifeblood" of the economy and that are the subject of this consultation paper, but also larger entrepreneur-owned entities with multi-million pound balance sheets and hundreds of employees. Cumulatively, and through their interconnected relationships with employees, customers and suppliers, private businesses have a huge positive impact on the UK economy.

In our experience, what the vast majority of these private entrepreneur-owned businesses have in common - and that includes all SMEs - is that

- a. they all need access to financial services during their life cycles and
- b. they are *not* on a level playing field, in terms of size and negotiating power, with their main suppliers of financial products and services, the big banks.

Not a level playing field

There are some key issues which prevent the majority of private businesses and all SMEs from being on a level playing field with large financial firms.

There is still negligible competition between a small number of very large, well established and powerful suppliers of commercial financial services, each of which remains too systemically important to be allowed to fail, which results in a lack of variety of price and features between the main suppliers' offerings in this market.

A lack of choice and negotiating power can leave business consumers without sufficiently clear information and understanding of features and risks to make informed decisions about financial products and services that will meet their needs and give them a certainty of outcome. With no requirement for financial firms to provide transparency, a duty of care or to act in good faith, problems can be sealed into commercial banking relationship from the outset. There may be little option but to agree to unfavourable and onerous contractual terms in order to access the funding necessary to develop or grow a business. Once committed to certain facilities business customers are unlikely to be able to easily switch between suppliers, if a better alternative can be found. They will also find it extremely difficult to make a successful legal challenge against any commercial contractual terms they have agreed to that cause damage and appear unfair.

The huge disparity in power between the main financial services providers and their business customers leaves those customers open to a potential abuse of power. There is currently little disincentive to deter large financial firms from hastening or even participating in the failure (insolvency) of their business customers or selling on their debt to unregulated entities and thereby potentially exposing them to asset-stripping due to commercial or regulatory pressure to de-risk or exit certain markets.

Losses experienced by businesses can have a more serious and widespread effect than those experienced by other consumers. The financial sums involved can often be much greater and the impact of those losses or of the resultant failure of a business can be felt not just by the business owner(s) but also by its employees, customers and suppliers. Larger businesses are as much at risk as smaller ones, if they are not in a position to negotiate on an equal footing with financial firms, but the scale and extent of the loss or failure and number of those affected by that loss or failure can be much greater.

The damage to individuals and the wider economy as a result of problems between businesses and their financial services providers cannot be understated; job losses, personal bankruptcy, mental health problems, suicide, family break-ups and cuts in local and national funding from loss of revenue to councils, HMRC and others, are all common effects.

Misconceived generalisations in the FCA's consultation document

We therefore strongly disagree with the following generalised statements made on page 3, page 8 and page 10 and page 21 respectively of the consultation document:

1.3: In general, larger SMEs will have the bargaining power, organisational resources and understanding of financial services to protect their interests in disputes with firms. We therefore believe the courts remain the most appropriate place for larger SMEs to resolve financial services disputes.

2.1: Businesses generally have greater resources than individual consumers, and their owners often have limited liability. They also tend to have more experience of assessing their product needs, negotiating with suppliers and reviewing contract terms.

2.18: In many cases, the courts will continue to be the most appropriate place for larger SMEs to resolve disputes.

4.11: ...we generally consider that businesses above the small business threshold should, on average, be sufficiently sophisticated and resourced to negotiate material contract terms with firms and protect their interests in disputes with financial services firms through the courts.

We also note the FCA's comment on page 8, 2.5: "...research shows that only commercial banking customers with 50 or more employees feel they can negotiate contract terms with a bank" and that the FCA then concludes, in 3.30, page 17: "There is some evidence (see 2.5) that businesses with 50 or more employees consider themselves better able to negotiate contract terms with firms."

The evidence referred to here is a report compiled from research commissioned by the CMA, 'SME Research into the Retail Banking Market'. Sixteen businesses with between 50 and 249 employees were interviewed as part of this research and according to the report were asked about their experiences and any success of negotiating with banks specifically on pricing of various products, but *not* on other contract terms. Business owners may not even be aware of the true extent of the detrimental nature of many of the terms they agree to when taking on financial products until things go wrong.

The report chose to highlight the following comment as representative of the sample of medium-sized businesses' experiences of negotiating with their bank: "We don't [negotiate]. I just tell them I'm not paying charges. On occasion if we are buying a property there is a charge with CHAPS payment. I ask for it on the house and they might say no, but it's only £25. I always ask. Don't ask don't get."

The recently released s166 report on the Royal Bank of Scotland (RBS) Global Restructuring Group (GRG) provides an alternative perspective on the extent to which thousands of SME business customers of that bank, with borrowing of up to £20million, were in any position to negotiate. There is also the experience of tens of thousands of business owners, small, medium and large, many of whom no doubt congratulated themselves on successfully negotiating a favourable rate on

the margin rate of interest above the base rate they would pay on their borrowing, only to be told that the lending was conditional on them entering into an interest rate hedging product (IRHP) or a fixed-rate loan with a hidden IRHP, the subsequent costs of which made that margin rate more or less irrelevant for most.

There is clearly a vast difference between achieving an exemption on a few fees of the order of £25 and persuading a bank that a very profitable (to the bank and some of its individual employees) complex instrument should not be sold as a condition of lending. We have not seen evidence that many SMEs nor even much larger businesses were able to negotiate away a lending requirement or otherwise resist pressure to enter into one or more IRHPs or other complex loan products.

Why businesses urgently need wider access to effective dispute resolution

While other consumers receive a high degree of protection when accessing financial services, there is very little, if any, regulatory protection for most business customers. The majority of their financial interactions and transactions currently sit outside the “regulatory perimeter”. However the decision makers within private businesses are often no different to ‘ordinary’ individual consumers, in terms of their level of knowledge and understanding of the financial products and services they need to access. Entrepreneurs are not usually experts in all fields and cannot be considered to have innate financial sophistication as a result of being successful in one or more spheres of business.

We have also found that there is often a wide gap between people’s perceptions and reality in terms of how large financial firms behave towards private businesses and the level of protection that covers those businesses’ interactions and transactions with those firms. This is hardly surprising when there is such a disconnect between the messages firms give out in their marketing and public relations campaigns and what actually happens in reality. In their adverts large financial firms are keen to portray themselves as caring, helping, supporting, and even cushioning customers through each stage of their life or business. Customer-facing employees, including trusted Relationship Managers, can also be unclear about the extent to which any duty of care will be applied in the relationship, which can lead to business customers being lulled into a false sense of security.

Consequently many entrepreneurs assume that their bank will act in good faith and extend them a duty of care or that, in the event that it fails to do so, they and their business will be protected from serious harm. Often business customers only become aware of the reality - that a financial firm owes them no such duty or responsibility and there is little or no regulatory protection - when things go wrong.

Private businesses are poorly served by existing complaint handling and dispute resolution processes. For those not eligible for FOS, aside from any redress scheme set up to deal with certain specific products or bank customers, usually the only chance of resolving a dispute with a financial firm is to commence litigation. This is not a financially feasible or desirable option for the vast majority of businesses.

Although 96.3% of businesses are eligible for FOS by business number, these businesses only represent 18% of turnover in that sector. The remaining 3.7% not covered by the FOS in fact employ

67% of the workforce in private enterprise—employing over 17 million—and generate 82% of the total turnover, or £2.9 trillion pounds.

Observations about the Financial Ombudsman Service (FOS)

Before responding to specific questions asked in the consultation document we make the following observations about FOS.

The experience of the APPG, gathered from members' constituents and their advisers and from evidence submitted in the course of our joint Inquiry into dispute resolution is that while the FOS may be performing a valuable service for many thousands of financial services consumers with relatively low-value, straightforward complaints, it is ill-equipped to deal with serious complex financial disputes involving life-changing sums of money and potential insolvency. These are common characteristics of the vast majority of the commercial financial disputes that come to the attention of the APPG.

The joint inquiry of the APPG has clearly demonstrated that the FOS process in its current form is not a suitable mechanism for the resolution of many of the commercial financial disputes that are currently eligible for review by this service.

The maximum award limit of £150,000 is not sufficient to cover the full extent of the damage and/or losses experienced in most complex business disputes and would probably need to be greatly increased to stand a chance of doing so.

Although some firms will honour a FOS recommendation to pay out more than the limit, this is by no means guaranteed. A complainant is not generally able to accept a FOS decision and then pursue the financial firm for more compensation on the same issue through another forum such as court. Where a complainant does not accept a decision that would result in insufficient redress in order to pursue the complaint through an alternative dispute resolution forum, such as litigation, then their ability to do so may be affected by the time taken to reach the decision (see below).

It is not usually 'quick' (as the FCA describes it in this consultation) and when it is, it may not achieve a perceived fair result .

In our experience very few complex business complaints have been decided on by FOS in under 6 months; such complaints by businesses against banks are far more likely to take several years to reach a conclusion. One respondent to our joint Inquiry, a firm of solicitors, provided data on the time taken for 57 of their clients' disputes to reach a conclusion through FOS. Not one was resolved in under 6 months. Over 31% took 1 to 2 years to complete. 47% took between 2 and 5 years to complete and 6 of the complaints - over 10% - took in excess of 5 years. Of the 6 complaints that were completed relatively quickly, between 6 months to a year, the majority of these - 5 - were not upheld.

A timescale of years rather than months to resolve a serious dispute can cause further damage to businesses that are usually already financially distressed as a consequence of events that caused the

dispute and often remain in a compromised relationship with the financial firm with which they are in dispute. The time taken for FOS to reach a final decision on a case is of critical importance where the business remains dissatisfied with their FOS outcome as the legal limitation period in their case, and thus their ability to institute any legal action, may expire while waiting for that decision.

However, it is also important that the speed of dispatching a complaint is not prioritised at the expense of reasonable decision making. This is a real danger in view of the following further major issues we have identified, some of which were also highlighted in the recent Channel 4 Dispatches undercover investigation into the FOS:

- Variability in quality and knowledge and experience of FOS personnel and a clear lack of certain expertise and specific technical skills, for instance with respect to matters of business, sales of complex financial instruments and the specialist assessment of consequential loss claims—in particular those of a very complex nature that require the skills of a forensic account or other expert witnesses.
- Insufficient power to order disclosure of all of the relevant information and evidence that may be necessary for the decision maker to have a true picture of all of the issues (where the individual adjudicator or ombudsman has sufficient knowledge to know what type of evidence to request from a financial firm).
- Adjudicators and ombudsman not always sharing with complainants and their advisers all of the information that is used when making their decisions.
- A reluctance to challenge or even examine “commercial decisions” of a financial firm, relying heavily on the discretion of that firm, even where a complainant alleges that a particular decision was unreasonable and/or resulted in damage or loss to a business.

The process is heavily reliant both on the complainant to effectively articulate the issues involved (which may not necessarily be well understood at the outset) and on the firm to act in good faith and release all relevant evidence (and not just that which is favourable to it). Consequently adjudicators and ombudsmen must often make decisions in circumstances where there is no guarantee that both sides, and the FOS itself, have equal and full disclosure of evidence and sufficient understanding of all of the important issues.

One of the expert witnesses in our joint inquiry commented that in his belief complainants who use advisors “*tend to get better results with FOS because they’re able to educate the adjudicators*”.

The APPG has a very legitimate concern that where unadvised, unsophisticated customers who are unsure of all of the key issues of their case or which pieces of evidence they need to demonstrate what went wrong, are having to rely on equally unapprised and underpowered FOS personnel to resolve their dispute against a very well-informed and well-resourced multi-national giant, replete with dedicated in-house and outsourced legal teams, dealing with hundreds or thousands of similar cases, there is a clear likelihood that the chances of a fair and reasonable outcome in all of the circumstances of the case may be severely diminished.

The disparity of resources and asymmetry of information between complainants and large financial firms and also between FOS and the financial firms serves to further accentuate the imbalance of

power between these firms and customers who make complaints about them. For instance, some large financial firms regularly use lawyers and/or dedicated FOS liaison staff to closely scrutinise FOS decisions and subject FOS adjudicators and ombudsman to technical and legalistic arguments to try to persuade them to alter any decision that is perceived by the firm to be too much in the complainant's favour. This behaviour can be backed up by the realistic threat of legal action from financial firms as Judicial Review may be perceived as a cost effective use of a financial firm's resources if it results in substantial savings in the payment of redress for a whole tranche of cases. And just as they do in litigation, financial firms can use their superior resources to settle on confidential terms with a particular complainant to pre-empt the issuing (and publishing) of any final decision that they suspect will not be helpful to them.

Where the issues we highlight above may give rise to unpredictability and a lack of consistency in outcomes, as we believe they frequently do, there is a clear danger that if poor behaviour can go unchallenged by FOS, then such behaviour may in fact be validated by the status that FOS decisions hold within the regulatory framework.

We therefore feel that what is required from both the FCA and FOS is a candid and clear acknowledgement of the serious limitations of FOS for the resolution of complex, high-value disputes. Either there must be acceptance that FOS is not the right mechanism for the resolution of such disputes or that what is required is radical change to some of FOS's processes and personnel if it is to be able to realistically cope even with the majority of the business disputes that it is currently presented with, let alone attempt to handle additional disputes from larger businesses that could be of higher value, more complex and where many more jobs and livelihoods are potentially at stake.

Questions

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate? *and*

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

The APPG is quite clear that the FOS in its current form is not a suitable body for the resolution of the kind of complex, high-value financial disputes that can arise between businesses of all shapes and sizes and large financial firms. (We refer to all of our comments above).

We would be cautious of any extension of the eligibility of FOS if the increased access to it were to lead to longer delays in the resolution of complex and high-value disputes and/or further inconsistency of results and hence potentially the proliferation of incorrect or otherwise unreasonable decisions together with the resultant negative effect this could have on future conduct. We also have concerns should the envisaged extension of the scope of FOS act as a break in progress on the introduction of a more suitable dispute resolution forum, or prejudice or interfere in any way in any business consumer's ability to take their dispute to any alternative dispute resolution mechanism in future.

That said, the status of 'eligible complainant' brings with it a key benefit or right that should be common to all consumers of every financial product or service, whether or not they fall within the regulatory perimeter. That is the right to complain to a supplier of financial services in the knowledge that the financial firm is obliged to investigate and respond to all such complaints and report on them to the regulator. Were the FCA to then start to compile meaningful data on all complaints made to all regulated firms and analyse it in a useful way, it would stand a good chance of detecting patterns of poor behaviour at a much earlier stage than it is currently in a position to do, and potentially prevent a great deal of damage to consumers.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

Yes

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate? *and*

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

We see no reason why any changes should apply only to acts and omissions of a financial firm that occur after the date that the changes come into effect. Any newly eligible complainants should be able to complain about earlier issues to the same extent that existing eligible complainants are able to do so.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

It is the considered view of the APPG that the amount of redress that ought to be due to businesses as a consequence of mis-selling and other misconduct towards them of financial firms and their associates is of a magnitude far in excess of the FCA's estimates.

The costs and benefits of any new dispute resolution mechanism that we put forward will be offset against the costs to financial firms and the regulator of the provision of mass redress schemes, including the IRHP review and the RBS GRG refund and complaints scheme, the estimated cost of relevant legal actions to all parties concerned and the full cost of the detriment to private businesses of not having financial disputes satisfactorily resolved within a reasonable timescale.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

It is our contention that we must not shy away from making changes to legislation and/or regulatory rules where these are found to be necessary to improve or even initiate access to justice for businesses. For instance there will certainly need to be reform of current insolvency law to prevent insolvency being used as a refuge for misconduct by financial firms. The APPG also believes it is necessary consider the options to introduce a Duty of Care and a requirement to act in Good Faith into all financial services supplier and consumer relationships.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

Substantial change is required to FOS for it to become an appropriate body to even satisfactorily consider its current caseload of complex and high-value complaints from microbusinesses.

However, even with these changes, there will still be a large body of businesses that cannot be served by the FOS, including those in insolvency. We therefore are very clear that the extension of the FOS—even with a radical change in its resource and powers—is not sufficient to provide the solution required by the business community.

We refer back to all of our previous comments.

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 29 January 2018 18:03
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:
Reference 290118655451

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate? They seem broadly acceptable except for the criteria relating to employees..

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

The number of employees appears to be irrelevant to any question of the firm's capacity to sue their financial services providers and actually just provides a greater burden.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

Yes but the drafting needs tidying up. What you are trying to say is that guarantors of small business and personal loans are included regardless of whether they are individuals or small businesses or if the complainant is a small business or individual. I think that it's the latter but this must be a great deal clearer.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

No. It is standard English legal practice that procedural changes relate to events before they were made. Here, there is no reason why banks and insurers should escape FOS scrutiny for unfair or unreasonable behaviour prior to December 2018.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018? No. See 4.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered? These calculations are pure guess work and of no value.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

Remove the exclusion for regulated firms which would allow such businesses to bring complaints to FOS about their PI insurers. There has never been any justification for this exclusion and it causes huge hardship for small financial services intermediaries.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

Yes. One could go a good deal higher. Ultimately, FOS or a division of it would make an ideal body to judge such disputes and would be a good deal cheaper and more knowledgeable than retired High Court judges who are often retired for a reason.

Is your response confidential? No

Your details

Company Adam Samuel

Name [REDACTED]

Position [REDACTED]

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In what capacity are you responding? as an individual

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Association of Accounting Technicians response to FCA Consultation on SME ● access to the Financial Ombudsman Service

Association of Accounting Technicians response to the FCA consultation on SME access to the Financial Ombudsman Service

1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the consultation paper on SME access to the Financial Ombudsman Service, published on 21 January 2018
- 1.2. AAT is submitting this response on behalf of our membership and for the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has added comment to add value or highlight aspects that need to be considered further.
- 1.4. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.
- 1.5. Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by AAT's 4,250 licensed accountants.

2. Executive summary

- 2.1. **AAT supports the FCA's changes to the definition of complainants.** This relaxation of definitions is clearly in the best interests of justice and equality given it will extend eligibility to a substantially larger pool of SMEs
- 2.2. **The proposals in this consultation could all be made more speedily.** Given there is no suggestion of a new redress system, this is simply changing eligibility criteria, it seems unjust to deny larger SMEs (who have between 10-50 employees) and guarantors, access to justice for a further ten months.
- 2.3. **The current award limit must be increased.** For various reasons set out in 9.1., 9.2 and 9.3, the current award limit of £150,000 should be increased to at least £250,000 as a matter of urgency.
- 2.4. **Awareness of the Financial Ombudsman Service (FOS) needs to be increased.** More should be done to promote awareness and understanding of the FOS by working with credible third parties such as AAT, who have a substantial SME membership.
- 2.5. **The risks of the FOS accepting more complex and high value cases are outweighed by the benefits.** There are limited risks to taking on more high value and complex cases whilst the benefits of providing access to justice to a group who would previously struggle to gain redress are significant.

3. AAT response to the consultation paper

4. **Q1. Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?**
 - 4.1. AAT agrees with the definition of an eligible complainant and the proposed size thresholds appear sensible. AAT agrees that larger SMEs are likely to have, the bargaining power and organisational resources and understanding of financial services to protect their interests in disputes with firms. We therefore believe the courts remain the most appropriate place for larger SMEs to resolve financial services disputes.

5. **Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?**
- 5.1. Each of the three tests are acceptable and have clearly been derived from informed research. However, AAT believes that requiring all three tests to be met is unnecessarily restrictive and that meeting any one of the three tests independently would be a fairer measure.
- 5.2. A lower threshold will also enable a greater number of SMEs to qualify for assistance and ultimately this should be the aim of changes to eligibility – to make access to justice more widely available.
6. **Q3: Do you agree with our proposal to make guarantors eligible complainants?**
- 6.1. Making guarantors eligible complainants appears to be a sensible means of enabling those who may have given a personal guarantee or security a means of seeking redress where they would otherwise struggle to do so. As a result, AAT agrees with this proposal.
7. **Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?**
- 7.1. AAT notes that changes to staffing levels and other resources may be an issue for the FOS but that these should not be significant given there is no suggestion of a new redress system, the proposed changes are simply changing eligibility criteria. It therefore seems unjust to deny larger SMEs (who have between 10-50 employees) access to justice for a further ten months.
- 7.2. Similarly, some may argue that there is a need for an effective communications campaign in advance of these changes but a few months is unlikely to make much difference and the message, “we can help now” rather than “we can help in six months’ time” is a more effective message to deliver.
- 7.3. The quicker these changes are made; the more SMEs can be helped.
8. **Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?**
- 8.1. As this is a new category of complainant there may be some justification for delaying until 1 December 2018 but given the numbers are likely to be small (dozens rather than thousands or even hundreds), this seems unnecessary.
- 8.2. As with the timetable for the changes for small businesses, AAT believes these should be introduced more speedily.
- 8.3. Whatever date is finally agreed upon, clearly it makes sense for the eligibility date, for both newly eligible SMEs and for guarantors, to be the same.
9. **Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?**
- 9.1. AAT is broadly satisfied with the cost benefit analysis undertaken. However, the current award limit of £150,000 is not sufficient and there are a number of factors that the FCA does not appear to have adequately taken into account in deciding to keep the existing limit in place.
- 9.2. Most notably there is no recognition that whilst the limit has not increased in six years, if it had done so in line with inflation, it would now stand at approximately £175,000.

- 9.3. Furthermore, the FCA's own analysis suggests that around a fifth of all SME disputes are already above the current award limit.¹ It is likely that larger small companies will have larger sums of money at stake and it would therefore seem reasonable that when the FCA permits larger SMEs to make a claim it also increases the award limit to at least £250,000. This would not only take account of the inflationary rises that have not been delivered but by the FCA's own calculations that a limit of £250,000 would open the redress system up to an additional 7% of SMEs².

10. Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

- 10.1. As FCA SME Complaints Survey data indicates less than 5% of all SME financial complaints are referred to the Ombudsman, there is clearly much more to be done in terms of raising the profile of FOS and awareness among eligible firms.
- 10.2. Raising SME awareness of the existence of FOS, how and why it operates and its eligibility criteria would therefore seem like a good starting point.
- 10.3. With limited resources for advertising and marketing, working collaboratively with credible third parties would seem like a good means of achieving this e.g. organisations such as the Federation of Small Businesses, Institute of Directors and British Chambers of Commerce, specialist bodies like AAT and high-profile individuals like the Small Business Minister, Shadow Minister and as his own profile grows, the Small Business Commissioner.
- 10.4. 60% of AAT's 140,000 members work for or run their own SME, in addition AAT's 4,250 licensed accountants provide business and accountancy services to more than 400,000 British businesses, most of whom are SMEs and would fall into the below 50 employee's category. AAT would be happy to promote the FOS service to our membership and is confident that other organisations would do likewise.
- 10.5. As stated at 5.1 above, with regard to eligibility, requiring a simple test of either employee numbers, turnover or balance sheet rather than all three combined would improve access to redress.
- 10.6. Likewise, as stated at 9.1 above, increasing the current award limit to £250,000 would also likely lead to improved access.

11. Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

- 11.1. AAT notes the various calls for new, alternative SME dispute resolution from a range of organisations such as the Treasury Select Committee and even the FCA itself. However, AAT also notes that this is not within the powers of the FCA and therefore recognises the need for this consultation.
- 11.2. AAT sees no problem in the Ombudsman dealing with "higher value" cases. Indeed, AAT has recommended an increase in the award limit to at least £250,000 (9.1. & 10.6) which would require precisely this.
- 11.3. A more significant change relates to a desire to deal with "complex" cases. This would require quite considerable reform given the history of dealing only with what could be described as "vanilla" cases.
- 11.4. That said, there is undoubtedly a need for this given SMEs face an uphill struggle to obtain justice in relation to complex financial wrongdoing – as the RBS GRG³ complainants would testify.

¹ p22, Consultation on SME access to FOS, Jan. 2018: <https://www.fca.org.uk/publication/consultation/cp18-03.pdf>

² p24, Consultation on SME access to FOS, Jan. 2018: <https://www.fca.org.uk/publication/consultation/cp18-03.pdf>

³ RBS & GRG complaints: <http://www.bbc.co.uk/news/business-42877472>

- 11.5. Firstly, the High Court deals only with the upper end of the spectrum, hearing complex cases worth in excess of £50m and is therefore highly unlikely to be of much help to most SMEs.
- 11.6. For those with claims that currently fall below this threshold but above the FOS threshold, legal expenses can be an issue - in April 2015 court fees rose by up to 600%⁴.
- 11.7. Securing expert legal representation who can take on the banks, insurers and others in the financial services sector is another significant challenge for SMEs. Many legal firms who could help are engaged by large financial services firms through legal advice panels which mean they cannot act for claimants. For example, in 2016 Barclays had a panel of 350 legal firms⁵.
- 11.8. Another benefit of the relatively speedy FOS, especially in complex cases, would be the avoidance of large financial services firms repeated tactic of wearing down SMEs through delay and cost accumulation.
- 11.9. It therefore seems obvious that the FOS system, which can help avoid unnecessary costs, that is relatively speedy and would be open to a wider pool of complainants than was previously the case would be welcome.
- 11.10. The key challenge would be ensuring FOS has a large enough pool of staff who are sufficiently experienced in complex areas e.g. financial benchmarks, debt securities, derivatives etc. and this would probably be the most significant change required.
- 11.11. Risks of undertaking more complex cases would be an increase in the time taken to resolve complaints, the knock-on effect in terms of timeframes for those who have made more straightforward complaints and the overall impact on service levels.
- 11.12. Complex cases do not in themselves mean a longer dispute resolution process and providing additional resources are provided, these risks can be mitigated. Furthermore, those dealing with more straightforward cases are unlikely to be those who are dealing with highly complex issues so again, this is a further mitigation. Finally, complex cases will always remain a very small minority of the FOS caseload and as such the effects on the rest of the organisation are likely to be negligible.
- 11.13. In summary, it would appear that the risks are far outweighed by the benefits.

8. About AAT

- 8.2. AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 90,000 student and affiliate members worldwide. Of the full and fellow members, there are more than 4,250 licensed accountants who provide accountancy and taxation services to over 400,000 British businesses.
- 8.3. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

9. Further information

If you have any queries, require any further information or would like to discuss any of the above points in more detail, please contact [REDACTED] at:

E-mail: [REDACTED] Telephone: [REDACTED] Twitter: [REDACTED]

Association of Accounting Technicians, 140 Aldersgate Street, London, EC1A 4HY

⁴ 600% increase in court fees:

<https://www.theguardian.com/law/2015/mar/04/peers-vote-enhanced-court-fees-access-justice>

⁵ Barclays legal panel of 350 firms:

<https://www.lawgazette.co.uk/practice/barclays-hacks-back-legal-panel/5056134.article>

From: [REDACTED]
Sent: 21 March 2018 17:42
To: cp18-03
Cc: [REDACTED]
Subject: Consultation Feedback

Dear James

Please find below comments from [REDACTED] the Association of Alternative Business Finance on the proposed new rules to allow more small and medium-sized enterprises (SMEs) to refer disputes to the Financial Ombudsman Service

If you require any clarification or further feedback please contact [REDACTED]

Feedback on proposed new rules to allow more small and medium-sized enterprises (SMEs) to refer disputes to the Financial Ombudsman Service.

The Association of Alternative Business Finance (AABF) welcomes initiatives that are designed to improve fairness and transparency. We have read with great interest the FCA's plans to give more SMEs access to the Financial Ombudsman Service (FOS) but have a number of reservations.

Before outlining these it is worth recapping that the AABF was launched in February 2017 and the commitments that underpin our four key Operating Principles (Transparency, Security, Fairness and Responsibility) were designed to ensure members agreed to adhere to the highest possible industry standards. Not surprisingly these drew heavily on the established British Bankers Association Lending Code that was current at that time.

For example, and relevant to the current proposal,

TRANSPARENCY

Example commitment:

Each Members website or other publicly available information must include:

- (a) details of its complaints procedure;*
- (b) details of the senior management team (if appropriate);*
- (c) the legal form of the business, location of its head office and date of incorporation*

RESPONSIBILITY

Example commitment:

Adhere to the terms of the agreement with the customer; if any of the terms relevant to the funding agreement are changed then notice must be given to the customer in compliance with the terms of the agreement in question.

Our main reservation concerns FOS being fit for purpose in terms of both resources and dedicated/trained staff that would fully understand the various forms of business finance now on offer to UK SMEs.

This view has been formed based on the experience of our current members. This was reinforced after meeting with key representatives from the All Party Parliamentary Group on Fair Business Banking and Finance who share concerns about the level of resources and expertise within FOS and the added strain at this time of extending the number of qualifying SMEs.

While drafting this response the Channel 4 Dispatches programme 'Who's Policing Your Bank?' was broadcast. We understand that this type of programme sensationalises issues to attract viewers. However, what emerged was a clear picture of an under resourced organisation with poorly trained staff who didn't always understand the products they were ruling on.

This is at odds with your statement on Page 20 4.2 regarding the 'purpose of the Ombudsman to provide quick, informal redress'.

We believe the other options you identify on page 21, 4.8 - the APPG for Fair Business Banking and Finance's development of a special, separate tribunal for SME disputes and UK Finance's independent review on SME access to ADR should be factored into your thinking.

As we state above we fully support Fairness and Transparency and there are a range of other initiatives that support this. For example we note your proposal to include Guarantors and we absolutely agree that all parties should receive the same documentation that clearly outlines the financial arrangement that is being entered into. Furthermore, legal advice should be taken before anything is signed so there can be no grounds for a claim of 'I didn't fully understand the commitments I was making'.

Our final comment is on the proposed fee per complaint charge and the danger of the law of unintended consequences. This could lead to a situation where an SME feels they have nothing to lose by referring a 'complaint' to the Ombudsman even though they have no evidence to support a case. This could create even more work for FOS and the potential costs could be a barrier to entry for new alternative lenders.

We believe there would be merit in introducing an initial screening process that would quickly identify if a claim was without merit and there would then be no need to levy a complaint charge against the finance provider. Without this there could be the potential for the 'claims industry' to move its focus on to encouraging SMEs to lodge complaints without any foundation.

We hope you find our views informative and we feel it is important that the views of the alternative lenders are taken into consideration alongside those of 'traditional' banks that rightly or wrongly have created the impression that SMEs aren't being fairly dealt with.

Ends

[REDACTED]

[REDACTED]



ABI Response to FCA Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

The ABI

The Association of British Insurers (ABI) is the voice of the UK's world leading insurance and long-term savings industry. A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation.

General Comments

The ABI agrees with the broad rationale of the FCA proposal. However, we believe that there are a number of potential operational challenges that accompany the implementation of the expansion of FOS competencies, under its current operational model. These reflect a likely increase in complexity of the claims the FOS will be addressing under the new eligibility criteria. We are of the view that the claims originating from such businesses may be of a higher average value and are likely to involve cases of increased complexity. In preparing for these changes, firms will also incur costs that are not reflected in the business case and will require longer than 6 months to implement them.

Within this context, we also believe that the £150,000 award limit which is currently in place (and increased from £100,000 only relatively recently) remains appropriate and should not change. Changing the award limit to £600,000 would be a transformational development that requires detailed analysis of the harm it is intended to address, as well as the implications and unintended consequences it would create. As a minimum it would create an inevitable increase in complexity, due to higher value complaints and would fundamentally change the skill set required by FOS personnel. We are of the view that for many higher value cases, legal redress remains the most appropriate mechanism.

Responses to the Consultation questions

- 1. Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?**

In the general insurance market, self-employed professionals and microbusinesses usually purchase products with fixed cover limits, generating greater homogeneity of risk and allowing a more standardised approach to be adopted when dealing with claims. For larger businesses, insurance requirements become more complex and are often purchased on an advised basis, involving third parties. In addition, SMEs with the same number of employees and comparable

turnover levels may have significantly different insurance requirements based on the nature of their work. Therefore, a standardised approach is not always appropriate.

The complaints originating from these businesses are likely to be of higher complexity, involving niche claims that should be tackled with adequate expertise. These claims are also likely to be of higher value and should ideally be accompanied by a detailed analysis of the claim, information which only an expert in the area can provide. We therefore believe that the FOS may need specialist resources and skills to be able to analyse these. It is also of concern that, for potentially more complex cases, the current operational model of the FOS lacks a legal standpoint and an appeals process.

2. Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

We think that all three tests should be met, for the Ombudsman to consider an SME a small business. As these businesses tend to have more complex business models, a common set of eligibility criteria should be met. It is however to be stressed that the fact that these tests would be met does not necessarily indicate comparability of these businesses.

3. Do you agree with our proposal to make guarantors eligible complainants?

We have no comment on this question.

4. Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

We do not believe that this transitional period is appropriate for any changes to be implemented. Insurance companies need at least a period of 12 months to install relevant IT systems and identify businesses that could be eligible complainants under the new rules. In addition, firms would potentially need to undertake internal training for staff, to provide the skills to deal with in-house complaints and FOS outcomes, which is like to increase cost for firms.

Although we broadly agree with the principle of the new rules, as we are of the view that there is a need for the establishment of an alternative dispute resolution mechanism for SMEs, we currently believe that the timing these have been suggested is not ideal for the FOS. Given the recent publicity regarding the FOS, as well as the ongoing enquiry committees of the Treasury and BEIS, we believe that any changes to the current regime should only be made after the independent review on FOS has been finalised. This would avoid further challenges for the FOS at a time when it is already reviewing its business processes and operational model.

- 5. Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complainants made to a firm regarding guarantees or security given on or after 1 December 2018?**

We have no comment on this question.

- 6. Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?**

We believe that the cost benefit analysis underestimates the correlation between the new eligibility criteria and the complexity of the cases potentially to be filed to the FOS. It also underestimates the consequences this extension will have to the operational model of the FOS. As mentioned, we believe that in order for the FOS to be able to address these new kinds of complaints, additional resources and internal training will be needed. As the cost benefit analysis stresses, in paragraph 53, the FOS "has experience of dealing with complex complaints including those involving micro-enterprise complaints about IRHPs, commercial lending and commercial insurance". Therefore, suggests that the current experience of FOS lies within the micro-enterprise scope of complaints. One we believe is considerably different to that of SMEs.

As mentioned previously, in question number 4 on implementation timing, firms will need to undertake preparation measures in light of these changes. Business will have to work on identifying eligible complainants, possibly develop new IT systems, as well as undertake internal training. We therefore believe that the cost benefit analysis omits to factor in the costs this will incur for the insurance industry.

We also find that the method of calculation of the number of complaints from newly eligible SMEs (representing an increase of 0.1% to 0.3%) is not clearly stated. Additionally, the cost benefit analysis lacks evidence and data supporting the proposal of for an increase in award limits from £150,000 to £600,000.

- 7. Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?**

In our view, there are a number of alternative options, which we find adequate to the circumstances, namely the potential complexity of claims originating from SMEs. The first option is in line with the broader proposal of the FCA to expand FOS services. We believe that if the FOS were to recruit adequate resources, especially in terms of expertise, the successful and timely resolution of disputes would be more likely. However, this would therefore lead to further expenses for the FOS and a likely increase in its fee. This could only be justified if it was proportionate to any benefits.

A second option would be the creation of a body similar to the FOS alternative dispute resolution, focusing on SMEs rather than individuals. The establishment of a tribunal, an option that is currently being explored by Parliament and has been supported by FCA CEO Andrew Bailey, would give SMEs access to swift, inexpensive and tailored dispute resolution. Recently, the Australian Parliament voted in favour of a similar body, the Australian Financial Complaints Authority, a not-for-profit company limited by guarantee and funded by member contributions.

8. Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed make this effective? What risks might this introduce?

The ABI believes that the FOS could become an appropriate body to consider complaints of higher complexity and value claims, if additional resources of adequate expertise were recruited. We believe that for these cases, an operational model with a legal standpoint and appeal process would be more appropriate. Alternatively, the FOS would need to undertake training for staff, to provide the skills to deal with the potential increased complexity of those claims. Both solutions would potentially result in an increase of FOS spending and budget changes would need to be made.

We believe that changing award limits from £150,000, which is the current FOS limit, to £600,000 is a vast increase in award limits. Such change would increase the value of complaints, thus increasing their complexity. In addition, we have identified a risk that with the proposed change, businesses are more likely to file complaints to the FOS, in search of compensation. Given the current operational model of the FOS, and without taking into consideration any potential changes in the way the FOS operates, such increase is unsuitable. We therefore believe that the current £150,000 limit remains appropriate. The ABI understands that the suggestion of a £600,000 limit stems from very limited data available on SME complaints. A more extensive collection and assessment of data from businesses may be needed, ahead of making any changes to award limits.



*Association of Mortgage Intermediaries' response to FCA CP18/3:
Consultation on SME access to the Financial Ombudsman Service*

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Response

As the trade body representing intermediaries in the consumer mortgage market we are responding in relation to their interests as providers of advice, not as trading entities who might wish to bring claims against other firms. We do not consider this to be within our scope.

We are surprised that feedback to a discussion paper from November 2015 is only now being communicated and without transparency behind the delay. We also have general concerns about the consultative process and engagement with industry. Whilst our stance in the last two years may not have changed, given that consultations are expected to be based on current industry opinion, we question the method and appropriateness of using dated responses to form these proposals. There doesn't appear to be an appreciation of the impact of these proposals nor a recognition of the fundamental shift in the regulatory approach. We are disappointed that with such a widening of scope since the initial discussion paper it has been considered as having limited impact, implied by the lack of use of the FCA's "star process" applied to consultations.

Whilst this paper has been communicated as extending the scope of SME access to the Ombudsman, we are disappointed that the equally significant proposal to extend complainants eligible to claim from the Financial Services Compensation Scheme has been buried in the cost benefit analysis (with draft rules lacking). We disagree with allowing these businesses to claim from FSCS for the same reasons we have set out in this response.

Questions

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

We do not believe it is appropriate for the definition of eligible complainants to be extended to include small businesses. The current micro-enterprise definition already covers most relevant firms. These proposals eradicate the clear distinction between firms who are likely to suffer information asymmetry and those who should be able to exercise reasonable commercial care or employ appropriate professional assistance.

References to "consumers' access to redress" are misused as the proposals relate to businesses. The proposals fundamentally change the current regulatory approach to SMEs and consumers, blurring the boundaries between the two. The paper refers to the FCA's objective to secure an appropriate level of protection for consumers, but this has never been intended to include businesses.

Extending the definition so widely to give a significant number of businesses access to the same redress provided to consumers should be considered outside of the FCA's remit. Whilst the FCA believes it has identified "harm" for some small businesses, linking this to its legislative objectives is tenuous with the regulator's role misunderstood. The belief that it is the regulator's responsibility to "reduce the harm to smaller business customers" by "improving outcomes for these customers" is misguided.

We also consider that these proposals risk widening the role of the Ombudsman to a degree which is inconsistent with their more general purpose. The complexity of the issues likely to be raised will be inconsistent with the backgrounds, knowledge and training of the case handlers, adjudicators and ombudsmen employed. This is likely to have further cost implications for their service which our members do not feel able to support.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

We do not agree that businesses with an annual turnover of up to £6.5m, an annual balance of up to £5m and with up to 50 employees should be classed as consumers. There is a significant gap between these businesses and micro-enterprises who have a turnover or balance sheet of up to £2m and up to 10 employees. We do not agree with the justifications that have been made that it is the regulator's duty to treat small businesses in the same way as consumers.

No consideration has been given around potential issues with the legal profession, processes or structure if a business of this size cannot access professional assistance. Instead an inappropriate solution has been proposed, perhaps seen as an "easy option", however the wider perspective of the FCA and Ombudsman's roles has not been adequately considered and explained.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

We consider the current regulatory approach to consumers to be appropriate. Those acting for business or professional reasons should not be afforded the same protections as consumers. We do not understand the regulatory u-turn nor why the FCA is going out of its way to protect individuals who are not consumers but have given a guarantee or security for the liability of a business. We are disappointed in the loss of regulatory focus.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

We do not agree that these changes are within the regulator's scope.

We always consider that any regulatory changes should only apply to matters going forward and not back-dated.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

We do not agree that these changes are within the regulator's scope.

We always consider that any regulatory changes should only apply to matters going forward and not back-dated.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

As set out in our response to DP15/7, we do not support an increase of costs to all participants. This would not be proportionate given that many firms, such as our members, primarily deal with consumers and micro-enterprises. The cost benefit analysis states that the Ombudsman's unit cost for resolving a complaint exceeds the case fee therefore the difference would be covered by the levy, which would increase up to £0.78m per year.

It is however not clear to which industry fee blocks this additional cost will be apportioned. The draft rules also omit any detail on the funding. We are disappointed that incomplete proposals have been put forward. Developing solutions in piecemeal is less than satisfactory as it is usually only with the entire picture that solutions can be properly assessed and are workable and effective.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

This has been covered elsewhere.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

The Ombudsman was set up with a £100,000 limit, raised to £150,000 in 2012, to cater for cases that could be dealt with speedily and by using dispute resolution techniques to gain agreement. It was always considered that higher value disputes of those with complex arguments should still be the subject of legal remedy. We therefore object to any increase in the current limit as we consider this level to still be appropriate.

We also do not believe it is fair for different award limits to apply to different complainants; it adds too much complexity to what should be a simple resolution. It also runs counter to the policy position adopted by the FCA in the FSCS discussions on consistent compensation limits.

From: [REDACTED]
Sent: 23 April 2018 16:27
To: cp18-03
Cc: UK Compliance [REDACTED]
Subject: AXA UK Response to CP18/3 - Consultation on SME access to the Financial Ombudsman Service

Categories: Purple Category, Green Category

Dear Sirs,

Please find below, the AXA UK Group response to your consultation paper CP18/3 – Consultation on SME access to the Financial Ombudsman Service. We note that the closing date for this consultation was the 22nd April 2018 and that this response arrives with you a day late. We would like to apologise for the late submission and hope that you are still able to take our feedback into consideration.

Consultation Questions:

Q1. Do you agree with the FCA's proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

A1. We agree that the proposed thresholds seem to align well with the targeted recipients of additional FOS rights, capturing the wide scope in size of SME's but excluding larger organisations who may reasonably be expected to seek formal legal advice and compensation through the courts. However, please refer to our comments in response to question 2 in relation to the three tests.

Q2. Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

A2. Whilst we agree that the 3 tests all seem to be appropriate to define an SME and assess eligibility, we suggest that the number of eligibility criteria should be reduced and the definition of a small business be amended to the following:

Small Business (in DISP) an *enterprise* which:

- (a) employs fewer than 50 *persons*;
- (b) has a balance sheet total, or annual turnover of less than £5 million (or its equivalent in any other currency); and
- (c) is not a *micro-enterprise*.

Q3. Do you agree with our proposal to make guarantors eligible complainants?

A3. We have no comments to make with regards to guarantors' eligibility.

Q4. Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1st December 2018 and they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1st December 2018? If not, what transitional period do you consider appropriate?

A4. We do have concerns with the proposed timeframe of 1st December 2018. We believe firms should be given a twelve-month transition period from the effective date of change, so that policy documentation can be updated to reflect the additional FOS access rights afforded to SME's.

Q5. Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1st December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1st December 2018?

A5. We have no comments to make with regards to guarantors' eligibility.

Q6. Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

A6. We have no comments regarding the cost/benefit analysis.

Q7. Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where the FCA have powers to make changes?

A7. No, we welcome the proposals set out in this consultation paper which we believe adequately address the disparity for SME's when seeking redress for a complaint and agree with the rationale set out in this paper by the FCA, for not changing the level of redress available.

Q8. Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

A8. Please refer to our response to question 7.

Kind regards

[Redacted]
[Redacted]
Group Compliance
AXA UK
5 Old Broad Street, London, EC2N 1AD
Mob: [Redacted]
Email: [Redacted]

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From: [REDACTED]
Sent: 22 January 2018 18:48
To: cp18-03
Subject: Response to Consultation document

Dear Sirs

Having read the consultation document, and experienced an issue with a bank as an SME, a crucial area of concern is that of notification.

A product provider should in my view be required to advise customers when the specific product is not regulated.

A provider should be required to advise small business consumers that they will not benefit from the Financial Ombudsman's Service, when this is the case.

In my experience providers correspond with consumers indicating that the provider is Regulated, this is grossly misleading, when the product being sold is not regulated.

Consumer facing individuals, operating ostensibly for a Regulated firm, selling unregulated products need to make this clear to SME's, and be conversant with the complaints process.

Your sincerely

[REDACTED]
Former SME client with bank

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SME access to the Financial Ombudsman Service

Consultation Paper CP 18/3

We respond as follows with regard to the above Consultation Paper with these comments pertaining to our particular sector

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

No.

With reference to our sector, the insurance market is still bedding down following the introduction of the processes and remedies applicable following implementation of the Insurance Act.

Whilst it is recognised that the Financial Ombudsman Service (FOS) has the right to make a fair judgement it must still be bound by Court decisions as precedents for a variety of situations.

In the absence of Court decisions as regards cases brought under the new regime there are no precedents to refer to and it will probably be some time before there are any Court decisions. It would not be equitable for the FOS to make decisions based on the new legal regime in advance of Court decisions.

Whilst it is accepted that the distinction between a personal lines client and a micro business can be small the insurance needs of a £6.5 million turnover business will be more complex and sophisticated.

As such, we feel it is premature to extend the scope of FOS involvement by altering the basis of eligible complainants.

Do you have access to data as to unsatisfactory outcomes in the general insurance sector following introduction of the insurance Act to warrant such extension of scope ?

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

See answer to Q1.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

No comment.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should

apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018?

If not, what transitional period do you consider appropriate?

See answer to Q1

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

No comment.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

No comment.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

No comment.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

No.

Where complex disputes arise, extensive technical knowledge is required and that would necessitate the FOS having staff with such extended technical knowledge and how that knowledge is applied to real life situations.

There is an extensive range of general insurance policies on the market and this range is constantly being expanded due to emerging risks and innovation. The FOS would have to keep abreast of such developments and the scope of insurance cover provided – given that market forces and competition lead to variations in the scope of policy covers.

We feel resolution of complex disputes is a matter best suited to the Courts.

9 April 2018



*Insurance innovation
spanning 40 years*

**Bridge Insurance Brokers Ltd
Cobac House
14-16 Charlotte Street
Manchester M1 4FL**

Financial Conduct Authority Firm Reference Number 308815



20 April 2018

Mr J Tallack
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Dear Mr Tallack

Consultation – CP18/3 - Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

BIBA welcomes the opportunity to respond to this consultation paper.

The British Insurance Brokers' Association (BIBA) is the UK's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

BIBA membership includes just under 2,000 regulated firms, who employ more than 100,000 staff. General insurance brokers contribute 1% of GDP to the UK economy; they arrange 54% of all general insurance and 79% of all commercial insurance business. Insurance brokers put the client's interests first; providing advice, access to suitable insurance protection and risk management.

Within our Manifesto for 2018, BIBA called for a period of stability in the rate of regulatory change.

As a general observation, BIBA is alive to the potential impact of the Insurance Act 2015 on the number of complaints raised by SME customers of insurance products.

As the Insurance Act (effective from 12 August 2016) introduced the requirement for a 'fair presentation of the risk' and proportionate remedies in the event of innocent non-disclosure of material facts, or non-compliance with warranties that had no impact on a loss, it is likely that the number of commercial customers seeking resolution to a complaint via the courts will fall, so negating the need for these proposals in our sector.

The following provides our specific feedback on the questions raised in the consultation paper.

British Insurance Brokers' Association
8th Floor, John Stow House
18 Bevis Marks
London EC3A 7JB
www.biba.org.uk

Members' line: 0344 77000 266
Find-A-Broker Service: 0370 950 1790
Facsimile: 020 7626 9676
Email: enquiries@biba.org.uk

British Insurance Brokers'
Association is a Limited Company
Registered in England No. 1293232
Registered Office: John Stow
House 18 Bevis Marks London
EC3A 7JB

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

BIBA members have expressed concern with the proposals.

Approximately 80% of BIBA members would be classified as micro to small businesses and so the proposals put forward in this paper would see customers that are many times the size of the regulated firm, being able to increase the already-held size advantage over these firms.

BIBA members also question whether the term 'small businesses' given to this new category of potential eligible complainants, as the FCA Handbook Glossary already includes the term 'small business' which is applied to firms with a turnover of less than £1m. Confusion may arise between the collective name for a group of firms falling into the small business category and this potential new group.

BIBA would also caution the FCA to consider the timing of this consultation, as the European Commission has launched a review of the three definitions within the EU-derived classifications that make up the SME groupings (see https://ec.europa.eu/info/consultations/public-consultation-review-sme-definition_en)

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

BIBA refers to our answer to Q1 and the bulk of our members would not be in favour of extending Ombudsman access to firms larger than them.

If an extension were to be made; BIBA would suggest ensuring a tie-in with developments to the European definitions, to create a consistent understanding of what constitutes the three classifications within the concepts of SME. BIBA also sees the logic in the need to meet all three tests.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

BIBA members expressed no objections

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

For the insurance sector specifically; too little time has elapsed to be able to judge the long term impact of the Insurance Act on complaint levels from commercial customers. As a consequence of this, BIBA would suggest a deferment of a couple of years at least would be required to determine if there was a need for the solution proposed by the FCA

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

BIBA members expressed no comments in this area

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

BIBA would again make reference to the legislative change referenced in this response which is likely to have a direct impact of the FCA's cost-benefit analysis, potentially making the numbers fail to 'stack up'.

BIBA would also invite the FCA to consider the size of many regulated insurance brokers, which it may glean from RMAR submissions, when considering Bargaining Powers of the relevant parties.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

BIBA would contend that for the insurance sector specifically, legislative changes have already come into effect which could dramatically reduce the number of complaints from commercial customers that fall into the FCA's proposed 'small businesses' category.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

BIBA members recall that the Ombudsman service was designed as a simple, fast-track service for complaints. BIBA is unsure whether the FOS has the existing skillset to handle higher value complaints and wonders whether such matters are best left to the courts to determine.

We would be happy to discuss any of our points further if this would assist.

Yours sincerely

[Redacted signature]

[Redacted text]

[REDACTED]

[REDACTED]

[REDACTED]

CONSULTATION PAPERS

CP18



Mr James Tallack
Financial Conduct Authority
25 The North Colonnade
London
E14 5HS

Dear Sirs,

Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services.

We welcome the opportunity to respond to this consultation paper.

About Broker Network

Broker Network's strength is built on its Members who want to retain their independence, have a competitive edge and maintain a strong voice within the industry. Our family is centred on three pillars: Members; Partners; and Products. This includes a full range of exclusive products providing Members and Partners with a competitive advantage; and capital investment allowing independent brokers to grow their business and fulfil their strategic objectives. By creating regional broking centres, we also provide our Partners with the capability to purchase smaller brokerages.

The Voice of Independent Broking

As the UK's largest network of independent brokers, the majority of the Broker Network membership is made up of SMEs whose precious time must be devoted to the needs of their clients. We have made it our mission to ensure that no matter what its size; every Member is empowered to participate in wider discussions that affect its future. The following provides our specific feedback on the questions raised in the consultation.

CP18/3

Q1: Do you agree with our proposed changes to the definition of a eligible complainant? Are the size thresholds broadly correct or would different thresholds be more appropriate?

We do not agree.

From our research in the house of commons library in 2017 there were almost 5.7 million businesses in the UK.

Over 99% of these businesses were classed as SME of which 96% are currently classed as Micro enterprises. of the remaining 3% approx 208,000 firms may meet the FCA criteria for eligibility to seek redress from the FOS under the consultation. and therefore fall into scope.

We are surprised to read that in the FCA view many of these firms are having trouble obtaining access to significant legal resources (presumably due to the high costs involved in hiring legal counsel) – your research also confirms that the threshold for firms in this position sits at approx £6.5 million turnover.

We have in the past made our position clear that we did not support the introduction of a new eligibility level and whilst the levels now being proposed are smaller we maintain our position. We provide services to our general insurance intermediary members many of whom would be classed as sole traders and micro enterprises who find their finances constantly under pressure due to the high cost of regulation in this country and we therefore must resist any solution that would incur additional costs to our members in terms of increase in levy being applied regardless of the amounts involved added to the cost of investigating the complaint and the possible complexities it could bring with it.

With the introduction of the insurance act 2015 we would have thought that if this is being applied correctly the risk of detriment to all firms in the general insurance sector we operate in would be greatly reduced when it comes to affecting a suitable insurance contract as this was one of its primary objectives in turn we would expect to see a decline in disputes form

the 26% upheld in your survey dated 2015.

We support the argument put forward by the FCA in regards for a need to have a quick and efficient resolution system that will protect business at the time they most need it, however we wonder if the FOS is the correct vehicle for such a process or should there be a model based on independent arbitration or the civil proceedings act 1997. (We appreciate that these suggestions are outside your terms of reference).

We are also concerned about the additional cost of any levy applied by the FSCS although we found the paper confusing on whether or not there is an intention to increase the eligibility levels in Comp to the same as that in DISP- Clarification would be useful.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small Business?

Allowing for our answer to Q1 we would expect that if an SME was to become eligible it would have to abide by the eligibility criteria set down as a whole this would be consistent with the requirements of a micro enterprise.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

We have no comment, as guarantors as such are not part of the General Insurance business however we do not that the numbers being talked about are negligible in the grand scale of the proposal.

Q4: Do you agree that changes introducing small businesses as eligible complainants should come into effect on 1st December 2018 and that they should apply only to complaints made to a firm regarding act or omissions of the firm which occur from 1st Dec 2018?

Allowing for our answer in Q1 if the FCA still decided to go ahead with their proposals we would agree with an effective date of 1st Dec 2018 and that complaints for such complainants as being added should also be effective from

that date.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1st December 2018?

In line with our answer to Q3 we agree.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

We have noted the figures produced by the CP and in the main would agree with the cost benefit analysis put forward however we have concerns about the actual costs that could be attributed to our members in the investigation and administration costs of more large and complex disputes, plus the cost of increasing consumer awareness of the protection available including complaining to the Ombudsman.

Q7: Do you have views on how access to redress might be improved for SME without the need for changes to Legislation including but not limited to areas where we have powers to make changes?

We have no comment.

Q8: Without legislative change do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from the SME than is implied in our proposals for consultation in chapter 3 .What changes would be needed to make this effective – what risks might this introduce?

Notwithstanding our response to Q1 – we are not sure that the FOS is the appropriate body to consider a greater share of complex or higher value complaints.

Reasons

- (a) The complexity of some cases may require additional resources and expertise not readily available in the FOS – this will drive up costs of recruitment which will eventually

be carried by the firms in increased levies and case fees.

- (b) The FOS limit of £150,000 redress award may be well short of any recommendation which will mean that there is a risk of a double process of first going to the FOS and then a second approach through the courts.
- (c) Without further consultation we are not in favour of having the FOS limits increase to the values suggested.

Any queries in relation to this response should be directed to:

[REDACTED]
[REDACTED]
The Broker Network Limited (FRN 308523)
E: [REDACTED]
T: [REDACTED]
M: [REDACTED]

1. **Project Title**
 2. **Project Number**
 3. **Project Location**
 4. **Project Description**
 5. **Project Status**

22 April 2018

James Tallack
Strategy and Competition
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Dear James,

CP18/3: Consultation on SME access to the Financial Ombudsman Service

In response to the Financial Conduct Authority (FCA) consultation CP18/3 published on 22 January 2018, I am writing to outline the key aspects raised by CBI members about SME access to the Financial Ombudsman Service (FOS).

The CBI welcomes the opportunity to share these views.

This response highlights that:

- CBI members broadly support the proposals put forward in Consultation Paper 18/3
- CBI members would endorse that the upper threshold for the FOS be extended from the current 'micro enterprise' definition to 'small firms.'
- CBI members support the principle of changing the definition of eligibility as outlined in CP18/3 and view the proposed threshold levels as appropriate.

Financial services at the CBI

The CBI is the UK's leading business organisation, speaking for some 190,000 businesses that together employ around a third of the private sector workforce. With offices across the UK as well as representation in Brussels, Washington, Beijing and Delhi the CBI communicates the British business voice around the world.

The CBI's financial services policy work is rooted in two priorities; assessing the potential impact of Brexit on the UK's financial services sector and highlighting the sector's role as an enabler of growth across the economy.

SME disputes

The CBI recognises the work undertaken by the FCA and UK Finance on this critical issue over the last two years. CBI members, including the CBI's Enterprise Forum, comprising of 50 leading SMEs from across the UK, broadly support the proposals put forward in Consultation Paper 18/3, to ensure more small businesses can access vital support and advice when they need it most.

Extension

At present, if a business qualifies as a 'micro enterprise' and their complaint cannot be speedily resolved to their satisfaction, the current FOS regime includes a simple, free ombudsman service with compensation powers up to £150,000. CBI members are supportive of this vital service.

Nonetheless, over 99% of all banking relationships in the UK are with firms under 50 employees which, based on EU definitions, is the cut off point for their definition of 'small firms'. This pattern of relationship is confirmed by the 2017 FCA Financial Lives Survey.¹ Significantly, the current reporting requirements

¹ FCA, Financial Lives 2017 – see data tables for self employed

by the FCA on small business complaints to the FOS only cover 'micro enterprises', with only 9 or fewer employees, which is linked to the underlying EU regulations on micro firms and consumers.²

Consequently, CBI members would endorse that the upper threshold for the FOS be extended from the current 'micro enterprise' definition to 'small firms', which would move the threshold to under 50 employees or £6.50 million in turnover. This would provide a measurable increase of about 200,000 businesses that would then be in the scope of the FOS service, helping many firms who are currently excluded from non-court based redress.

Eligibility

CBI members support the principle of changing the definition of eligibility as outlined in CP18/3 and views the proposed threshold levels as broadly appropriate in terms of coverage and simplicity for both businesses and charities.³

The principle of a number of simple and well publicised tests to confirm eligibility of inclusion in the enhanced FOS regime requires further discussion to determine if the three tests outlined in CP18/3 are sufficient or workable in *all* circumstances. While the values suggested for these tests appear appropriate, some operational issues may still arise. For example, some small firms which use part time or casual staff may find the employment test problematic.

Closing comments

The UK needs a financial system that inspires confidence to be the best place to start and grow a business. The FCA's proposed measures will assist in rebuilding trust between firms and the customers they serve. It should encourage SMEs to borrow and manage the finance they need to innovate and grow with the assurance that they have access to the Financial Ombudsman Service.

Yours sincerely,



CBI

² Micro enterprises with 9 or fewer employees or under 2m euro sales or balance sheet. See EU SME Definition Note the definition is currently under review (see consultation)

³ FCA CP18/3 (Point 3.13, page 14, January 2018)



Chartered
Institute
of Credit
Management

Our ref. GB/PJK/NH

20 April 2018

Mr James Tallack
Financial Conduct Authority
25 The North Collonade
London E14 5HS

Dear Mr Tallack

**RESPONSE OF THE CHARTERED INSTITUTE OF CREDIT MANAGEMENT TO:
FINANCIAL CONDUCT AUTHORITY – SME ACCESS TO THE FINANCIAL OMBUDSMAN
SERVICE**

The Chartered Institute of Credit Management (CICM) is the largest recognised professional body in the world for the credit management community. Formed over 75 years ago, the Institute was granted its Royal Charter in 2014. Representing all areas of the credit and collections lifecycle, it is the trusted leader and expert in its field providing its members with support, resources, advice, and career development as well as a networking and interactive community. In addition to its comprehensive suite of qualifications and learning opportunities, events and magazine 'Credit Management', the CICM administers the Prompt Payment Code for BEIS. Independently, and through collaboration with business organisations, it provides vital advice to businesses of all sizes on how best to manage cashflow and credit.

CICM members hold important, credit-related appointments throughout industry and commerce, and although we have chosen not to answer the specific questions posed in the paper, we feel it appropriate to comment on this consultation.

We are broadly supportive of the proposals to allow more SMEs access to the Financial Ombudsman Service. We would urge that the timescales should allow for systems to be in place, and necessary training to have been undertaken prior to the changes being introduced. We believe it is important that communication of the changes should be sufficiently clear to avoid confusion among affected businesses. In principle we support the eligibility of guarantor complainants but believe further investigation is needed to ensure that unintended consequences are avoided.

If we can help in any further way please do not hesitate to contact us.

Yours sincerely

Chair of Technical Committee

E : governance@cicm.com

T :

W : www.cicm.com

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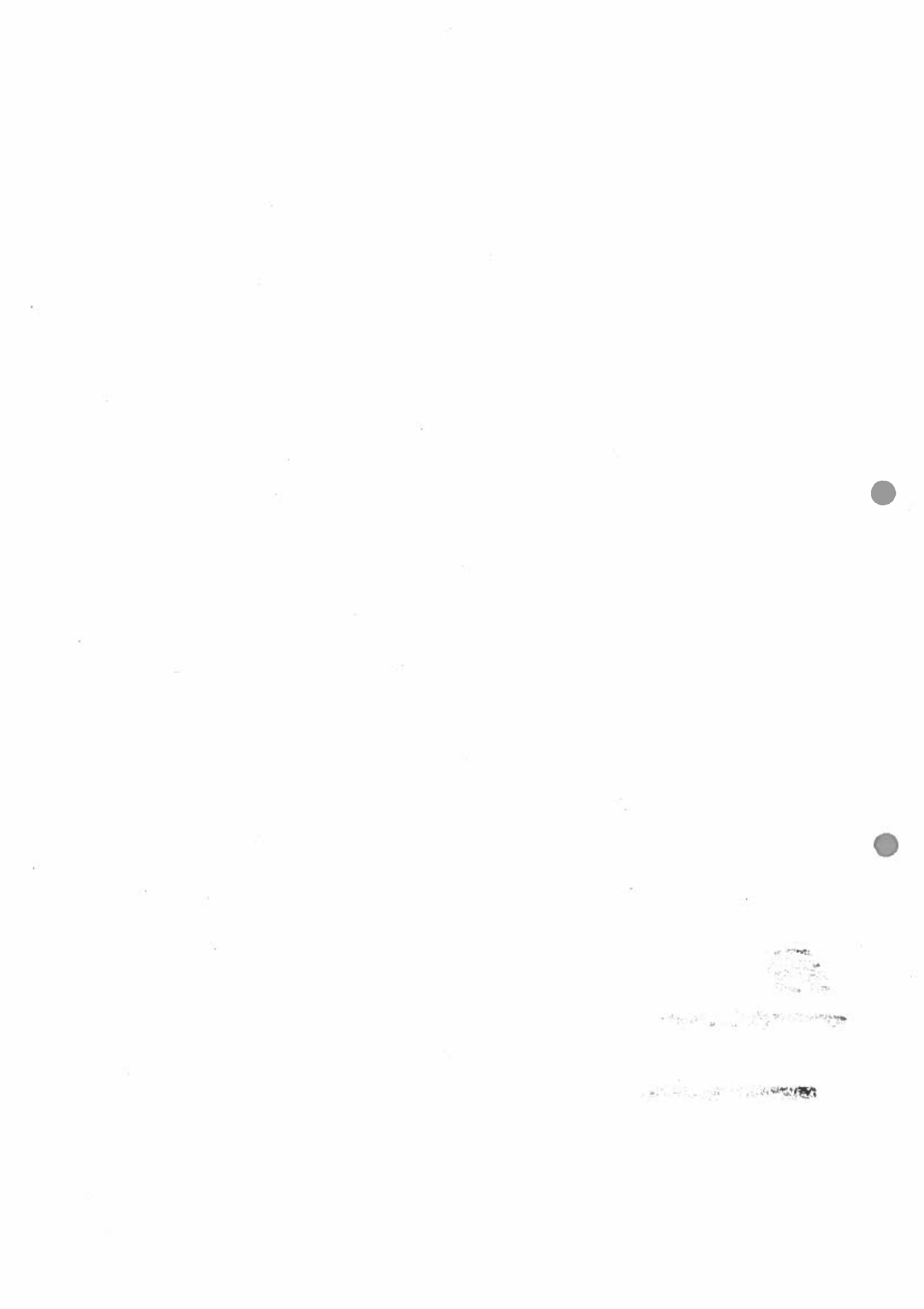
Chartered Institute of Credit Management

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CP 18/03: Consultation on SME access to the Financial Ombudsman Service and Feedback to DP 15/7: SMEs as users of financial services

Response from the Consumer Finance Association

Introduction

The Consumer Finance Association (CFA) is the principal trade association representing the interests of major online and store-based, short and medium-term lending businesses operating in the UK. The CFA is pleased to have the opportunity to respond to the Financial Conduct Authority (FCA) consultation (CP 18/03) on SME access to the Financial Ombudsman Service.

CFA members include a range of lenders, cheque cashers and associated firms.

General comments

The CFA welcomes the FCA proposal to extend access to the Financial Ombudsman Service (FOS) to small businesses.

Small financial services businesses, such as local high street lenders and money service businesses (MSBs), play an important role in the financial system, often providing financial services to people less likely to use traditional banking services.

But the continued operation of these businesses depends on the provision of basic financial services, such as day-to-day banking services, which can be removed by the larger banks in apparently arbitrary decisions.

Extending access to the FOS to small businesses will introduce greater accountability for larger firms when dealing with small businesses.

The CFA believes that access to the FOS for small businesses should help to ensure that large banks treat all their business customers fairly.

The current proposals to extend access to the FOS for small businesses for actions that occur after 1st December 2018 would introduce additional risks for small businesses up until that date. The CFA believes there is a risk that larger financial services firms could try and withdraw services currently provided to small businesses before that date in an effort to avoid potential complaints to the FOS.

A transitional period is needed to allow small businesses to make complaints about actions by financial services firms between the date the CP was published and the date the new rules take effect.

Responses to specific questions

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

The CFA agrees with the proposed changes to the definition of an eligible complainant. It is important that small businesses are able to get help from the FOS in resolving complaints. As the CP points out, small businesses are unlikely to have the resources they would need to challenge the way they are treated by larger financial services businesses.

The viability of many small businesses, including small lenders and MSBs, depends on having access to banking services. These businesses can be put under threat by an apparently arbitrary decision to remove or reduce access to banking services.

Extending access to the FOS to small businesses will be vital in helping small businesses challenge the removal of services which can threaten the future of their business.

The thresholds proposed by the FCA should help ensure that financial services firm treat small business customers fairly.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

The CFA agrees that all the tests should be met for the FOS to consider an SME a small business. This will help ensure that access to the FOS is available to those businesses which do not have the resources to challenge poor treatment by financial services firms in other ways.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

The CFA believes that the current proposal to allow complaints to the FOS from small businesses for acts or omissions of a firm which occur after 1st December 2018 increases the risk of small businesses being treated unfairly up until that date.

For example, banks could review their small business accounts in the coming months and make a range of arbitrary decisions about the services provided to these customers, knowing that the small business will not be able to take a complaint to the FOS about their actions.

A transitional period, which allowed complaints to be made after 1st December 2018 in respect of acts or omissions by firms after the date the CP was published, would reduce this risk significantly.

For a transitional period to be effective, the rules would also need to include a requirement for firms to tell small businesses about the right to refer complaints to the FOS, particularly where the initial complaint was made prior to 1st December 2018.

**Consumer Finance Association
April 2018**



From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 23 April 2018 12:33
To: cp18-03
Subject: Online response form submission for CP18/3

Categories: Purple Category, Green Category

Thank you for your submission. Your responses are given below:

Reference 230418763186

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

Whilst we understand the desire to allow SME's to have access to FOS, when consulting with our Membership it became apparent that firms would not have the data which would allow them to determine whether an SME met the criteria. Our members are debt collection and debt purchase companies. The information they receive at the point of instruction is often minimal, but certainly wouldn't include whether an SME had a certain amount of employees, turnover level etc, just that the SME had an outstanding debt. Therefore members could not ensure they are accurately providing FOS rights. FOS referral wording in a final response would need to put the onus on the SME to establish whether they have the right to raise their complaint with FOS or not.

A solution to this could be that the FOS rights could be built into letters, but would need to be supported by the qualifying criteria, pushing the onus onto the SME customer to determine whether they would be able to escalate a complaint to the FOS or not. Failing that, members would have to ask the SME, at the point of receiving a complaint, if they meet the criteria, which may cause further frustration.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

Q3: Do you agree with our proposal to make guarantors eligible complainants?

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

Is your response confidential? No

Your details

Company Credit Services Association

Name [REDACTED]

Position [REDACTED]

Address 2 Esh Plaza, Sir Bobby Robson Way, Great Park, Newcastle upon Tyne

Postcode NE13 9BA

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as a representative of a professional firm

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 24 January 2018 13:12
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 240118648321

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

I do not agree with the proposed changes put forward to determine the definition of an eligible complainant. I have requested through my MP for the last 7 years that a tribunal be put in place to deal with this type of complaint which outside of interference of other bodies such as the Financial Conduct Authority or Financial Ombudsman Service

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

I do not agree that any barrier be it based on number of employees, turnover or balance sheet should put in place of any business to prevent them seeking a correction or judgement for the wrong doing of any Bank or Financial Institution.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

As a guarantor I have been affected by the wrong doing of HSBC Bank so I am in agreement that guarantors become eligible complainants

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

I do not agree that the changes introducing small businesses as eligible complainants should come into effect on 1st December 2018, it should come in before that time, as soon as possible even being back dated to January 1995.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

I do not agree that the changes introducing small businesses as eligible complainants should come into effect on 1st December 2018, it should come in before that time, as soon as possible even being back dated to January 1995.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?
I do not agree, I believe the only way for is for a fair outcome decided by a judge outside of any inference from Government, FCA or FOS.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

With past experience of being letdown by the FCA, their inability to make sure that the information that their body put forward for public information get to everyone I would be concerned that the FCA would not do their best to implement any changes. The FCA have not done their best for the victims of the banking scandal, agreeing with the Banks that the bank although they may have mis-sold (fraud) a product they have encouraged the banks to replace this product with another unwanted product. the FCA is therefore not to be trusted.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

The Ombudsman is not the appropriate body for this type of complaint, we need to move on for complainant to seek a judicial review of the complaint being made, the Ombudsman Service is definitely not the appropriate body. There are changes that would make this acceptable of effective one of the main risks is the closeness of the Banks to the FCA and Ombudsman Service.

Is your response confidential? No

Your details

Company Darby's Glass & DIY Ltd

Name [REDACTED]

Position [REDACTED]

Address 2 [REDACTED]

Postcode [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as an individual



Electronic Money Association

Crescent House

5 The Crescent

Surbiton

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Telephone: +44 (0) 20 8399 2066

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www.e-ma.org

James Tallack

Financial Conduct Authority

25 The North Colonnade

London E14 5HS

UK

23 April 2018

Dear James

Re: EMA response to FCA CP 18/3 on SME Access to the Financial Ombudsman Service

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide that provide online payments, card-based products, electronic vouchers and mobile payment instruments. They also include a large number of smaller Payment Service Providers, including startups. The majority of EMA members are authorized in the UK, and operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

We write to express our concern about the FCA's proposals to expand the list of eligible complainants to the Financial Ombudsman Service to include SMEs and guarantors. This is a substantial departure from existing practice, and is likely to have a considerable impact, particularly on smaller financial service providers in the payment services sector, where disputes are likely to be complex, and where the financial services provider may themselves be an SME.

I would be grateful for your consideration of our concerns.

Yours faithfully

Electronic Money Association

EMA response to consultation

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

We do not agree with the proposed expansion of the definition of eligible complainants.

Freedom of contract is a long established principle in common law, in particular in its application to B2B contracts. This principle has only been varied to protect weaker parties where there is a gross power disparity e.g. individuals as consumers or employees. The businesses that are proposed to fall within the scope of the revised definition will have between 10 and 50 employees, and turnover and assets well in excess of the resources of ordinary individuals. The financial services industry should not have to provide a special redress channel merely to cover inadequate preparation when purchasing financial services. These businesses can avail themselves of the services of accountants, independent financial advisors and lawyers in a manner that ordinary individuals cannot.

We note that currently the legislative basis for the Financial Ombudsman Service ("**Ombudsman**"), as set out in section 225(1) FSMA, is "*a scheme under which certain disputes may be resolved quickly and with minimum formality by an independent person.*" The more complex and the higher the value of claim, the harder it is for the Ombudsman to meet these criteria.

We also note that the Ombudsman's decisions are binding on the relevant financial service provider but not on the eligible complainant. As the cases increase in complexity (and the corresponding claim values increase), the new larger eligible complainants will be incentivized to present their case in the High Court with respect to matters that have not succeeded with the Ombudsman, using it as a means of testing and honing arguments in advance of the court hearing. This is a form of dispute arbitration. Unlike in the case of a complaint to the Ombudsman, commercial alternative dispute resolution ("**ADR**") allows for a level playing field as outcomes are either not binding (e.g. negotiation or mediation) or they are binding on both parties (e.g. arbitration), which allows for certainty and prevents arbitrage by the complainant. Therefore, in order to prevent such arbitrage, we caution against the expansion of the definition of eligible complaints.

Regarding complexity, we note the Ombudsman's £150,000 compensation limit already exceeds the qualifying threshold for the Multi Track of the High Court, which handles the most complex civil cases. While this is justifiable for consumers, micro-enterprises, small charities and small trusts, for the purposes of meeting the statutory objectives of section 225(1) FSMA, the expected

complexity of claims by larger complainants will require the Ombudsman to adopt procedures which incorporate the characteristics of Multi Track. This then defeats the statutory objective of the Ombudsman to resolve disputes quickly and with a minimum of formality.

Finally, the Ombudsman is unlikely to have the necessary resources or expertise to handle the type and number of potential cases that might arise with larger complainants, particularly in relation to payment services. If this issue is not addressed in advance, financial service providers are likely to reduce the types of services offered to such businesses, thereby reducing their access to financial services products.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

While we disagree with the values set out in the 3 tests, and recommend that they be reduced, we are of the view that all 3 tests (with revised values) must be met for the Ombudsman to consider an SME a small business.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

No, guarantors should not be eligible complainants as they have a secondary contingent liability; it is the principal that has the primary liability under a contract backed by a guarantee. The guarantors are not the recipients of the financial services. If a guarantor becomes liable under the guarantee because of the failure of the principal to meet its obligation to the beneficiary, the guarantor is entitled to have the courts assess the principal's primary liability to the beneficiary and raise the principal's defences against the beneficiary. These issues are best determined by the courts.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm, which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

We do not agree with the proposed changes to the definition to eligible complainant. However, if the changes were to take place, it would be appropriate for the changes to apply only to acts or omissions occurring on or after the date the new rules come into force in order to allow firms to adjust their product offerings and services if need be.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they

should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

We do not agree with the proposed changes to the definition of eligible complainant. However, if the changes were to take place, it would be appropriate for the changes to apply only to guarantees made on or after the date the new rules come into force in order to allow firms to adjust their product offerings and services if need be.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

We do not agree with the cost benefit analysis and our initial view is that the costs to both SMEs and financial service providers are being underestimated, as the more complex cases that will arise will require more time and resources to process, both for financial service providers and for the Ombudsman. Furthermore, the benefits to SMEs and financial service providers have been overestimated. Financial service providers are likely to build into their fees the potential cost of Ombudsman hearings, which would include not just the fees to the Ombudsman, the levy, but also the cost of preparing a case for the Ombudsman.

The Ombudsman is unlikely to have the necessary resources or expertise to handle the type and number of potential cases that might arise with larger complainants. If this issue is not addressed in advance, financial service providers are likely to reduce the types of services offered to such businesses, thereby reduce their access to financial services products.

Any action should be taken only after consideration of the findings of UK Finance's review into the complaints and ADR landscape for the UK's SME market.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

We suggest that an industry-led voluntary ADR system as proposed by UK Finance, and mentioned by the FCA in paragraph 4.8 would be an appropriate tool for this purpose.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

No, please see our response to Q1.

List of EMA members as of April 2018:

Advanced Payment Solutions Ltd	One Money Mail Ltd
Airbnb Inc	Optal
Allegro Group	Park Card Services Limited
American Express	Paybase Limited
Azimo Limited	Payoneer
Bitstamp	PayPal Europe Ltd
BlaBla Connect UK Ltd	PayPoint Plc
Blackhawk Network Ltd	Paysafe Group
Boku Inc	PPRO Financial Ltd
CashFlows	PrePay Solutions
Citadel Commerce UK Ltd	R. Raphael & Sons plc
Clearsettle	Remitly
Coinbase	SafeCharge UK Limited
Corner Banca SA	Securiclick Limited
Ebanx	Skrill Limited
eBay Europe Sarl	Starpay Global Ltd.
Euronet Worldwide Inc	Stripe
Facebook Payments International Ltd	Syspay Ltd
First Rate Exchange Services	Transact Payments Limited
Flex-e-card	Transact24 (UK) Ltd
Flywire	TransferWise Ltd
GoCardless Ltd	TrueLayer Limited
Google Payment Ltd	Uber BV
IDT Financial Services Limited	Valitor
Imagor SA	Vitesse PSP Ltd
Intuit Inc.	Viva Payments SA
Ixaris Systems Ltd	Wave Crest Holdings Ltd
Merpay Ltd.	Wirecard AG
MuchBetter	Wirex Limited
Nvayo Limited	Worldpay UK Limited

From: [REDACTED]
Sent: 28 January 2018 10:11
To: cp18-03
Cc: [REDACTED]
Subject: Open consultation access to FOS for SMEs

Dear FCA

In response to your open consultation:

Banks have come to rely on matrimonial assets in lending to small family businesses. In my experience, banks are now treating this as an unquestioned entitlement, *even after unsecured lending has already occurred*. This clearly influences lending decisions, allowing them to be even more cavalier. I do not believe that this was the original intention of the relaxation of laws in England with regard to family homes, where *families and joint owners* decide what happens to their homes.

If the disreputable, widespread banking procedures, which now annexe the family home with such ease, were prohibited, I believe the banks' lending decisions would be more circumspect.

In my case, a Ltd business was set up carefully and deliberately with separate personal and business finance.

The bank, however, (NatWest) decided at the height of the financial crash in 2008, to demand the security of our matrimonial assets on an *existing* business overdraft which was then capped. ie – they over-rode the Ltd status of the company but the PG gave no advantage to the business.

Since 2002 banks have had a responsibility to make sure that the co-owner of the property (the wife/husband or partner of the person taking out the business loan) understands the consequences. Banks also understand that Company Law requires such documents to be disclosed to shareholders. But NatWest did not do this.

They came up against my potential objection and so pressurised my husband to sign documents on his own, at a secret meeting without legal presence (some documents in my name) which they processed without my knowledge and in the face of my known objection. Legally, I should have seen some of these documents in my capacity as a shareholder.

The bank was then in a position to force the sale of my home. NatWest have since acknowledged putting my home at risk.

By the time I knew about the PG, my husband had attempted suicide and descended into severe depression. It was impossible to have any rational discussion. Without any support from the bank, the company was liquidated. Our marriage ended. He was then made personally bankrupt. He died in 2013, having never recovered his mental health.

My first problem was that I had not seen any documents and did not even think to challenge. I did not know at that point that banks act dishonestly.

About a year later, I found a copy of the PG with my name on it, and was horrified. I challenged the bank and alerted the IP who was then involved (PwC) – and LandRegistry.

Suffice to say that NatWest Customer Services obfuscated, dragged out responses for a number of years, gave false information, and finally declared their case closed, sending me their standard blurb about forwarding my complaint to the FOS.

It took the FOS a similar amount of time to decide that I was not an 'eligible' complainant, in their view, because I was not a 'customer of the bank'. (!)

The time it took them to decide this leads me to believe that these 'rules' are overly open to interpretation.

I was told that the route of court action was open to me. Clearly, I cannot afford any legal action against a bank so this route was not open to me.

Before he died, my husband complained in his own capacity as a 'customer of the bank' to the FOS but his IP – (by that time; Mazars) – would not allow the FOS to investigate the complaint against NatWest/RBS. This in itself raises questions: by this time, PwC and Mazars' legal advisors had clocked up £100ks in fees which needed to be paid by the sale of my home. Mazars bankruptcy division had bought into such bankruptcy claims when they purchased their IP dept. from PwC. Was self-interest at play?

I contacted the FSA/FCA twice.

I was told that this body does not investigate individual complaints but was eventually advised by them to contact the FOS again as a shareholder. Which I did.

The FOS' latest response was that I cannot complain as a shareholder, because the company no longer exists, and I am not a 'consumer'.

I understand that the FOS rules are set by the FCA.

I was therefore surprised to see the FCA's own definition of a consumer in your consultation preamble:

This will be of interest to consumers who are self-employed, own or manage SMEs, provide guarantees for SME loans, or contribute to a family business.

Therefore, according to the FCA, I am, and always have been, without any doubt whatsoever, a 'consumer'.

My response to your consultation is as follows:

SME owners, shareholders and 3rd parties directly affected by banking decisions are not positively identified in 'eligibility rules'. I believe that the profile of any potential complainant regarding SMEs cannot be pre-decided and that each case should be assessed within a more transparent tribunal system.

Eligibility rules currently appear to be fluid and open to such interpretation by the FOS to suit other factors.

Complainants should have access to a tribunal that is outside the influence of an IP and his/her legal advisor. IPs are commercial and unregulated. They cannot be relied upon to make decisions which might not be in their own interests.

Former shareholders of liquidated companies currently have no recourse to the FOS. This is unfair when evidence comes to light after a company has been dissolved or where mental ill-health makes it difficult to complain within a defined timescale. An independent tribunal should address this.

Sincerely




FINANCE & LEASING ASSOCIATION (FLA) RESPONSE TO THE FINANCIAL CONDUCT AUTHORITY (FCA) CONSULTATION PAPER ON SME ACCESS TO THE FINANCIAL OMBUDSMAN SERVICE (FOS)

Introduction

1. The Finance & Leasing Association (FLA) represents UK providers of asset finance (leasing and hire purchase). The FLA's members include specialist lenders, subsidiaries of banks, independent asset finance providers, and captive finance companies owned by equipment manufacturers. In 2017 they provided £32 billion of funding to businesses and the public sector. They play a vital role in allowing SMEs to access the finance they need to grow their businesses, acquire new equipment, and invest in new technologies.

Executive Summary

2. The FLA supports the principle of providing SMEs with effective mechanisms for redress when they encounter problems associated with the purchase of financial services. But such mechanisms need to be seen in the wider context of the regulatory system which governs the provision of those services. That system is not currently fit for purpose. Several points arise in consequence:
 - First, the cost of applying Consumer Credit Act (CCA) customer information and creditworthiness rules – designed to protect individuals – to 1.5 million business customers *within* the current regulatory boundary has already encouraged many finance providers and intermediaries to leave the market. The FCA is of course reviewing the CCA for the Government. We believe reform is urgent, and that any changes to current redress mechanisms for small businesses can only sensibly be made once a more appropriate and proportionate regime is in place for the regulated markets.
 - Second, the FCA's proposal to extend the Financial Ombudsman Service's (FOS's) remit to cover small business complaints arising *outside* the regulatory boundary would further increase the compliance and risk burden on funders, causing even more to leave the business finance market. This would raise costs for customers and create adverse consequences for market competition and choice.
 - Third, the FOS has very little relevant experience. The FCA's proposals would require major changes to the way the FOS operates, considers complaints, and makes decisions. The FOS's resources and capacity are already under pressure and the addition of such a significant new jurisdiction would require a major investment programme. The proposed implementation date of 1 December 2018 would, in consequence, be much too soon.
 - Fourth, it does not seem logical to propose extending a redress mechanism like the FOS which currently applies *within* the regulatory boundary to customers currently *outside* the boundary. On what basis could complaints be



fairly assessed? Given their limited market coverage, existing industry voluntary codes could at best provide only a small part of the answer to this question.

3. We therefore recommend that the FCA should complete its current review of the CCA while at the same time conducting a more general assessment of the regulation of the provision of financial services to small businesses, with the aim of designing a more proportionate and effective system. This would then provide the context for fresh thinking about redress mechanisms. While extending the use of existing mechanisms – such as the FOS – may seem superficially attractive, such a “quick fix” would do nothing to address the underlying problems, and would be likely to make some of them worse. The fourth point in para 2 above gives rise to considerable doubt as to whether this approach would be at all practicable.

Responses to questions posed in the consultation

Q1: Do you agree with our proposed changes to the definition of an eligible complainant?

Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

4. The FLA does not support the proposed changes to the definition of an eligible complainant. While we do support a better system of redress for SMEs, this needs to be part of a properly thought-through and proportionate regulatory regime or it simply will not work. Such a regime would recognise the real distinction between individual consumers and small business customers of financial services, who have quite different needs, expectations and levels of understanding. Those differences are reflected in the current additional regulatory protections for individual consumers, including the FOS complaints process.
5. The FOS is neither designed nor resourced to consider business to business complaints. This is shown – for example – by the confusion which currently surrounds the FOS’s jurisdiction over complaints from micro-enterprises about unregulated corporate lending not classed as ‘restricted credit’ and also hire purchase.
6. Widening the FOS’s jurisdiction to cover more small businesses outside the current regulatory perimeter would give rise to several quite serious problems, the solutions to which are not apparent from the FCA’s paper. These include:
 - How would complaints outside the regulatory boundary be adjudicated?
 - What rules would apply?
 - How would consistency with complaints within the boundary be achieved?
 - How would providers of financial services be able to raise concerns?
 - How would the validity and enforceability of freely-negotiated *unregulated* commercial contracts be preserved?
7. Other practical considerations would also arise. For example, in instances of dispute it is sometimes necessary for a lender to take immediate action to preserve the equipment or asset which is the subject of a finance agreement. If even more SMEs had access to the FOS, such action could be inhibited across a wider market



than at present, while relevant Ombudsman cases were being considered. This would raise the perceived level of risk for firms who wished to provide finance to SMEs, which would in turn have a significant further adverse impact on the cost, type and availability of such finance.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

8. If the proposal were to be adopted (which we strongly advise against for the reasons given above), we agree that all three tests should be met before the FOS could consider a complaint. We support the use of multiple criteria to identify eligible complainants.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

9. We are concerned that allowing guarantors to become eligible complainants would create more confusion, as well as additional administrative burdens. For example, documentation outlining an individual business's right to approach the FOS would have to be sent to guarantors as well as to the business. This would further erode the distinction between individual consumers and business customers in an unhelpful way.
10. Guarantors for commercial finance are also likely to be very different from those prevalent in the consumer markets, who are usually individuals. Commercial guarantors may, for example, be large businesses, who would not normally be eligible complainants under the FOS's jurisdictions. Commercial guarantors will frequently not take the same risks as those involved in consumer contracts. In the commercial markets, the funder, borrower and guarantor have the flexibility to design the lending decision and the guarantee to reflect individual circumstances.
11. The FCA's proposal therefore raises the risk that commercial guarantors may use a complaint to the FOS as a delaying tactic when a funder seeks to recover a debt. Funders would need to account for this additional risk when making a decision to lend, again potentially increasing the cost of lending.
12. A more proportionate approach might be to allow guarantors to make eligible complaints only if the business has ceased trading.



Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

13. We believe that the implementation date is much too soon. A transitional period of at least 24 months would be appropriate, were the FCA to go forward with these proposals. Our members would need to ensure that their products and documentation were compliant, and would need to train staff and amend complaints procedures. Firms would also need to re-assess the risk of lending to SMEs for the reasons outlined above.

14. As we have explained above, the FOS would also have to design and execute a major implementation process of its own, involving the formulation of relevant policies and procedures, the development of its knowledge of commercial transactions to an appropriate level, and the recruitment and training of new staff with the appropriate competences. We believe this is not possible within the proposed timescale.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

15. We believe the proposal would impose significant new costs on funders, as explained above. In addition to these, the likely adverse changes in the risk profile for SME lending (as also explained above) have not been considered in the FCA's cost/benefit analysis (CBA), nor the (high) likelihood of market withdrawal by some funders. Furthermore, the CBA does not take into account the cost of the proposals likely to arise because of changes to complainant behaviour. For example, there is likely to be a significant increase in caseload for the FOS and for funders, including an increase in frivolous complaints (as seen in every other FOS jurisdiction).



Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

16. For all the reasons given above, an improved system of redress for SMEs can only be designed in the context of a relevant and proportionate regulatory regime. Furthermore, and for the reasons given, we do not believe the FOS is likely to be able provide such an improved system.

17. Other options might include industry-backed alternative dispute resolution (ADR) schemes; an expanded role for the Small Business Commissioner; and a new tribunal system. The FLA believes that more work needs to be done on developing options like these. All would be likely to require legislative change and further consultation, which is appropriate given the complexity of the issues.

[REDACTED]
[REDACTED]
Finance & Leasing Association
[REDACTED]
[REDACTED]

April 2018

7-5-80
7-5-80
7-5-80

From: [REDACTED]
Sent: 16 April 2018 10:19
To: cp18-03
Subject: FOS consultation

FLAXMANS

We would like to comment as follows:

1. We support the proposed extension of the Financial Ombudsman Service to incorporate the proposed new definition of small business.
2. Proposed effective date of 1 December 2018. The consultation anticipates the new arrangements will apply where the event being complained of occurred from 1 December 2018 onwards.

This could present difficulties in relation to insurance claims, as it might be difficult to establish an appropriate date. Is it the date of incident; the date the matter is reported; the date the claim is repudiated; or the date a complaint is lodged.

We feel it would be fair to the customer to simply use the date of incident for insurance claims.

3. We expect the FOS being available to an estimated additional 160,000 business customers will, as far as insurance is concerned, have significant implications for Lloyd's of London. We suggest the complaints process for policies issued at Lloyd's be investigated, as the current two-stage process comes as an unwelcome surprise to many policyholders.

We recommend that a Lloyd's policyholder, on receipt of a complaint rejection from the Lloyd's underwriter, should have immediate access to the FOS. It should then be a matter for the FOS to coordinate the progress of the complaint with the Committee of Lloyd's Complaints section, instead of the policyholder having to initiate this. This should help to deflect criticism that Lloyd's Complaints is not able to enforce its decisions on members, a factor that is unwelcome and not readily understood by the policyholder.

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From: FPRA <info@fpra.org.uk>
Sent: 07 March 2018 11:47
To: cp18-03
Subject: CP18/3: Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

Follow Up Flag: Follow up
Flag Status: Completed

For the attention of James Tallack.

Thank you for giving us the opportunity to respond to this consultation.

The Federation of Private Residents Associations is the national body that represents leaseholders in England and Wales, which we do via their own Residents' Associations, Resident Management Companies, Flat Management Companies, Right to Manage Companies, Commonhold Associations and similar groups.

We are often referred to as the voice of leaseholders and have around 500 member organisations that we represent.

We welcome the proposals in outline but are concerned that the proposals may not incorporate all of our membership because of the diverse and unusual nature of leasehold in England and Wales. Financial matters are handled by all of the extensive list above of different types of organisations which deal with leasehold, and more. And we would strongly urge you to discuss with the leasehold section at the Ministry of Housing, Communities and Local Government who will also be aware of the extensive separate legislation affecting money and funds relating to leasehold property and its management.

It is not appropriate and we do not have the resources as a volunteer-run organisation for us to respond to your specific questions but hope that having brought this to your attention, you will take the necessary action.

Please be aware that FPRA has on many occasions been in contact with the FCA and Treasury because of the failure to incorporate leasehold into thinking about protection and things such as those you are now consulting on.

A great deal more information about our organisation can be found on our website and if you need specific help, we would welcome hearing from you.

Please acknowledge this response.

For the FPRA Admin Office

(The Admin Office is open most Monday – Friday mornings and is run as a job share between [REDACTED] so any correspondence may be dealt with by any one of us.)



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James Tallack
Financial Conduct Authority
25 The North Colonnade
London E14 5HS

20th April 2018

Consultation on SME access to the Financial Ombudsman Service

The Federation of Small Businesses (FSB) welcomes the opportunity to respond to Consultation on SME access to the Financial Ombudsman Service.

FSB is one of the UK's leading business organisations. It exists to protect and promote the interests of small businesses and the self-employed. FSB is non-party political, and with 170,000 members, it is the largest organisation representing small and medium sized businesses in the UK.

Small businesses – those with less than 50 employees - make up 99.3 per cent of all businesses in the UK. Medium sized businesses are another 0.6 per cent of the businesses in the economy. SMEs therefore account for 99.9% of all businesses in the UK, and make a huge contribution to the economy. They contribute 51 per cent of the private sector output, amounting to £1.9 trillion and employ 60 per cent of the private sector workforce.

The issue of redress for small businesses involved in disputes with financial services firms has been brought into sharp relief by the number of scandals that have taken place in recent years. We believe small businesses, whose loans are unregulated by the FCA can be vulnerable to the most egregious abuses by Britain's banks. The examples of misconduct since the financial crisis have resulted in losses or the collapse of a number of smaller businesses and personal hardship for their owners.

The status quo does not acknowledge the fact that small businesses are much more like consumers than large corporates. Given importance of SMEs to the UK economy and the moral onus on the regulator to protect people left vulnerable by misconduct, it is vital small businesses have improved access to redress within the financial services sector when those vital relationships break down.

We trust that you will find our comments helpful and that they will be taken into consideration. If you would like to further discuss any of the points raised please contact me via my colleague [REDACTED] on [REDACTED] or [REDACTED].

Yours sincerely,

[Redacted Signature]

[Redacted Name]

Federation of Small Businesses

RESPONSES TO QUESTIONS

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

The new thresholds are broadly correct and would cover the majority of small businesses in the UK. FSB's average member has seven employees. According to business population statistics three in four businesses have no employees¹. For those that employ at least one person but less than 50 people, the average number is just over six. Therefore we believe the new thresholds are broadly correct and would cover the majority of small businesses in the UK.

However, there is a concern that these thresholds are too arbitrary however and may not fairly assess the level of expertise or resources within a business that could be allocated to addressing a dispute with a financial institution.

The ideal criteria would assess the skills available to a business and their liquid financial assets. For example, assessment based on using Standard Occupational Classifications to assess the balance of skill levels within a company or net profit from the previous financial year would better reflect whether or not that firm would have the financial capability to seek redress from a financial institution themselves.

One criterion that would assess the capabilities of the business is the age of the business. This will likely be a good proxy for the experience level of the owner. Less experienced entrepreneurs are perhaps more vulnerable to financial mis-selling and would benefit from an ability to access additional protections.

The metrics, as suggested by the proposals, do have the advantage of being more easily measurable than more pertinent criteria. As the Ombudsman service will also be responsible for verifying the eligibility of claimant businesses, it is perhaps better to allocate resources to solving cases properly rather than evaluating businesses eligibility as those on the margins will remain very small in number. Building in a system that allows complaints from businesses that adhere to further unique criteria might be a useful way to plug any clear gaps.

¹ BEIS, Business Population Estimates for the UK and Regions 2017, November 2017, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663235/bpe_2017_statistical_release.pdf

For example a business that is below two of the three limits but is fewer than five years old may have a case considered.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

Some businesses may be excluded because one or more of these criteria falls outside the normal definition of a small business but in terms of their capabilities they have more in common with small businesses. One such example of this is estate agents. These businesses often have high value balance sheets and turnover but are constrained by tight margins and cashflow. The legal and financial expertise at the businesses' disposal have more in common with other small businesses with under 50 employees than businesses that have comparable financial statistics by balance sheet and turnover measures.

These cases are rare, however and therefore we would call for the ombudsman to have the discretion to be able to consider these cases. We firmly believe there should be a path to apply for the Ombudsman's support for a business that does not meet the criteria as it is set out in the consultation document.

There is an argument that just two of the tests should be met in order for the Ombudsman to consider a business small and so eligible for the service. This, however, just loosens the criteria rather than actually helping smaller businesses that legitimately do not have the resources to access redress without the assistance of the Ombudsman service.

It is perhaps better to design a more complex test for unique businesses that contact the Ombudsman. As with the aforementioned Estate Agents' example an approach could be to significantly lower the threshold of one or more of the three initial tests if they are unable to pass all three. Using this example the business would need to have less than ten employees (a fifth of the limit for other businesses) in order to be eligible. They would also have to illustrate their lack of capability in other ways –profit and age limits could also be used.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

FSB believe that those providing guarantees should be allowed to make complaints. As guarantors risk personal assets, often homes, they should be entitled to protection from misconduct and mis-selling.

Similarly, **the FCA should be assigning products sold with a personal guarantee regulated status**, bringing them in line with personal finance products. Given that guarantors' personal assets are explicitly used as collateral this is a logical reform. It is apparent that personal guarantees essentially shift the nature of the loan from a purely commercial agreement to one that has

potential impacts on the individual. The consumer therefore needs to be protected as such.

Typically, personal guarantees are for low value loans (up to around £50,000) so the risk of the FCA attempting to regulate products that are too complex for their guidelines is limited.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

FSB does not have the best access to the data that drives the consultations estimates of financial costs to the government, businesses and banks of expanding the Ombudsman service's remit.

However, we believe that the benefits to the small business community and the wider economy are broad based and extend into the long run. As such the non-quantifiable and dynamic benefits may have been under estimated by the consultation. The SME finance monitor and FSB's own research has shown that the proportion of SMEs that are classified as Permanent Non-Borrowers, those that have not recently sought external finance and have no plans to, grew to half of all SMEs² after the financial crisis and has remained near that historically high level ever since³. The implication is that fewer smaller businesses are willing to take on the risk of credit in order to grow. In aggregate, this has wider implications for small business growth and productivity. In the same period trust in banks and the financial services sector as a whole has waned⁴. Many will argue that the latter is a driver of the former and providing better access to redress will rebuild trust in the industry and drive down the number of businesses that refuse to seek external finances.

The potential benefit to the individual businesses and the wider economy in terms of growth are indeed difficult to measure but it is clear how these impacts can multiply and result in a long term virtuous cycle of growth, improvements in productivity and positive externalities.

² BDRC, SME Finance Monitor Q4 2017, March 2018, https://www.bdrc-group.com/wp-content/uploads/2018/03/RES_BDRC_SME_Finance_Monitor_Q4_2017.pdf

³ FSB, Voice of

Small Business Index Q1 2018, March 2018 <https://www.fsb.org.uk/docs/default-source/fsb-org-uk/fsb-sbi-q1-2018-v03.pdf>

⁴ Financial Services Compensation Scheme, Mind the Gap: Restoring Consumer Trust in Financial Services, November 2015, <https://www.fscs.org.uk/globalassets/press-releases/20151111-fscs-trust-white-paper-final.pdf>

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

Further improvements to business banking codes are currently being worked on. The Ombudsman service should continue to use the codes that banks are signed up to, to assess their conduct.

To most effectively provide timely and accurate support to the small business community, the Ombudsman service should invest in increasing staff skills. It is essential that the service has the skills and resources required. The most obvious non-legislative intervention that could be made is for a significant investment in increased training. Creating large pools of product experts should be a priority before the end of this year. The FCA should also look at the potential role of external experts who could be drawn upon to give case by case, impartial, expert, advice when the service is dealing with particularly complex issues.

Another adjustment that the FCA should make is increasing the compensation limit. The £150,000 compensation limit is too low. The FOS can recommend but not enforce more. The limit should be raised to £500,000. This would give greater coverage for small businesses. The aforementioned reform to regulate products sold with a personal guarantee in a similar way as personal products would also be welcome.

FSB believes contracts between SME's and banks should have a common basic structure so that offerings can be more easily understood and compared. The main terms should be available on a summary sheet as is the case with residential mortgages.

The creation of more uniform business lending contracts is an important indirect path to provide improved redress without legislation. FSB believes that clearer and more consistent contractual terms will not only encourage better behaviour from bank staff but will allow more effective scrutiny from customers and the Ombudsman Service when assessing misconduct.

The CMA proposed in 2016 that all lenders should be required to publish standard rates for unsecured SME loans and overdrafts of up to £25,000 with this information made available as open data to intermediaries. FSB still supports this proposal as it would the market much easier to navigate for businesses seeking relatively low value loans. The CMA also called for the largest SME banking providers to offer a tool on their websites so that business customers can get an indicative quote and know, provisionally, whether they would be eligible for the loan they seek is another policy that FSB supports.

FSB currently works alongside the British Chambers of Commerce to deliver the Business Banking Insights tool. This is a service quality survey which provides a number of metrics through which customers can compare banks. The BBI has surveyed over 20,000 small business owners, assessing 31 providers across 14 different products. We believe that continuation of such a service is vital to raise the knowledge level of small business banking customers.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

An expanded ombudsman service will go a significant way to filling the redress gap for a good proportion of small businesses.

FSB believes the question of whether it is indeed possible to fully resolve the redress gap without legislation should be considered. There is the risk that the ombudsman over-stretches in attempt bridge the gap and fails to provide the service that cases more appropriate to it deserve.

There is also the risk that more complex complaints are less likely to be given a thorough and robust evaluation by the service as it would require more skilled experts to deliver an informed, fair and consistent rulings in some instances.

For these reasons FSB believes that it is possible that the redress gap may not be completely bridged without any new legislation. The possibility of change through parliament should not be taken off the table.

Through legislative change, a tribunal service which is better capable of addressing larger or more complex disputes could be established. And this could provide case law precedents that guide future behaviour and rulings.

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

James Tallack
Financial Conduct Authority
25 The North Colonnade
London
E14 5HS

24 April 2018

By email: cp18-03@fca.org.uk

Dear James

CP18/3: Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

The Financial Services Consumer Panel welcomes the opportunity to respond to this consultation on widening access to the Financial Ombudsman Service (FOS) for small businesses.

The Panel supports the proposal, but we are disappointed that the consultation is limited to widening SME access to the FOS. It is three years since the FCA published its Discussion Paper (DP15/7). This set out the problems many SMEs face when they use financial services. The Panel's research on how personal bank customers and microbusinesses saw a good banking culture echoed many of the FCA's findings.¹

Consumer protections available to smaller businesses² should be fully aligned with those available to individuals in relation to both general UK consumer law and the regulated financial services sector. Particularly since the financial crisis, SMEs have struggled to access the banking and finance products they need. They also too often experience unfair terms and conditions and can't get good advice when things go wrong.³

Banks do not necessarily provide the most appropriate lending products for SMEs. They often lack expertise in the relevant sector, and are inflexible. They also exploit the fact that SMEs are reluctant to switch their main current account provider.⁴ However, smaller businesses in particular do not have the time or expertise to search the market. What they need is impartial guidance⁵ to help them search the market or produce business plans for example.

¹ https://www.fs-cp.org.uk/sites/default/files/fscp_banking_culture_report_final.pdf

² We generally use 'smaller businesses' to mean microbusinesses and those SMEs that don't have a finance function or an accountant, and are thus equivalent to individual consumers.

³ <http://www.appgbanking.org.uk/wp-content/uploads/2017/05/APPG-FBB-Creating-A-Level-Playing-Field.pdf>

⁴ Banking services to small and medium-sized enterprises, CMA and FCA, July 2014

⁵ https://assets.publishing.service.gov.uk/media/53eb6b73ed915d188800000e/SME-report_final.pdf

⁶ Business, Energy and Industrial Strategy Committee - Access to Finance Report, pg15

The Treasury set up the British Business Bank to do this, but as yet, it seems to have had little impact.

Three years is a long time to let small businesses suffer harm, and even now the FCA has only picked off one issue. We very much hope that it will now focus on these other important issues as well.

The FCA recognises that, when things go wrong for SMEs, the impact can be severe, leaving them with little recourse to redress other than the courts. The FCA should carry out a more in-depth analysis of the potential effects of increasing the FOS award limit to different levels using previous work, such as on interest-rate hedging products (IRHPs).

Yours sincerely




Financial Services Consumer Panel

Questions for discussion:

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

The Panel believes that SMEs should be eligible unless they have a specified individual responsible for financial matters, typically a finance director or employed accountant. This would be simple and easy to administer. After further consideration, the Panel now feels the proposed three-stage approach to eligibility is too onerous. Criteria based solely on turnover and number of employees should be adequate, and help achieve the aim of easy access. This would also be in line with the two-stage definition of micro-enterprises and the ring-fencing test.⁶ We are not persuaded that an additional requirement of a total balance sheet amount is necessary.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

A test based on annual turnover and number of employees should be adequate for the FOS to consider an SME a small business. Both criteria should be met.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

Yes. This would give business loan guarantors the same rights as those for personal loans.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Yes.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

Yes.

⁶The FOS & the EU use the same definition of microbusiness or micro-enterprise, that is, an annual turnover of less than two million euros and fewer than ten employees.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

As highlighted in the FCA's Financial Lives Survey 2017⁷, consumers tend not to complain in the belief that to do so would be futile, or nothing would happen as a result of complaining, or they think it too trivial.⁸ It would be a shame to see the same pattern emerge for small businesses.

The FCA and the FOS should assess in greater depth the reasons why currently eligible smaller businesses do not complain, and whether the current award limit of £150,000 is a significant factor.

It will be vital that small businesses are made aware of the changes, and the FCA and FOS should consider how best to do this, in collaboration with small business associations.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

The FOS is the appropriate body to consider an increased share of complaints from SMEs given its long-standing experience in handling financial complaints. However, to ensure that SMEs have a full range of access to redress, the Panel suggests a Tribunal for cases involving high values of potential redress, likely to be made up of consequential loss, *could* be appropriate and this should be explored in more detail.⁹

The FOS award limit of £150,000 has been in force since 2012. The FCA should conduct further research to see if this limit should be increased for *all* claimants, as it is unlikely to be adequate in light of pension freedoms. The Panel also suggests the award limit should be reviewed periodically to consider the effect of the limit on small businesses and individual consumers.

⁷ <https://www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf>

⁸ <https://www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf> pg 169

⁹ <http://emli.oxfordjournals.org/content/early/2016/02/09/emli.kmw001>

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 31 January 2018 14:34
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 310118658421

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate? Yes the proposed size thresholds are correct

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business? Yes all three tests should be met

Q3: Do you agree with our proposal to make guarantors eligible complainants? Yes

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate? Yes

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018? Yes

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered? Yes

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes? No

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

No and there is a risk to extending FOS in this way as it may prove disproportionately burdensome to the detriment of consumers and small businesses to engage in cases where the existing legal system is already functioning satisfactorily.

Is your response confidential? No

Your details

Company Finsec Limited

Name [REDACTED]

Position [REDACTED]

Address [REDACTED]

Postcode [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as a representative of an authorised firm

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 23 January 2018 09:40
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 230118646311

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate? Yes.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business? Yes.

Q3: Do you agree with our proposal to make guarantors eligible complainants? Yes.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate? Yes.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018? Yes.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

The biggest positive changes which could be made for SMEs would be (a) to allow companies to sue for breach of the COBS Rules (the current definition of 'private person' is illogical, unfair and contrary to the legitimate expectations of customers) and (b) to recognise the logic of the Court of Appeal's decision in *Fons Hf v Corporal Ltd* and the lessons from the fixed rate loan scandal that commercial lending to SMEs ought to be a regulated activity.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce? No.

Is your response confidential? No

Your details

Company Forum Chambers

Name [REDACTED]

Position [REDACTED]

Address 1 Quality Court, Chancery Lane

Postcode WC2A 1HR

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as a representative of a professional firm

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 23 January 2018 16:29
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 230118647146

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

No - put in place a tribunal - SMEs have requested this via their MPs and other people/avenues repeatedly for years and years.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

No - put in place a tribunal-SMEs have requested this via their MPs and other people/avenues repeatedly for years and years.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

No - put in place a tribunal-SMEs have requested this via their MPs and other people/avenues repeatedly for years and years.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

No - put in place a tribunal -SMEs have requested this via their MPs and other people/avenues repeatedly for years and years.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

No - put in place a tribunal-SMEs have requested this via their MPs and other people/avenues repeatedly for years and years.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

No - put in place a proper tribunal -SMEs have requested this via their MPs and other people/avenues repeatedly for years and years.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

No - you really ought to get legislation changed and put a tribunal in place for businesses of all sizes -SMEs have requested this via their MPs and other people/avenues repeatedly for years and years.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

No - put in place a proper tribunal system for all SMEs. The Ombudsman is definitely not an appropriate body. Is your response confidential? No

Your details

Company Four Wynds Guest House

Name [REDACTED]

Position [REDACTED]

Address [REDACTED]

Postcode [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as an individual

1974



1974

James Tallack
Financial Conduct Authority
25 The North Colonnade
London
E14 5HS

Our Ref: TH/FOS.SME
Your Ref: CP18/3

Please reply to our Brierley Hill office

22 April 2018

BY EMAIL ONLY TO: cp18-03@fca.org.uk

Dear Sirs,

Our response to CP18/3: Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

We are a firm of Solicitors specialising in financial services law. This is our response to CP18/3: Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services. We represent both consumers and authorised firms and therefore consider that we can provide a particularly unique, objective and holistic response to your consultation.

Your SME proposals

First and foremost, we welcome wholeheartedly your proposals to extend the Financial Ombudsman Service to SMEs, which we consider will enhance access to justice and provide further important protections and safeguards within the financial services sector.

In response to your questions specifically set out in the consultation:

Question 1: We agree with your proposed changes to the definition of an "*eligible complainant*". We consider that the proposed size thresholds are a good starting point, which will certainly assist those who would most benefit from access to the Financial Ombudsman Service. Whether the proposed size thresholds ultimately go far enough is a matter yet to be seen however, and as such, we consider that this is a matter which should be reviewed by the Financial Conduct Authority in the future.

Question 2: We agree that your proposed 3 tests should all be met as a starting point. Of course, in practice, it may become clear that the proposed tests may need amending if it transpires that certain SMEs are being denied redress where they ought to benefit from it; as such, we consider that this is a matter which also should be reviewed by the Financial Conduct Authority in the future.

Question 3: We agree that guarantors should also be recognised as eligible complainants.

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Question 4: We consider that the changes introducing small businesses as eligible complainants should be implemented as soon as practicable, and thus agree with your proposed implementation date of 1 December 2018. These changes should not have retrospective effect and thus should only apply to complaints brought on or after the proposed implementation date of 1 December 2018.

Question 5: We consider that the changes introducing guarantors as eligible complainants should be implemented as soon as practicable, and thus agree with the proposed implementation date of 1 December 2018. These changes should not have retrospective effect and thus should only apply to complaints brought on or after the proposed implementation date of 1 December 2018.

Question 6: We express no view in respect of your cost benefit analysis.

We provide our own proposals below which we consider are relevant to **Question 7** and **Question 8** of your consultation. For the avoidance of doubt, our proposals are intended to be of benefit to all eligible complainants, not just small businesses and guarantors.

Proposal One: Removing the Financial Ombudsman Service award limit

Our first proposal is the removal of the Financial Ombudsman Service award limit entirely. Whilst this proposal may seem radical, we consider that it makes sense and is justifiable.

As you would expect, the financial services sector exposes consumers to significant risk which can manifest in high-value losses, even for retail consumers, which can de-rail both their and their family's lives. The most prominent example that we frequently come across are consumers who are misadvised to transfer the entirety of their pensions and/or life-savings into unsuitable investments. The introduction of substantial court fees of up to £10,000 acts as a significant barrier to access to justice. You acknowledge these barriers at paragraphs 2.5 to 2.9 of your consultation.

These issues are more significant than they may first seem however. Pensions, for example, can be worth hundreds of thousands of pounds. We frequently come across consumers, of pensionable age, who have lost their entire pension pots to mis-selling, and the issue is becoming more prevalent, as you have noted recently in respect of defined benefit pension transfers, particularly in the wake of the British Steel Pension Scheme revelations. Consumers who have lost their pensions and life savings, simply cannot afford to go to court – having lost everything, there is no way that they can find the substantial court fees. The current system simply does not cater for these types of consumers. It is not rare for pension pots to be worth £200,000 to £500,000 – the current Financial Ombudsman Service award limit therefore is simply not fit for purpose and denies such consumers from proper redress.

Given the above, it is not difficult to see how such issues will also translate across to small businesses.

It is noteworthy that the Pensions Ombudsman, which considers complex and high-value complaints and which is in many ways similar to the Financial Ombudsman Service, has no award limit. We consider that there is no justification for the Financial Ombudsman Service being restricted by an award limit whilst the Pensions Ombudsman is not similarly restricted. We do not consider that the fact that the Financial Ombudsman Service considers complaints

on the basis of what is "*fair and reasonable*", in contrast to the Pensions Ombudsman considering complaints in accordance with law, as sufficient to justify an award limit only for the Financial Ombudsman Service. Whilst the Pensions Ombudsman is accountable in the form of its decisions being appealable to the High Court, the Financial Ombudsman Service is similarly accountable as its decisions are nonetheless susceptible to judicial review. The Financial Ombudsman Service therefore is not, on any analysis, a law unto itself – any perverse or irrational decisions that it may make can be challenged. Whilst we appreciate your comments that Parliament intended for the Financial Ombudsman Service to provide quick and informal redress, the same is undoubtedly true of the Pensions Ombudsman.

We consider that because the Financial Conduct Authority has the power to set an award limit for the Financial Ombudsman Service, by implication, the Financial Conduct Authority also has the power to remove the award limit.

Whilst Section 229(5) Financial Services & Markets Act 2000 ('FSMA') states that "*a money award may not exceed the monetary limit*" it is noteworthy that Section 229(6) FSMA states that "*the monetary limit is such amount as may be specified*" (emphasis added). We consider that the use of the word "*may*" in Section 229(6) FSMA suggests that the monetary limit is not mandatory and thus we consider that the Financial Conduct Authority has the power to remove the monetary limit if it so desires, without the need for further legislation.

In the event that you consider that you do not have the powers to remove the monetary limit, we consider that this is still a matter worthy of consideration which should be explored with Parliament; particularly if this proposal were to be adopted in combination with our third proposal below.

Proposal Two: A Financial Ombudsman Service award limit of no less than £250,000

We appreciate that our first proposal may not be adopted by the Financial Conduct Authority owing to the fact that it would be a significant departure from the current regime; for this reason, our second proposal is more moderate. We consider, for the same reasons set out in our first proposal, that the Financial Ombudsman Service award limit should be no less than £250,000. We consider that this would ensure suitable redress is available to those most in need.

That said, we would welcome any higher award limit proposed by the Financial Conduct Authority. In particular, we consider that an award limit of £295,000, as considered at paragraph 4.26 of your consultation, would be a fair limit for those who currently qualify as eligible complainants alongside small businesses and guarantors. This limit would be in line with the position in Australia, which you have identified at paragraph 4.26 of your consultation "*is a relevant comparator as it, like the UK, has a common law legal system*".

Proposal Three: Decisions in line with law and an appeal process to the High Court

The Financial Ombudsman Service has recently become the subject of increased scrutiny. Firms frequently complain that they feel that the Financial Ombudsman Service is not properly accountable because it is not bound by the law and there is no appeals process (other than judicial review). You acknowledge this in your consultation at paragraph 4.28. Both complainants and firms recognise that judicial review is a complex, risky and expensive route which is rarely a genuine or realistic option for either firms or complainants. The Channel 4

programme, *Dispatches*, has also recently raised concerns in respect of the Financial Ombudsman Service's processes.

In light of the above, our third proposal is that the Financial Ombudsman Service should, like the Pensions Ombudsman, make decisions in accordance with law, and accordingly, its decisions could then be appealed on a point of law to the High Court, as is the case currently with the Pensions Ombudsman. We consider that such changes would act as important safeguards and would be beneficial to both complainants and firms alike.

We consider, in light of the recent revelations highlighted in Channel 4's *Dispatches* programme, the fact that the Financial Ombudsman Service is due to be subjected to an independent review and also because the Treasury Committee has expressed concerns, now is the time to seriously consider this proposal.

We consider, in light of the above, that these changes would ensure that the Financial Ombudsman Service is seen as properly accountable and to ensure that a major overhaul of the Financial Ombudsman Service is not necessary. Such changes become all the more compelling when considering the recent comments made by the High Court in *Aviva Life & Pensions (UK) Ltd, R (On the Application Of) v McCulloch & Anor* [2017] EWHC 352 (Admin), whereby Justice Jay said this of the Financial Ombudsman Service:

"By way of postscript, I do have personal concerns about a jurisdiction such as this which occupies an uncertain space outside the common law and statute. The relationship between what is fair and reasonable, and what the law lays down, is not altogether clear... Speaking entirely personally, I am not wholly satisfied that this adequately bridges the gap, or gives sufficient definition to the norms under scrutiny. Who, or what, defines the contours and content of fairness and reasonableness? If the law takes one policy direction, what can rationally survive of a policy which has been eschewed? During the course of oral argument, I suggested that fairness and reasonableness may occupy some sort of penumbral space, by implication contiguous with the much larger body of principles and rules which are visible to all, but I have begun to wonder where this metaphor leads. It might be said that this jurisdiction is penumbral because its shadows cannot be illuminated".

For the reasons set out above, we consider that this proposal should be adopted in any event, although it would be particularly relevant if you were to adopt our first proposal. We appreciate that such changes would require legislation, however we consider that such changes are warranted and should be considered with Parliament.

Summary

In summary:

1. Predominantly we agree with your proposals to extend the Financial Ombudsman Service to small businesses and guarantors;
2. We propose that the Financial Ombudsman Service award limit should be removed entirely;
3. Alternatively, we propose that the Financial Ombudsman Service award limit should be no less than £250,000; and
4. We consider that the Financial Ombudsman Service should be required to make decisions in accordance with law and that its decisions can be appealed on a point of

law to the High Court (particularly if our first proposal to remove the Financial Ombudsman Service award limit was adopted).

We trust that our submissions assist, and if you have any queries, please do not hesitate to contact the author of this document, [REDACTED], a Solicitor of our firm, by telephone on [REDACTED] or alternatively by email at [REDACTED].

Yours faithfully

A handwritten signature in black ink that reads "FS Legal." The letters are stylized and cursive.

FS LEGAL SOLICITORS LLP

1. The first part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

2. The second part of the document is a list of the names of the persons who have been appointed to the various offices of the city.



3. The third part of the document is a list of the names of the persons who have been appointed to the various offices of the city.

CP18/3: Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

Response by GRiD April 2018

Introduction

This submission has been prepared by GRiD in response to CP18/3: Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

Our response has been compiled from a working group drawn from a representative sample of our membership and reflects our combined views, although it may not represent the views of each member company.

About GRiD

Group Risk Development (GRiD) is the industry body for the group risk protection sector, promoting the value to UK businesses of providing financial protection for their staff, enhancing their wellbeing and improving employee engagement.

Our membership includes insurers, reinsurers and intermediaries who have a collective wealth of experience built over years of operating in the group risk protection market.

GRiD aims to promote group risk through a collective voice to Government, policymakers, stakeholders and employers.

GRiD works with Government departments and regulators involved in legislation and regulation affecting group risk benefits, and with other organisations involved in the benefits and financial protection arenas.

GRiD also seeks to enhance the industry's standing by encouraging best practice and by participating in industry-wide initiatives such as the professional qualification in group risk managed jointly with the Chartered Insurance Institute.

GRiD's media activity aims to generate a wider awareness and understanding of group risk products and their benefits for employers and employees.

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

Yes. Broadly, GRiD members would not seek to apply the current eligible complainant test on complaint cases submitted by the Financial Ombudsman Service 'FOS'. There are examples where individuals and employers have successfully had their complaints considered by the FOS who would not have passed the eligible complainant test, and / or did not have any rights under the insurance policy being complained about.

GRiD recognises that smaller employers do not have access to the same resources as larger employers and access to the FOS is an appropriate and suitable solution for those employers with a complaint.

GRiD members have a lower than average number of complaints submitted to the FOS, and is not concerned that widening the definition of eligible complainant would result in a significant increase in complaints to the FOS that they would need to handle.

GRiD is comfortable with the proposed size threshold with one exception in respect of trusts. Standalone group life trusts will usually only have a value immediately following a claim before it is distributed to beneficiaries, therefore trustees of a very large trust, covering hundreds or even thousands of employees, would meet the proposed new definition of eligible complainant. GRiD suggests that the current limit of £1m is unchanged and recognises that even at this limit, large trustees could still submit a complaint.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

Subject to Q1 response, yes.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

No. As the policyholder of the group risk insurance contract, or sponsoring employer of the insured scheme, complaints should be brought by them, rather than a guarantor of the organisation.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Yes.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

Please see response to Q3. No further comments to add.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

No comments to add.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

No comments to add.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

No.

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 01 February 2018 17:15
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 010218660416

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

Broadly yes, however, I do not believe the number of employees is a useful test as there are significant variations in employee productivity across different sectors of the economy, meaning the number of employees varies considerably compared to the other two metrics being measured. Additionally, at what point in time is the number of employees measured, for instance a seasonal business may breach the proposed limit at certain times of the year, and not at others. What employees are included - for instance zero hours contract 'employees', what about businesses that don't directly employ much of their workforce, for instance where they sub-contract or use consultants?

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

No. As per my comments to Q1, I do not believe the number of employees is a useful test as there are significant variations in employee productivity across different sectors of the economy. Additionally, at what point in time is the number of employees measured, for instance a business that operates in a seasonal sector may breach the proposed limit at certain times of the year, and not at others. I also have some concerns over how the tests will be administered (and appropriately evidenced) to ensure that the criteria are met, while at the same time not delaying consideration of the complaint.

Q3: Do you agree with our proposal to make guarantors eligible complainants? No strong opinion either way.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Yes, providing that there is a minimum 6 month lead in period (i.e. the changes are confirmed by 1st June) to allow companies affected to adjust to the changes.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018? No strong opinion either way.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered? My only concern is that the sample sizes for much of the analysis are very small - this makes all the following analysis subject to huge margins of error. I suspect that the true increases in number of complaints referred to the Ombudsman will be towards the top end, or even above your projections, depending on how well the changes are publicized.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes? No.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

No, this segment would require a different skill set and an effective appeal process.

Is your response confidential? No

Your details

Company Harmonic Intelligent Solutions Ltd

Name [REDACTED]

Position [REDACTED]

Address Waterhouse Business Centre, 2 Cromar Way, Chelmsford

Postcode CM1 2QE

From: [REDACTED]
Sent: 20 April 2018 14:53
To: cp18-03
Subject: IBAS Response to FCA on DP15/7
Attachments: Nov 2013 H&E Response to FOS 'decision'.pdf

Dear Mr Tallack,

This email is the Independent Banking Advisory Service's Response to FCA Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SME as Users of Financial Services.

IBAS has been involved in business banking cases and business banking issues since 1992 and during the early period IBAS representatives met with Laurence Shurman the Banking Ombudsman (until 1996) and then also David Thomas and discussed how The Banking Ombudsman could be improved. The Banking Ombudsman then became part of the Financial Ombudsman Service (FOS) and grew into what it is now.

Over the period since 1992, IBAS has seen the results of many business banking cases which have been sent to the FOS and we can only speak about Business Banking Cases and the issues involved in business banking cases. Many who have used the FOS service have provided their views to IBAS on how they perceived the FOS and in most cases their extreme disappointment on the result.

The Principles for Ombudsman sets very high standards and the fundamental criteria are independence, fairness, effectiveness, openness and transparency and accountability. IBAS has tested the FOS over many years with business banking cases and have also received many opinions from those who have attempted to obtain a 'fair' hearing.

Our perception, is that where business banking cases are concerned the FOS **does not** 'tick all the boxes' of independence, fairness, effectiveness, openness and transparency and accountability. IBAS concerns from the many FOS decisions we have seen are that many of those decisions appeared to have been reached without the evidence required to reinforce what then appeared to be biased decisions which favoured the banks.

We have recently been in contact with the FCA regarding the FOS and regulatory non compliance issues and we remain concerned that the reality of their current position is that the FOS 'tick box' approach and system **does not** properly 'screen' **all** complaints referred to the FOS which also evidence regulatory non compliance. This means that many cases of regulatory non compliance are **not** 'followed up' by the FCA Conduct Unit at all - because the FOS discards all complaints that are outside the FOS jurisdiction **even if** those complaints evidence a bank's deliberate regulatory non compliance.

Although the FCA and FOS have a Memorandum of Understanding (MOU) in our opinion it **does not** appear to be working or assisting in treating business customers fairly (TCF) as published by the FSA PRIN 1-11 and endorsed by the FCA and therefore it actually means nothing for business banking customers and banks know that and take advantage of it.

The recent Ch 4 Dispatches program raised many crucial questions for the FOS which Rt Hon Nicky Morgan MP has requested Caroline Wayman address i.e. bias in favour of banks, poor decision making, errors and improper handling of cases.

We have observed a 'closeness' between the FOS staff and the banks in many cases, where the FOS accepts the bank's views, regardless of evidence or questions raised by the business customer. The FOS appears to be 'led' by the bank's 'Final Letter' - which has been produced for that very effect by very experienced banking legal experts in complaint 'avoidance'.

The FOS suggest that a customer can make a complaint themselves, which in our view (for any business banking complaint) is a misrepresentation by the FOS, as the reality is that many business banking customers who place their own complaint, soon find themselves 'tied up in knots' by the professional legally trained complaint 'avoidance' experts the banks employ, who will then also prepare the bank's 'Final Letter' to the customer and from then on converse with the FOS for the bank.

In our opinion 'Beefing up' the FOS as suggested by the FCA will **not** provide businesses with an **independent** business banking 'tribunal' or provide better results. The FOS is much too 'connected' to banks with many FOS employees being ex bankers with banking pensions and continued allegiances to their bank.

Whilst, The Tomlinson Report raised many pertinent questions about the Royal Bank of Scotland and NatWest GRG business banking and particularly honesty issues, the FOS still appears susceptible to accepting banking 'conversations' as truthful (without checking the facts) and the lack of or failure to produce internal bank documents as 'accidents'.

Plus, The FOS continue to cite decisions on 'the balance of probability' which are weighed and based on their conception of truthful and competent bankers acting fairly - whilst the large volume of media on business banking products like PPI and SWAPS, plus the HBOS Reading fiasco, plus RBS/NatWest GRG various concealments, show that the FOS 'balance of probability' measuring 'stick' is **not** an accurate measurement.

The example below is why we believe the FOS **does not** decide cases fairly :

This complaint to the FOS was against RBS (with NatWest also involved) and it was decided by an ex RBS Ombudsman who 'threw it out' (whilst at the same time also publishing his 22 years career banking experiences with both NatWest and RBS on LinkedIn) - (copies available).

The customer declined to accept the FOS Decision - they also wrote to the FOS and explained why they did not accept it was a fair or reasonable decision and quoted bias (see letter attached).

That case was then publicised by the FOS as DR N 99 88448.

In our view that FOS decision could not been considered a fair decision - nor would any reasonable person think it was or that it would stand up to public scrutiny. Particularly, as the Ombudsman involved was an ex career banker who had been employed by both RBS and NatWest - both banks were involved in this complaint to the FOS.

It seems to us (and to many others) that a banking pension for a senior banking manager **is in itself** a direct conflict of interest for **any** Ombudsman and that it should prevent them from providing **any** decision or from investigating any business banking case where they previously had employment or connections with the bank being complained about - particularly where the allegations are of banks cheating customers - as with this specific case. The issue of the ex RBS Ombudsman further increases suspicion on the various RBS/NatWest/Specialised Relationship Management/Recovery unit 'irregularities' in this case. (IBAS has the customer's authorities to publicise).

UK Judges in the same position (of financial conflicts of interest) would not be allowed to hear a case where those conflicts would prevent a 'fair' hearing and also 'considering the perception the fair-minded and informed observer would have'.

In Locabail (UK) Ltd v (1) Bayfield Properties Ltd (1999) at

(ii) The second rule provided for the disqualification of a judge and the setting aside of a decision, if on examination of all the relevant circumstances, the court concluded that there was a real danger (or possibility) of bias - The test for bias is whether there is a real danger of bias such that the decision is unfair.

Having read this RBS case and the FOS file it appears that £150k has effectively been taken from the customers by deception/s in which the two banks are alleged to have been involved/complicit. Normally, any investigator would 'follow the money' - but the FOS investigation appears to have ended prematurely at the exact point to which the FOS were 'led' by the bank and then to a decision supporting the bank without:

- a) fully checking important details
- b) comparing the customer's input and answers from the FOS summary and
- c) without obtaining pivotal documents from the bank.

We have used this case as a prime example of an FOS case which should be overturned. It also demonstrates several repeating factors seen in other FOS business banking cases which include:

- 1) inaccurate summaries,
- 2) inept investigations,
- 3) failures to fully investigate important details,
- 4) failure to obtain bank documents pivotal to the case under investigation,
- 5) reaching conclusions based on inaccurate or unqualified 'facts' (as presented by banks - often orally),
- 6) lack of notes from oral bank conversations and
- 7) bank bias.

After 26 years of assessing cases and FOS 'decisions' - IBAS **do not** consider the FOS is fit for purpose in the investigation or determination of any business banking case investigation and therefore **we cannot agree to Q8.**

Also, we do not consider the FOS can be entrusted with a greater share of complex or higher value complaints from SMEs - because FOS decisions already seen on the less complex cases or lesser value cases already evidence their inability to fully understand, grasp, effectively calculate or fully investigate them fairly.

On Q1 to Q7 - IBAS believe that only a totally independent and unbiased Tribunal can provide a 'fair' outcome in such matters.

This response is **not** confidential.

Yours sincerely,



For and on behalf of IBAS
The Independent Banking Advisory Service

<http://www.ibas.co.uk> provides information on our organisations work and success during the past twenty six years together with evidence of the continued support and recommendation we receive from the National media.

****This mail was scanned by the current version of McAfee virus protection and Malwarebytes when leaving our system. However, it is recommended that recipients carry out their own virus checks as no responsibility will be accepted for any damage sustained as a result of viruses which may be contained in or attached to this mail****

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Dear Sir/Madam,

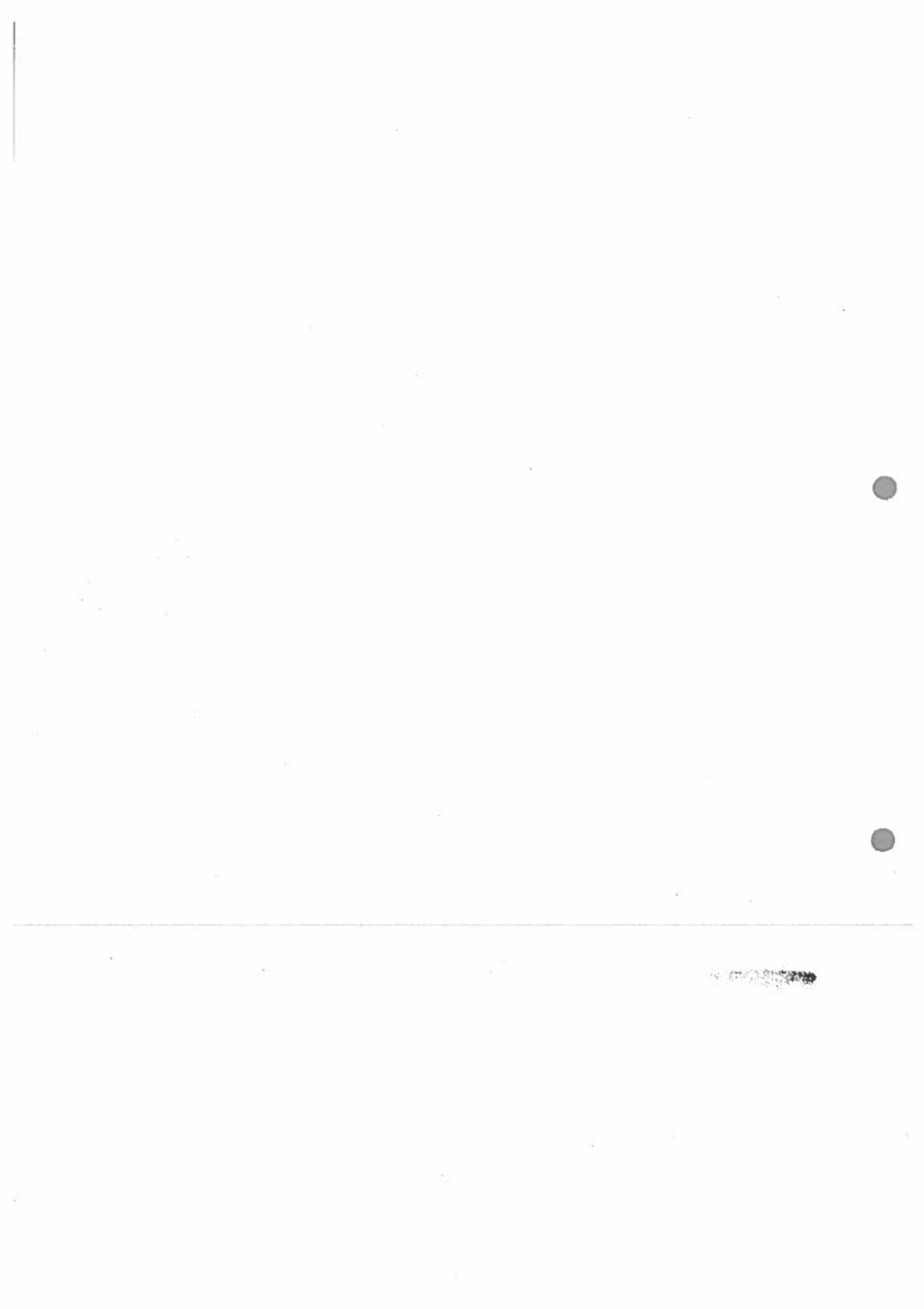
We refer to yours dated 28th November 2013.

We are extremely dissatisfied in your response considering the numerous inaccuracies of the initial adjudicator to which we addressed with factual provable evidence. We have felt an underlying bias to the bank by the FOS throughout and have noted every comment contributed by the Bank seems to be treated as fact even when proven inaccurate and our information discarded. Our information has never changed unlike that provided by the bank. We have never received any evidence of your findings and as we were never involved in the transaction we have nothing other than already supplied to support our case. The RBS is a known discreditor to the Banking world, they have been referred to as Banking criminals, even more recently with regard to Vince Cable and the Tomlinson report of which severely outlines the atrocities that this bank has committed to cheat people/firms of their wealth and businesses. We are the same as these other cheated people who must also be the discarded or ignored to be failed by this system. The FOS clearly supports this banking establishment without question despite the actual facts of its known behaviour. We have brought this case to you because we know first hand of these bank tricks and wished to fight against them on what is now a misconception that you would too. There are again inaccuracies in your final decision, but as the process has been both longwinded and more than likely a foregone conclusion by the FOS from the beginning it would appear that any further pleas for what should be righted would be a complete waste of effort. As a result of the above it is clear the FOS is certainly not as transparent and free of other known persuasions as the consumer would have been led to believe. You have simply squashed us whilst appearing to go through the motions.

In addition we have been horrified to discover that the actual Ombudsman offering his final unbiased findings is indeed an ex Managing Director of the RBS bank to which to take consideration of his 20 years service with them, board level contacts and no doubt for the protection of his pension his decision is only what could be expected. We most definitely think there is a conflict of interest in this choice of Ombudsman made by The FOS.

Whilst the FOS have managed to stretch this complaint to the 6 year deadline to what may be the actual deadline day we will not be allowing the matter to diminish. In the first instance we would like a copy of our file and the information provided to you by the bank, we expect the bank have seen all the information we have provided to you. You have provided us with absolutely nothing. We are now forced into taking legal advice and will be contacting various action groups and or media in order to publicise the Banks deceit and the failings of the FOS. We do NOT accept your verdict.







FCA CP 18 3 SME ACCESS TO FOS

Issued 24 April 2018

This response of 24 April 2018 has been prepared by the ICAEW Financial Services Faculty. As a leading centre for thought leadership on financial services, the Faculty brings together different interests and is responsible for representations on behalf of ICAEW on governance, regulation, risk management, auditing and reporting issues facing the financial services sector. The Faculty draws on the expertise of its members and more than 25,000 ICAEW members involved in financial services.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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For more information, please contact: representations@icaew.com

MAJOR POINTS

1. The FCA's proposals are of interest to us as many ICAEW members provide business support to small and medium sized enterprises (SMEs). ICAEW's Business Advice Service (<http://www.businessadviceservice.com/>) provides resources SMEs and connects them with Chartered Accountants for free initial advice sessions. Over 10,000 small businesses per year use this service.
2. We support the proposals to help SMEs resolve disputes with financial services firms and seek redress. Overall we think the extension of the Ombudsman, a free service for those making a complaint, will help to address the 'balance of power' between the two parties (financial institutions and SMEs) by reducing the barriers to taking action. Access to the Ombudsman is important for individual SMEs that feel they have been subject to inappropriate behaviour, particularly as they might be in difficult financial circumstances at the time. Therefore, additional avenues for redress are likely to be welcomed by these smaller entities. Such enterprises would benefit from additional avenues for redress where they feel they have a case against their lender.
3. We think it is helpful to provide access to the Ombudsman for more than 80% of the approximately 200,000 SMEs who are not currently eligible.
4. Whilst dispute resolution and redress are important, prevention is often better than cure. We recognise that since the financial crisis the FCA has put significant effort into improving culture and conduct in financial services, notably through the Senior Managers and Certification Regime (SMCR). The SMCR establishes a clear expectation and duty that senior managers will do the right thing, building on initiatives to instil appropriate culture that institutions had themselves already been developing internally. The regime has the support and sanctions in place to expect to generally enhance standards of conduct while providing a benchmark to more easily call out outlying bad behaviour.

DETAILED QUESTIONS

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

1. We broadly agree with the proposals to change the definition of an eligible complainant so that slightly larger firms can use the Ombudsman.
2. Currently micro businesses are already eligible to complain to the Ombudsman. Micro enterprises have fewer than 10 employees and either turnover or a balance sheet of no more than €2m. There are more than 5.4 million such businesses in the UK, which comprise over 95% of the country's enterprises.
3. Small and medium sized enterprises (SMEs) are businesses employing under 250 staff, or with an annual turnover of under €50m. The FCA proposes three new criteria which will include more firms:
 - annual turnover below £6.5m,
 - an annual balance sheet total smaller than £5m, and
 - fewer than 50 employees.
4. The FCA proposals would extend the ombudsman to a further 160,000 SMEs (small firms), although larger, medium-sized businesses would still be excluded. There is a

strong case for supporting small businesses that naturally lack the resources to pursue cases against their lender through the courts themselves. It may be that extending access to the Ombudsman is the most cost effective and proportionate way of providing greater opportunities for recourse for small businesses. The uphold rates for insurance and banking complaints at 26% and 52% for micro enterprises suggest there is merit in an extension and it would help to deliver better outcomes.

5. We note that previously the FCA used slightly different criteria when it looked at client sophistication re interest rate swap mis-selling.

<https://www.fca.org.uk/publication/archive/fsa-irs-flowchart.pdf>

6. The FCA should reflect on the appropriateness of tests used previously. They may better reflect the gap between the capabilities and resources that financial institutions assume SMEs have, and their actual financial and legal expertise.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

7. In the absence of clearer data it is difficult to make a judgement about whether the tests should be cumulative (i.e. all three should be met) or whether they should each operate as independent threshold tests; where either one of them would trigger eligibility.
8. The FCA's forthcoming policy statement should shed light on the data and the Venn diagram between these three respective criteria. We note that the Companies Act refers to two out of three requirements being met. A similar approach might be adopted by the FCA for consistency.
9. Whilst in the past turnover has been a key determinant of whether a firm elected to use legal advice (paragraph 3.31 & 3.35) this may not always be the case going forward and as new business models emerge.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

10. Capturing guarantors would help to capture those vulnerable to harm who may also lack the financial capability to understand the complexity and risks related to the services provided by the financial institution. We welcome the FCA's proposals to look beyond 'micro-enterprises' and 'consumers' as currently defined in DISP.
11. The UK is a service based economy and the sector contributes around 80% of GDP. For these business provision of collateral is particularly important as they tend to have fewer assets. We are therefore supportive of measures to help small business get the support they need and the avenues for redress where required.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

12. We think the changes should apply from the 31 March 2019. This would give financial institutions time to make the appropriate changes where necessary.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

13. We think the changes should apply from the 31 March 2019.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

14. We have no comment on the FCA's cost benefit analysis.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

15. We agree with the FCA proposals as drafted.

16. We are supportive of a voluntary industry code. Our response to the Treasury committee sets out why we think this would help.

<https://www.icaew.com/-/media/corporate/files/technical/icaew-representations/2018/icaew-rep-41-18-treasury-committee---sme-finance-inquiry.ashx>

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

17. We agree a change to the award limit would have a material and detrimental impact on costs, the supply of financial services and timeliness. The current award limit acts in a balanced and measured way and therefore should be unchanged.

22 April 2018

James Tallack
Financial Conduct Authority
25 The North Colonnade
Canary Wharf, London
E14 5HS

Response submitted via e-mail

Dear James,

**Consultation on SME access to the Financial Ombudsman Service and Feedback to
DP15/7: SMEs as Users of Financial Services (CP18/3)**

We are pleased to be able to provide comments on CP18/3 regarding future access to the FOS.

The International Underwriting Association of London (IUA) represents international and wholesale insurance and reinsurance companies operating in or through London. It exists to promote and enhance the business environment for its members. The IUA's London Company Market Statistics Report shows that overall premium income for the company market in 2016 was £22.725bn. Gross premium written in London totalled £16.034bn, while a further £6.691bn was identified as written in other locations, but overseen by London operations. For further information about our organisation and membership please visit our website, www.iua.co.uk under the section 'About the IUA'.

We propose to make some general comments on the proposals as a whole and on the operation of the FOS more widely before answering the specific consultation questions. We would also note that a working group of IUA's Professional Indemnity Forum is working with the law firm, RPC LLP, on drafting a more targeted response to CP18/3, looking at the specific issues arising for professional indemnity insurers, particularly in the provision of cover for financial advisors.

General Comments

1. We strongly support the underlying purpose of the FOS – that is to provide expedient, easy and inexpensive access to a forum to hear consumers' and micro businesses' complaints and adjudicate based on broad principles of fairness and reasonableness. However, the quid pro quo of having more flexible legal adjudication rules in place (and inherent uncertainty for respondents), without appeal, has been that the FOS has been restricted to consumers and businesses' of a size whom, according to their status, clearly need it and whom would generally not bring complex disputes. Clearly, there is a balance to be struck and we are not persuaded that the extension proposed would provide that.

2. Prima facie, extending the definition of 'eligible complainant' will have a fairly limited impact on the volume of complaints and consequent impact on insurers, whether as respondents in their own right, or as professional indemnity insurers of firms who have had complaints brought against them.

Even so, we hold concerns on how the proposal will be effectively implemented, outlined in more detail below. More importantly, this proposal cannot be assessed as a standalone provision as it feeds into the wider issue (as raised in the consultation paper) of the upper limit of FOS awards. If larger SMEs have access to the FOS, it is likely that the disputes arising will be of a higher value. Consequently, there will be inevitable pressure to upwardly revise the current £150k threshold. We identified strong concerns on such proposals in our response to DP15/7 and these are included in full in the Annex below for reference. These comments were drafted from a professional indemnity insurance perspective but can be read more widely and the arguments within it remain relevant.

3. As noted in the consultation paper, it follows that increasing the size and, in many cases, sophistication, of the firms eligible under the FOS, disputes may not only be of more value but also more complex and it is a relevant question to ask whether the FOS have the resource and capability to handle such. This has been questioned publicly very recently, both in the media and via correspondence between the Parliamentary Treasury Committee and the FOS. It is incumbent upon the relevant bodies to ensure that the FOS is suitably resourced and trained to handle both the increased volume of claims and likely increased complexity. Ultimately, it might be preferable for the FOS to concentrate on improving its performance to existing eligible complainants.
4. Notwithstanding our other concerns, we are also not convinced that this is the right time to be introducing changes to the eligibility criteria. From an insurance perspective, the Insurance Act 2015, which is perceived to be more flexible and beneficial for insured's than the previous legislative regime, is only just bedding in and we have yet to see its full effect in the Courts. More widely, continuing reform on legal costs and continuing promotion of ADR have also been put in place. We think it would be preferable to see how these reforms work in practice before undertaking further changes to the disputes regime.
5. Overall, from our reading of the consultation paper, it is arguable that the proposals are seeking to resolve a problem that largely does not exist. If there are felt to be problem areas, such as in the banking sector, then it would be more proportionate to target these specifically and we note in this regard the non-FOS initiatives highlighted in paragraph 4.8 of the consultation paper.

Consultation Questions

- Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?**

No. For the reasons stated in our General Comments above, we do not think that the argument has been made for reform to the eligibility criteria at this time. This is primarily because of concerns on the expected knock-on effect of the proposals. We also have some concerns on FOS resources.

We would make a brief comment on paragraph 4.12 of the consultation paper, which notes the precedential value of FOS awards in highlighting expectations of respondent firms, even those that remain outside the eligibility remit. We accept the point made but feel that it would be a limited benefit, at best. The very nature of the FOS approach, to find a fair and reasonable resolution, lends itself to a case-by-case analysis rather than establishing wider trends.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

Notwithstanding our answer to Q1, should the eligibility criteria be extended, it should be a requirement that all three tests are met.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

Yes.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Notwithstanding our answer to Q1, the proposed timetable would be reasonable.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

Yes.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

It is difficult as a trade association to comment in detail on the base assumptions in the cost / benefit analysis. As noted, the impact on complaints against insurance firms (estimated 40 – 130 upheld claims) would seem to be relatively benign. However, the potential impact on the provision of professional indemnity insurance for financial services firms needs to be carefully considered. Whilst an extension to the eligibility criteria, as proposed, will likely have a relatively

limited impact on the provision of cover and premium, an increase to the award limit would likely be far more impactful (see our extended comments in the Annex below).

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

No, we are largely comfortable with the current FOS remit and SME access to it.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

We highlight our thoughts on complex and higher value complaints in the below Annex and in General Comment 2 above.

We hope our comments are helpful to the FCA in their analysis of the FOS. We would be pleased to clarify or expand upon our comments as required.

Yours sincerely

[Redacted signature]

[Redacted signature]
[Redacted signature]

Annex (Extract from the IUA response to DP15/7, as drafted with RPC LLP)

In summary, the Working Group considers that it would be wholly unjustified to raise the FOS award limit in respect of claims made by SMEs (or indeed at all).

The Working Group's submissions

We will deal with both questions together as the Paper suggests that the reconsideration of the £150,000 limit stems from the question of whether larger business clients should be allowed access to the FOS. The Working Group's views on whether the FOS rules are altered to allow larger SMEs to complain to the Service are neutral, but the Working Group is very clear that there is no justification at all for increasing the FOS award limit to cater for SMEs' losses.

The argument to justify increasing the FOS limit for SMEs appears to be that SMEs (as opposed to consumers) are more likely to suffer losses that exceed the current FOS award limit of £150,000. This may or may not be correct, but this is beside the point. The FOS is not intended (and should not be intended) to provide a forum for all complaints regardless of value. The FOS is designed to provide a free, informal and quick dispute resolution service to the financial services industry, which in the round it does well. It is not designed (nor was it intended by parliament) to deal with complex high value matters and the award limit reflects this.

One of the reasons the FOS can provide a quick and informal service is that it is not obliged to apply the law. Financial adviser firms and their insurers alike are often frustrated by unpredictable FOS decisions that would be decided differently if the law was applied, but in the round such decisions are acceptable given the £150,000 limit. If this limit is increased then the DISP rules will not be fit for purpose and the law would need to be applied and followed strictly by FOS.

The FOS is of course not the only forum available to SMEs (or consumers). It is not the case that there is currently no alternative for larger SMEs unable to access the FOS. They are able to use the courts. The judicial system is the best forum for large and complex matters to be fairly decided. Bigger more complex cases involve large amounts of disclosure, expert evidence and witness statements, i.e. a thorough investigation of the facts and analysis of the law. The FOS is not designed to deal with such cases and it would not be just or reasonable to allow it to handle such matters.

The Paper appears to be of the view that the court system is weighted against SMEs and that they *"may be less likely to obtain redress through the courts"*. We disagree that because s.138D of FSMA applies to private persons as opposed to companies, SMEs are somehow unfairly disadvantaged. As the Paper alludes, business clients may still seek to rely on claims via common law principals. This is not a significant disadvantage to SMEs, as common law principles are wide reaching and well-rehearsed, and indeed take account of the regulatory regime when deciding whether a firm is liable to pay damages or not.

It is also not correct to say that larger SMEs are disadvantaged as they have to incur greater costs in making a financial services complaint. Pursuit of a claim via common law does not automatically mean large costs. The FOS is not the only less formal alternative to Court available. A claim under common law does not necessarily mean the matter will end up in Court (in fact it is a rarity). The pursuit of claims via the English court system requires the parties to take several steps that are alternative to a court action. Before a claim can be issued at court, the parties are obliged to follow the steps of a pre-action protocol which requires and encourages parties to discuss a dispute before court proceedings are issued. In addition the parties have to consider alternative dispute resolution ("ADR") at several stages throughout a claim and it is our

experience that more often than not parties agree to mediate or meet on a without prejudice basis to settle their dispute. So, there are plenty of lower cost ways of obtaining redress and SMEs (or, specifically, non-micro-enterprises) are by definition more able to afford such costs in any event. Moreover, let us not pretend that everyone who uses the FOS does so at no cost. Many consumers and SMEs use advisors to assist them with their complaints to FOS and pay for those services.

There appears to be no real basis for the proposal that all SMEs should be able to circumvent the common law and use the FOS to recover sums in excess of the current £150,000 limit.

Ultimately, the need for an award limit applies regardless of the type of client making a complaint. The limit is there to balance the competing interests of, on the one hand, a client's right to access redress free of charge, quickly and informally and, on the other hand, a firm's right of access to justice subject to a full investigation of the evidence and application of the law. There can be no justification at all for judging this balance differently for different types of client. Essentially, £150,000 is the right limit when balancing a firm's right to access to justice against consumer (including ordinary consumers and SMEs) protection and it should be applied regardless of the nature of the complainant.

If the FOS limit is increased there will be a real risk for professional indemnity insurers, because the FOS is able to decide large loss cases simply on the principal of what is "fair and reasonable", without full investigation of all the facts and without a right of appeal. The Working Group envisages that at best insurance premiums will need to be significantly increased, with potentially some insurers revisiting their willingness to participate in the class at all.

ENDS

James Tallack
Financial Conduct Authority
25 The North Colonnade
London E14 5HS

20 April 2018

Dear James,

**CP 18/3: SME access to the Financial Ombudsman Service
and Feedback to DP15/7: SMEs as Users of Financial Services**

The Investment & Life Assurance Group (ILAG) is a representative body, with members from across the Life Assurance and Wealth Management Industries.

ILAG members openly share and develop their practical experiences and expertise, applying this practitioner knowledge to the development of their businesses, both individually and collectively, for the benefit of members and their customers.

ILAG is run by practitioners for practitioners, whether by engagement with industry associated bodies or through active consultation.

A list of ILAG members is at the end of this submission.

General comments

Although it is expected that the rule changes will be effective from 1 December 2018, and only apply to acts and omissions occurring on or after that date, any suggestion that the rules should apply retrospectively would be contentious.

It is likely that this would encourage actions resulting in an increase in the volume of work managed by the Financial Ombudsman Service (FOS).

Any period of retrospective application would also have to be agreed, ascertaining what is reasonable for all parties would be a challenge. Many firms will have changed their organisational structures and practices because of issues raised, it is difficult to identify any benefit from looking back.

A clear launch date with clear communication is the best outcome for both employers and FOS.

The current FOS award limit for individuals is £150,000, and there is a suggestion that this could be increased to £400,000 for SMEs.

The consumer limit should not be raised to match the award limit for SMEs and the SME limit should not be more than the consumer limit.

The current level has been increased to reflect the significant personal loss in some individual cases. If SMEs are to be treated as consumers, the recipients should also be

treated as individuals, not corporate entities. Any remuneration awarded will be received by Directors in those businesses.

It is possible that with higher limits, some individuals make decisions to access a higher level of remuneration. For example paying for income protection through the company as an expense rather than out of a taxed, personal income.

In chapter four, clause 4.50, unofficial industry codes of conduct are mentioned.

Industry codes are not necessarily adhered to by the whole Industry. Those introduced by trade bodies only apply to their members, and non-members may not wish to apply a code they have no input into. FCA sponsorship of industry codes is not helpful; reviewing the regulatory perimeter would be more effective.

Firms are currently experiencing delays with FOS cases. We question whether the current resource and expertise within FOS will be sufficient to manage an increase in complaint volumes. Recruitment of individuals with specialist knowledge of the subjects referenced within the consultation is required.

Consultation questions

Question 1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

Companies do not generally seek to apply the current eligible complainant test to complaint cases submitted to FOS. There are clear examples that individuals and employers have successfully had complaints considered by FOS, but the cases would not have passed the eligible complainant test.

Smaller employers do not have access to the same resources as larger employers and access to FOS is an appropriate and suitable solution for those employers.

Widening the definition of 'eligible complainant' is not expected to result in a significant increase in complaints to FOS.

The proposed size thresholds appear reasonable, with one exception: trusts. It is proposed that trusts with net assets of up to £5m, at the time they make a complaint to a firm, would also become eligible complainants.

For Group Life trusts this could mean that a very large customer would be covered by this extension, as the trust is unlikely to have a high value (if any). The limit is currently £1m and this should remain unchanged, as it still allows large customers to make a complaint.

Question 2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

Noting comments made in response to question one, we agree that all three tests should be met.

Question 3: Do you agree with our proposal to make guarantors eligible complainants?

We do not agree with this proposal.

As the policyholder of the group risk insurance contract, or sponsoring employer of the insured scheme, complaints should be brought by them, rather than a guarantor of the organisation.

Question 4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Yes.

Question 5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

No.

Question 6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

No comments to make.

Question 7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

No comments to make.

Question 8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

There is a risk that expanding the remit of FOS in this way would take focus and resource away from consumers. As noted above, FOS is already considerably stretched by its current caseload. Higher value and more complex cases are likely to be more contentious and may be better dealt with by the legal profession.

Yours sincerely,


Investment & Life Assurance Group

ILAG Membership 2018

Full legal members

Aberdeen Standard Investments
Aviva
Canada Life Limited
Forester Life
Hannover Re UK Life Branch
LV=
MetLife
Pacific Life Re
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Squire Patton Boggs
State Street Investor Services

Small Mutuals

Foresters Friendly
Shepherds Friendly

James Tallack
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20 April 2018

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Dear James

Consultation on SME access to the Financial Ombudsman Service

The Lloyd's Market Association (LMA) represents the 57 managing agents at Lloyd's, which manage the 96 syndicates underwriting in the market, and also the 3 members' agents which act for third party capital. Managing agents are "dual regulated" firms by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) and members' agents are regulated by the FCA. For 2018, premium capacity is in excess of £30 billion.

Throughout our response, page and paragraph numbers relate to those in CP18/03.

General

We welcome any initiative designed to provide better and more consistent outcomes for policyholders. Therefore, we are generally supportive of the FCA's proposals to extend access to the FOS. Below, we highlight some potential issues with the specific proposals set out in CP18/03.

FOS workload and training

The FCA estimates the number of additional cases referred to the FOS to be modest, but still likely in excess of 1000. We would question whether the FOS will have sufficient staff to deal with the increased volume, particularly as the deadline for PPI complaints is not until 29 August 2019.

The FOS must ensure that its adjudicators will be able to deal effectively and efficiently with potentially more complex insurance products. Commercial insurance policies are often designed to cover specific and specialised business needs. Therefore adjudicators will need to understand the business sectors the insured customers operate in, as well as their insurance coverage.

Further than that, with more complex business disputes under consideration, it is essential that the legal framework within which market participants operate remains clear and certain. It is therefore crucial that the FOS applies the Insurance Act 2015 and the law generally with rigour in respect of business insurance contract adjudications. The Insurance Act is a carefully balanced framework of duties, rights and obligations, which was implemented after years of study and consultation through the Law Commission and Parliament. Policyholders, brokers and carriers need legal certainty, so that products can

be designed and priced for particular needs with a good expectation about how they will operate.”

Definition of an eligible complainant

We agree that all three criteria in paragraph 3.13 should be met as this would be consistent with the current criteria for micro-enterprises. However, the definition of an eligible complainant now appears confused as the proposed new wider category naturally encompasses all micro-enterprises. For many firms, the term micro-enterprise is only relevant to complaints and so we suggest the terms “eligible complainant” and “small business” be amended as follows:

An eligible complainant must be a person that is:

- (1) a consumer; or
- (2) a small business at the time the complainant refers the complaint to the respondent;
or
- (3) a charity which has an annual income of less than £ 6.5 million at the time the complainant refers the complaint to the respondent;
- (4) a trustee of a trust which has a net asset value of less than £5 million at the time the complainant refers the complaint to the respondent; or
- (5) (in relation to CBTL business) a CBTL consumer; or
- (6) (in relation to a complaint wholly or partly relating to payment services) a micro-enterprise at the time of the conclusion of the payment service contract; or
- (7) A guarantor.

Small business

(2) (in DISP) an enterprise which:

- (a) employs fewer than 50 persons;
- (b) has an annual turnover of less than £6.5 million (or its equivalent in any other currency);
- (c) has a balance sheet total of less than £5 million (or its equivalent in any other currency).

We would also note that removing the reference to micro-enterprises for non-payment services firms would make eligible complainants easier to identify due to all limits being in Sterling, rather than Euros, or a mixture of the two.

Regarding the definition of “small business” and number of employees ((2)(a)), we believe the FOS may be taking an approach different to that in DISP. Our understanding is that DISP intends “employee” to mean any individual employed by the small business or

micro-enterprise. However, our members' experience suggests that the FOS may be using FTE when calculating the number of employees. We would ask the FCA to ensure that a consistent approach is used to calculate employee numbers.

FOS free cases

We believe current allocation of the "free cases" referred to in paragraph 30 skews the recuperation of FOS costs in an unfair way for the Lloyd's market - this will likely become more pronounced if the number of cases for the Lloyd's market grows through extension of eligibility. The reason is set out below.

The Society of Lloyd's (the Society) oversees the Lloyd's market and operates a two-stage complaints handling process for the 57 (separately authorised) managing agents. If a Lloyd's managing agent is unable to resolve a complaint within 14 days, the complainant then has the right to refer their complaint to the Society for further consideration. This two-stage process allows the Society to maintain oversight of complaint handling and the general application of TCF in the Lloyd's market.

For the purposes of complaint "counting", the FOS considers the Society as a single entity. Consequently, under the current charging system, the entire Lloyd's market is entitled to 25 free cases, with all subsequent cases attracting the £550 case fee. The effect is that the Lloyd's market subsidises free cases for non-Lloyd's firms.

To correct this position, we believe the Society should be allocated a higher level of free cases to ensure that managing agents with low complaint volumes do not have to pay £550 for every FOS referral.

We would also highlight increased costs specific to the Lloyd's market due to a) the increase in complaints at firm level and; b) the increase in (chargeable) Lloyd's stage 2 reviews. In addition to managing agents' internal changes, amendments will also be required to the Lloyd's Complaints Code and market reporting procedures.

Timing of implementation

We question the appropriateness of the proposed 1 December 2018 implementation date. The consultation does not close until end of April meaning that final rules are unlikely to be published until mid-summer. That leaves little time for new complaints handling processes, data collection processes and reporting procedures to be implemented. We would suggest that 1 January 2019 is a preferable implementation date for firms as that date would tie in with current complaints reporting timetables.

Should you have any questions in relation to our response, please do not hesitate to contact me at [REDACTED]

Yours sincerely

[REDACTED]
[REDACTED]
[REDACTED]

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 09 February 2018 10:51
To: cp18-03
Subject: Online response form submission for CP18/3

Categories: Green Category

Thank you for your submission. Your responses are given below:

Reference 090218669786

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

I think you need to accept financial ombudsman service is rubbish.

Trust pilot is a true reflection of the financial ombudsman service, FOS.

They are a disgrace. They take at least 3 months to respond.

They are only interested in supporting the companies that pay their wages.

I spoke to one of the adjudicators about my case against a bank.

He said he was not going to listen to recordings I had obtained

Of bank staff..

He agreed to send me a copy of information that FOS had received from the bank.

He failed to send it. I had to make a complaint about him.

I had to make a 1998 data request to get the information the bank had sent to FOS.

This took 6 months.

FOS are scared of banks. They had to ask the bank if they could share information with me.

None of the information was not business sensitive.

The bank did include a statement. Don't share the information with me.

That's why FOS didn't want me to have a copy.

I sent a "signed for" letter asking the adjudicator for an update.

He didn't respond.

After complaining about him they had to admit he received the letter

But just stored it on their system and ignored me.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

Q2 is my view of FOS. If I had an issue with a financial business I would not go to FOS but take them to Court.

Is your response confidential? No

Your details

Company me

Name [REDACTED]

Position [REDACTED]

Address 1 [REDACTED]

Postcode [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as an individual

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 20 April 2018 14:51
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 200418761231

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

The majority of NACFB Members who responded felt that the proposed definition of an eligible complainant, i.e. fewer than 50 employees, an annual turnover below £6.5 million and an annual balance sheet (gross assets) below £5 million (a SME Borrower), was a fair one and agreed with the classification.

Some felt that more emphasis should be placed on the sophistication of the SME, rather than a purely financial number. You could see some property investors fall foul of a 'numbers game' due to the size of transaction. One additional definition could be that an SME borrower without a full time Financial Director, or experienced investor is eligible to register a complaint via the FOS. There is some scope to play with these definitions, but one based purely upon thresholds may not capture all eligible complainants.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

NACFB Members felt that all three key tests, of employee number, annual turnover and annual balance sheet would need to be met for the Ombudsman to consider an SME a small business.

Another defining test could be that an SME is an enterprise where 25% capital or voting rights is not owned by one entity, or jointly by several enterprises, that fall outside the same definition of an SME.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

The proposal to make guarantors eligible complainants is broadly agreed with by NACFB Members. This definition should ensure individuals who are not consumers and who have given a guarantee or security for an obligation or liability of a microenterprise or small business. So long as this business was a micro-enterprise or small business on the date that the guarantor gave the guarantee or security.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

With changes introducing small businesses as eligible complainants likely to come into effect on 1 December 2018, NACFB Members largely agree that these should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018.

Suggestions of proposed transitional periods put forward by Members range from three to twelve months, with a suggestion that any transitional period should cover the Brexit cut-off date.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

NACFB Members, as commercial finance brokers, generally agreed that the proposed changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?
The NACFB reviewed the FCA's prepared cost benefit analysis and agreed that the costs of imposing new rules are outweighed by the likely benefits. This is particularly relevant if a previously unregulated product or service is brought within regulation for the first time and there would inevitably be a period of adjustment to both pricing and supply.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

Overall the NACFB and its Members it is positive that SME's will have any easy way to seek redress if they are not getting satisfaction from a lender, and we feel a simple online platform may help to initially identify if the complaint falls within scope.

It is appropriate to improve redress in this area where non-sophisticated individuals are concerned. However, the FCA should seek to avoid creating a 'scammers charter' which will be increasing the FOS levy on everyone to help a few disadvantaged individuals. It should be noted also that the SME Alliance are calling for a judge led tribunal system.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

It is broadly felt that the Ombudsman is the appropriate body, but NACFB Members have expressed concerns about the level of resource that it currently possesses. Our Members have suggested the establishing of a specialist department to deal with complaints. Complex B2B matters cannot be best reviewed and considered by the same team that deals with complaints on personal overdrafts.

Further, the Ombudsman is mostly focused on retail rather than B2B complaints. This requires time to bring on board experienced B2B dispute resolution practitioners with commercial and financial services experience, a process that could take several years. The main risk is one of lack of experience in the early years if the proposed changes are implemented too soon without FSO office support.

Finally, the Ombudsman does not currently have the power to enforce payment of awarded amounts, so for larger sums than £150,000 it may well remain the better option for SME's to go through the courts where a binding judgement with more teeth can be obtained.

Is your response confidential? No

Your details

Company National Association of Commercial Finance

Name [REDACTED]

Position [REDACTED]

Address Hamilton House, 1 Temple Avenue

Postcode EC4Y0HA

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as a representative of an authorised firm

From: [REDACTED]
Sent: 28 January 2018 08:57
To: cp18-03
Subject: Re: Online response form submission for CP18/3

Yea

Wyslane z iPhone'a

Wiadomość napisana przez FCA CP18/3 <no-reply@fcamail.org.uk> w dniu 28.01.2018, o godz. 02:24:

Thank you for your submission. Your responses are given below:

Reference 280118653176

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate? Yes

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business? Yes

Q3: Do you agree with our proposal to make guarantors eligible complainants? Yes

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate? No

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018? Yes

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered? Yes

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes? No

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective?

What risks might this introduce? No

Is your response confidential?

Your details

Company Pan

Name [REDACTED]

Position [REDACTED]

Address [REDACTED]

Postcode [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as an individual

10-11-12

10-11-12



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10-11-12

13th April 2018

FAO Mr James Tallack
Financial Conduct Authority
25 The North Colonnade
London E14 5HS

22 City Road
Finsbury Square
London EC1Y 2AJ

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Dear Sirs

PIMFA's response to CP18/3 Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

We note that FCA's cost benefit analysis estimates that between 370 and 1,255 complaints to the Financial Ombudsman would be made by newly-eligible SMEs across all sectors. We believe that complaints originating from SMEs are likely to be more complex and higher value complaints than the majority of complaints referred to FOS requiring adjudicators and ombudsman with the requisite skills and experience to address such complaints. The CP makes no reference to the FCA having undertaken any work with FOS to ascertain whether or not they have the capability and appropriate resources to address the increase in such complaints. The FCA will be aware that problems regarding the processing of complaints by FOS have been aired in the press and that the Treasury Select Committee is also considering this issue. We believe the proposals should not be implemented until further work has been undertaken by the FCA to ensure that FOS has the capability to address such complaints without impacting on the current issues FOS is seeking to address in respect of existing complaints.

We note the content of the CP makes no reference to the provision of services outside of the banking and insurance sector and fails to recognise that many firms providing investment services to SMEs are considerably smaller than the SME threshold set out in the CP. In these circumstances, it could be argued that SMEs are in a stronger position in reverting to the courts than the investment firms.

There has been no analysis to:-

- ascertain whether there will be difficulties in now obtaining PII insurance for SME business and if coverage can be maintained whether or not the premiums will increase;

¹The Personal Investment Management and Financial Advice Association (PIMFA) is the UK's leading trade association for firms that provide investment management and financial advice to everyone from individuals and families to charities, pension funds, trusts and companies.

PIMFA was created in June 2017 as the outcome of the merger between the Association of Professional Financial Advisers (APFA) and the Wealth Management Association (WMA) and represents both full and associate member firms.

PIMFA's mission is to create an optimal operating environment so that our member firms can focus on delivering the best service to their clients, providing responsible stewardship for their long-term savings and investments. We also lead the debate on policy and regulatory recommendations to ensure that the UK remains a global centre of excellence in the investment management and financial advice arena.

- ascertain whether investment firms, particularly smaller investment firms, will withdraw from servicing SME business;
- determine the potential size of SME FOS claims on firms and their ability to pay and the potential impact on FSCS.

We would ask that the FCA proactively engages with PII providers to ensure they understand the extent of the changes.

Our response to the questions in the CP are set out in the accompanying appendix. Please contact us if you have any queries on our submission.

Yours faithfully

[Redacted signature]

[Redacted name]
[Redacted title]

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

We would refer you to our covering letter. In determining the changes it is unclear to what extent the impact on the PII market was considered. We are generally opposed to widening the access to FOS to larger businesses many of whom are larger than some of our member firms.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

We believe all three tests should apply.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

No comment.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

We refer you to our covering letter, no changes should be made until FCA is satisfied FOS has the capacity to address the increase in complaints. We are strongly opposed to the proposals applying retrospectively which could result in complaints being made to FOS which are not covered by firms PII.

More explanation is required in the resultant Policy Statement as to how the rules would apply in respect of complaints straddling the implementation date, particularly regarding the eligibility criteria and how any compensation costs will be determined. Whilst we recognise that complaints themselves are determined on a 'fair and reasonable' basis this does not, in our view, apply to the approach to be adopted in respect of the implementation date. There could be serious impact on firms if there is uncertainty as to how the implementation date applies to complaints. This point is particularly important in ensuring that claims cannot arise which are outside the scope of a firm's PII because a 'retrospective' approach has been permitted by FOS.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

No comment.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

We believe the analysis is logical although it is difficult for us to readily verify the underlying data.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

For SMEs it may be that a 'one size fits all' FOS scheme is not appropriate having regard to the nature of the different types of services being offered to SMEs by firms of differing size. In our view the changes fail to address the root cause of the issue which is the manner in which some major banks addressed complaints arising from SMEs in respect of the banks' lending activities.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

We would refer you to our covering letter. We are generally opposed to widening firm's exposure to FOS. Any changes must carefully consider the potential impact on all regulated firms. Most contractual complaints arising from a SME will normally require them to take legal action and we are not clear why this should not continue to be the case.

From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 17 February 2018 11:38
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 170218680956

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

In general, yes. However, I do have a concern.

One of the purposes of the Financial Ombudsman Service, and indeed this consultation, is to provide an "equality of arms" between the two parties to a dispute. The RBS Global Restructuring Group scandal cannot be allowed to be repeated.

However, I work with relatively small IFA firms to address disputes. They typically are themselves microenterprises in that they have fewer than 10 employees and turnovers/balance sheets of less than €2 million.

My concern is therefore that we could find a situation where a microenterprise that the FCA regulates has a client with 49 employees and a turnover of £6 million that makes allegations against it.

However, provided the Ombudsman is at all times conscious that the imbalance is in favour of the complainant, rather than the respondent, that may actually work to the legitimate benefit of the regulated firm.

Obviously, if the Ombudsman does not uphold the complaint the complaining SME could go to court but I think that unlikely. If the Ombudsman has ruled against in favour of the SME, that would not bind the court to his

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business? Yes

Q3: Do you agree with our proposal to make guarantors eligible complainants?

Yes - acting as a guarantor is a significant commitment but people who, in the end are private individuals.

It represents a significant personal financial risk and the lender should ensure that it was reasonable to suppose that the guarantor made an informed and balanced decision to do so.

However, the lender should be able to rely on a statement from an RI with relevant permissions or an appropriate professional (such as a solicitor or accountant) that this was assessed. If that the guarantor later complained that it was wrong, the lender would be able to refer them back to whoever provided the statement.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate? Yes

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018? Yes

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered? I do have a concern.

One of the purposes of the Financial Ombudsman Service, and indeed this consultation, is to provide an "equality of arms" between the two parties to a dispute. The RBS Global Restructuring Group scandal cannot be allowed to be repeated.

However, I work with relatively small IFA firms to address disputes. They typically are themselves microenterprises in that they have fewer than 10 employees and turnovers/balance sheets of less than €2 million.

My concern is therefore that we could find a situation where a microenterprise that the FCA regulates has a client with 49 employees and a turnover of £6 million that makes allegations against it.

However, provided the Ombudsman is at all times conscious that the imbalance is in favour of the complainant, rather than the respondent, that may actually work to the legitimate benefit of the regulated firm.

Obviously, if the Ombudsman does not uphold the complaint the complaining SME could go to court but I think that unlikely. If the Ombudsman has ruled against in favour of the SME, that would not bind the court to his decision but a solicitor once told me that the court is likely to take it as a "steer".

Given that the SME is accountable to its shareholders, and its legal advisers are accountable to it, I think would be considered unwise to go further.

There is also the issue illustrated by the GPG scandal in that the limit of £150,000 might not be sufficient. However, there is nothing to stop the complainant asking the firm if it will meet the Ombudsman's recommendation or merely the £150,000 award. They can then make an informed decision about whether to accept or not.

I am also aware that most network members are SMES and that the network usually arrange PI cover for them, effectively acting as their insurance broker. In my experience, networks are not always good at explaining the cover offered and in particular do not tell them that the excess has increased. Although the policy is in the network's name, the member is the beneficiary and, typically, directors of limited company members are required to give personal guarantees.

Clearly, if the member advises on commercial liability cover they have only themselves to blame if they do not take the trouble to check but most are not, they deal in pensions, investments and mortgages - or perhaps personal insurance.

So I think they need to be protected.

I also think care needs to be taken in limiting eligibility by permissions - particularly in respect of general insurance. A firm that has general insurance permission because they sell household insurance alongside their mortgage should not be restricted from making complaints about PI cover which they buy through a more specialist intermediary.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

I am most network members are SMES and that the network usually arrange PI cover for them, effectively acting as their insurance broker. In my experience, networks are not always good at explaining the cover offered and in particular do not tell them that the excess has increased. Although the policy is in the network's name, the member is the beneficiary and, typically, directors of limited company members are required to give personal guarantees.

Clearly, if the member advises on commercial liability cover they have only themselves to blame if they do not take the trouble to check but most are not, they deal in pensions, investments and mortgages - or perhaps personal insurance.

So I think they need to be protected.

Similarly, directly regulated firms.

I have concern that the limits should

Q: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?
Is your response confidential? No

Your details

Company PJT Enterprises Limited

Name [REDACTED]

Position [REDACTED]

Address [REDACTED]

Postcode [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? other

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Corporate Governance & Regulatory Affairs
Regulatory Developments
PO Box 1000
Second Floor, House G
Gogarburn
Edinburgh
EH12 1HQ

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

22 April 2018

By e-mail

To Whom It May Concern:

The Royal Bank of Scotland Group plc (**RBS**) welcomes the opportunity to comment on the FCA's Consultation on SME access to the Financial Ombudsman Service (**FOS**), issued in January 2018 (**CP18/3**).

RBS's responses to the eight questions posed in CP18/3 are appended to this letter.

Overall, and subject to any necessary steps being taken to ensure that the FOS is fully equipped to manage the larger, more complex complaints that are likely to be referred to it, RBS is broadly supportive of the FCA's proposed expansion of the remit and jurisdiction of the FOS to facilitate greater SME access.

Dispute prevention

In the context of considering SME access to the FOS and other dispute resolution mechanisms, it is important to note that RBS's primary aim will always be to seek to prevent disputes with its customers arising in the first place. Where an SME is dissatisfied with a product or service it has received from RBS, we will always strive to resolve its complaint or claim in as fair, reasonable and customer-focused a manner as possible.

Any assessment of the effectiveness of existing arrangements for dispute resolution must start with consideration of how a financial services firm's internal complaint management process works. This will, in the vast majority of cases, be the first route through which an SME customer seeks to escalate any concern, complaint or potential claim it may have in relation to its treatment, and is, of course, a necessary first step prior to a referral to FOS. The complaint process provides a valuable opportunity to listen to the customer's concerns, investigate what has happened and decide what steps, if any, should be taken to put matters right.

As part of the bank's commitment to serving its customers well, it will always endeavour to resolve instances of poor customer treatment in the most appropriate manner for the particular customer(s) involved. RBS would encourage all customers, including SMEs, who may wish to raise complaints

against the bank to engage directly with us, and we try to make the complaint process as accessible, understandable and user-friendly as possible so as to minimise the extent to which customers will feel obliged to refer their complaints to FOS or consider litigating.

Equipping the FOS

Subject to industry responses to CP18/3, and any consequent clarification or amendment of the proposals articulated in the FCA's Policy Statement, if the FCA does determine to exercise its powers to extend the scope and jurisdiction of FOS to accept complaints from 'small business' SMEs, RBS is keen to highlight one key issue for consideration: namely whether FOS will, within its current operating model, be fully equipped to manage the larger, more complex complaints that are likely to be referred to it.

When FOS was first established, it was designed primarily to adjudicate individual disputes between consumers and financial service providers in relation to relatively straightforward products and services. The main rationale of the scheme was to deliver a 'free', lay adjudication service to customers, with complaints being assessed against a general test of what the Ombudsman considers to be *'fair and reasonable in all the circumstances of the case'*. Financial firms have, since the outset, borne all scheme costs, even in cases where customers' complaints are not upheld. The FOS's maximum award limit, prescribed under the DISP rules, has long reflected this limited scope and underlined the fact that the FOS was not designed to be used for the adjudication of much larger, more complex disputes.

From our experience of SME litigation and of cases referred to date to the GRG complaints process, it is likely that, if the FOS assumes responsibility for adjudicating on SME complaints, it may be asked to review complex factual and technical scenarios including, for example, complaints which require assessment, individually or in any combination, of ultimate and cyclical customer viability, company trading strategies, specific market and sectoral analyses, cash flow and trading projections, interest and debt service coverage, real and intellectual property and asset valuations, hedging and security coverage impacts, derivative instruments, and deleveraging and sales strategies, which (by their very nature) will likely require assessment of voluminous documentation and, in some cases, expert evidence. It is likely that such cases will require to be adjudicated by staff with relevant experience in SME lending and/or restructuring and that new principles will have to be developed by FOS in order to determine such cases, either as against its general *'fair and reasonable'* test, or as against a new, still-to-be determined standard. The challenge that the FOS will face in considering SME complaints will be particularly acute in an unregulated context, where there is currently no universally agreed view across the financial services industry of what 'good practice' looks like.

Given FOS's wide discretion in adjudicating complaints, and given that its decisions can, as with PPI mis-selling complaints, have industry-wide significance, it would be particularly important after any expansion of its remit that banks – and SME customers – can have confidence in the FOS's ability to deliver consistently high quality outcomes that do not significantly diverge from established legal or regulatory principles. Any significant divergence might risk increasing uncertainty for all participants in the SME lending market, potentially dampening the availability of credit and raising barriers to entry for new participants.

RBS will be happy to help the FCA with any further information or questions about the contents of this response.

Yours sincerely

Andrew Lewis
[Redacted]

Responses

Q1 Do you agree to our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

RBS endorses the proposal outlined in CP18/3 to extend the remit and jurisdiction of FOS to enable FOS to adjudicate on complaints raised by SME complainants.

RBS broadly agrees with:

- the proposed amendment to DISP 2.7.3R to introduce a new category of eligible complainant entitled 'small businesses';
- the proposed threshold criteria (annual turnover of less than £6.5m; annual balance sheet total of less than £5m; and fewer than 50 employees) to determine the eligibility of 'small businesses';
- the proposed consequential amendment to DISP 2.7.3R(3) to extend the eligibility threshold criteria for charities with income up to £6.5m; and
- the proposed consequential amendment to DISP 2.7.3R(4) to extend the eligibility threshold criteria for trusts with net assets up to £5m.

However, in order both to give effect to the proposed expanded eligibility criteria and to ensure that the rules on qualification are clear and not open to misinterpretation, RBS also makes the following points:

- Wherever the eligibility dividing line is set, there will inevitably always be customers who fall just outside scope and who will claim they are unfairly excluded. This is particularly relevant to the assessment at Q.2 below as to the manner in which the qualifying criteria will be tested and whether (and, if so, when) all three tests need to be met. However, to manage user expectations and to enable it to reach a binary decision on whether or not compulsory jurisdiction arises, it is important that FOS issues very clear and comprehensible guidance on its eligibility parameters, reinforced through effective communication with potential complainants.
- RBS notes that the FCA does not propose to change its rules and guidance at DISP 2.7.6R – 2.7.10G which, in essence, extend the eligibility exclusions to SMEs that are also authorised firms, or acting as a professional client or eligible counterparty. Further, the FCA proposes to amend DISP 2.7.4G to extend the eligibility exclusion to SMEs that are part of a larger group. RBS agrees that these are sensible suggestions, which align to the spirit and principles of the proposed expanded remit of FOS. However, RBS suggests that further consideration be given to prescribing the nature of the relationship that an otherwise eligible SME might have with a larger corporate group. In particular, the eligibility and ownership/relationship status of Special Purpose Vehicles (SPVs) should be carefully assessed. For example, SPVs which have been incorporated by larger corporate groups for limited liability/protective or tax planning purposes but which, ostensibly, retain the characteristics of an eligible SME complainant would qualify under the new rules. RBS encourages the FCA to consider whether such an outcome would reflect the principles and spirit of the new proposals or whether such SPVs should be ineligible to complain under any extended FOS remit.

As to the award limit of £150,000, the FCA does have the power to change the limit of awards that the FOS can make within its compulsory jurisdiction, but it has not actually proposed (in CP18/3) any specific increase in limit. Rather, the FCA has invited views on whether the limit should change and, if so, on what basis and by how much.

On balance, RBS does not consider that there are sufficient grounds to justify an increase to the award limit, for the following reasons:

- RBS considers that the reasons the FCA has suggested in CP18/3 as to why the limit might not be increased (including the potential inconsistency between awards that consumers and SMEs might be eligible to receive, and the appropriateness of a 'quick

and informal' process being asked to adjudicate on substantial complex claims, including determining consequential losses) are compelling.

- FOS awards up to the current award limit of £150,000 are binding upon the financial services firm they are made against, without any route of appeal. This aligns with the summary nature of the FOS's remit, and its overarching principle, which participant firms support. RBS (and other participant firms) accept the role of the FOS in making awards up to this limit knowing that complaints will be summarily determined on a "fair and reasonable" basis. FOS does not apply strict legal rules in reaching its decisions but instead assesses whether, in its opinion, the firm is acting "fairly". While FOS staff gain a considerable degree of knowledge in the course of the work they do, the scrutiny and investigation they are able to apply to each complaint is still well short of full legal analysis and judicial determination. Financial service firms accept the potential limitations of this process, knowing that the maximum award in each case is set at a level that will cover nearly all valid claims. Also, if a decision is made in favour of a customer, the Ombudsman's award will be calculated in such a way as to compensate the customer but will not fine (or punish) the service provider. It is likely that a higher award limit (but where claims are similarly determined on a 'summary' basis with no right of appeal for the firm) would be much more difficult for financial service firms to accept, particularly where the outcome of the complaint might well be different had the customer pursued their claim through the courts. If FOS were to become able to make significantly higher awards to SMEs, the lack of a clearly defined route for firms to challenge or appeal FOS decisions would also become an increasing concern and might even lead to an undermining of firms' lending appetite in this sector. To that end, RBS also considers that if a higher award limit was introduced without any other process changes, firms would be more likely to decide they have a duty to their shareholders and stakeholders to defend larger claims and that they would be more inclined to seek judicial review of FOS decisions.

Q2 Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

RBS considers that it is critical to ensure that, whatever test or tests are agreed to determine the eligibility of an SME as a small business, those tests are straightforward, clear and easy for all parties to the dispute to comprehend.

RBS sees merit in the FCA's attempt to align its analysis broadly with established and currently used thresholds, principally the turnover and employee threshold numbers used in current legislation such as the FSMA Ringfencing Order 2014.

Of the tests selected (annual turnover of less than £6.5m; annual balance sheet total of less than £5m; and fewer than 50 employees), it is arguable that the easiest threshold both to define and to determine is the turnover threshold – this should be a matter of public record, although there remains the potential for uncertainty as to the timing of the assessment of annual turnover in the proposed amendment to DISP 2.7.3R(6). When assessing whether a complainant is a "*small business at the time the complainant refers the complaint to the respondent*", RBS queries whether this is to be based on the annual turnover figure contained in the complainant's last published annual accounts (which could be many months out of date at the time the complaint is made), or based on management accounts or similar which demonstrate the annual turnover as at the point of making the complaint.

RBS can foresee that there might be greater scope to challenge (and therefore less certainty in using) the outcome of balance sheet and/or employee threshold tests. Some small businesses which use part-time, seasonal or casual staff may, for instance, find the employment test challenging. If, for example, a farming company would otherwise meet the turnover and balance sheet thresholds, but was excluded from scope because of the number of seasonal farming staff it used in any particular period, this would likely not meet the spirit and intention behind the proposed expansion of the FOS's remit. Clear rules and guidance would be needed to ensure that flexible resourcing models operated by SMEs do not preclude eligibility if the other tests are met.

Given the above example, and with a view to ensuring clarity and certainty, RBS sees merit in amending the rules to the effect that a small business will be FOS-eligible if it has an annual turnover at the time of making its complaint of less than £6.5m, but only if it also meets at least one of the other

two threshold tests.

Q3 Do you agree with our proposal to make guarantors eligible complainants?

Subject to the caveat below, RBS agrees with the proposal to make personal guarantors of corporate loans eligible complainants.

RBS notes that the FCA has defined the nature of an eligible guarantor's complaint (at 3.25 of CP18/3) as one that "...involves matters that are relevant to a guarantee or security they have given for the liabilities of a micro-enterprise or small business under a mortgage, loan, actual or prospective regulated credit agreement or regulated consumer hire agreement, or a linked transaction..."

However, without further clarification, the FCA's proposed amendments to DISP 2.7.3R(7) and 2.7.5AR (defining that "a guarantor shall be an eligible complainant only to the extent that their complaint arises from matters relevant to the relationship with the respondent referred to in DISP 2.7.6(10)R") is open to misinterpretation and does not adequately reflect the FCA's proposal as to the nature of the guarantor's complaint.

RBS understands that the intention behind the extension of the eligibility criteria to guarantors is to give a route to redress for guarantors who wish to complain about the conduct of the financial services firm in the entering, sale or giving of the guarantee or security, its administration, and/or the call on, enforcement, discharge or release of the security or guarantee. This is not, however, reflected in the FCA's proposed amendments to DISP.

The unintended consequence of any failure to reflect the nature of a guarantor's complaint within DISP is that it would open the possibility of a guarantor complaint being a route through which to bring a complaint about the wider actions or conduct of a financial services firm which might otherwise be ineligible for consideration by FOS.

By way of example, if the draft rules remain unqualified, it would be open to a guarantor to complain that, but for the wider conduct of the financial services firm towards the underlying company, that company might not have failed, and consequently there would not have been a call on the guarantee. To investigate any such complaint would necessitate a (potentially wide-ranging) review of the financial services firm's treatment of the underlying company to establish whether any elements of it had been inappropriate. This would, however, be a complaint that should properly be brought by the company itself, not by the third party guarantor. If the company itself was ineligible to complain to FOS (for example if it were in an insolvency process or was not an eligible micro-enterprise or small business), it does not seem appropriate that it could still complain 'through the back door' via a complaint by its guarantor. This would appear to be contrary to policy and the intended spirit of the expanded principles.

In order to guard against any such unintended consequences, and to ensure clarity both for complainants and for firms, RBS suggests that the nature of an eligible guarantor's complaint should be clearly defined within the rules.

Q4 Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

RBS agrees that, whenever any changes introducing small businesses as eligible complainants might come into force, they should not have retrospective effect. The changes should only apply to complaints made regarding acts or omissions of a financial services firm which occur after the date on which the changes are brought into force.

Although RBS is not wedded to implementation on any particular date, we are supportive in principle of changes being introduced on 1 December 2018, but only provided that any necessary training and infrastructure can be put in place by FOS, and across the industry, to embed it properly within that timescale. If the FCA's Policy Statement is published in summer 2018, this may only leave a few

months for all the necessary preparations to be put in place at FOS. Given that there is a breadth of opinion and independent research underway, the FCA should ensure that sufficient time is built into the schedule to allow all relevant thinking and research outputs to be taken into account. Such an important step should not be rushed through to meet an arbitrary date if this results in confusion or poor service for customers. In the circumstances, rather than working backwards from 1 December 2018 to incorporate all relevant inputs from the consultation and independent research, perhaps the FCA might give thought to working forwards to implementation commencing on a date, say, six months after the publication of the FCA's Policy Statement, whenever that date might be.

Q5 Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

As per Q4 above.

Q6 Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

The broad cost benefit analysis approach adopted by the FCA in CP18/3 appears reasonable; RBS has no specific comments.

Q7 Do you have any views on how access to redress for SMEs might be improved without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

RBS has committed to funding and participating in research examining the potential merits of the establishment of an independent tribunal system for SME banking disputes, and is keen to participate in discussions with the APPG, HMT, UKF and other interested parties about how best to ensure that SMEs have access to fair and impartial dispute resolution options. RBS welcomes the opportunity to participate in discussions about supporting SME access to a range of dispute resolution models.

In addition to participation in firms' complaint procedures and referrals to FOS, SME customers should be encouraged to consider participating in Alternative Dispute Resolution (ADR) processes, including during or as an alternative to court proceedings. RBS is committed to encouraging the use of formal and informal methods of ADR in appropriate cases, such as engagement in direct party-to-party settlement negotiations and in mediation. Provided both sides agree to participate in ADR, there is no other barrier to access and it can offer a swift, low-cost route to achieving a mutually acceptable resolution. As such, RBS would support greater market and industry recognition and use of ADR as an effective and efficient means of resolving SME disputes.

In considering access to redress for SMEs, it is important that there is an objective assessment of whether there is truly a 'gap' at present in the ability of SMEs to access affordable means of resolving disputes with financial services firms and, if so, whether that gap is best addressed by the establishment of a new dispute resolution model (such as the mooted tribunal system which is the subject of independent industry research), or even by widening access to existing mechanisms e.g. through greater use of ADR, more innovative litigation funding options or further reforms to simplify and accelerate the court process.

The starting point must be to consider what the 'mischief' actually is in the current arrangements that any future reform might seek to address. For example, when it is argued that SME customers currently 'cannot' access justice through the courts, is this simply an issue of affordability? Or is there a view that the legal basis on which a court will determine such claims is inherently too 'narrow' and unlikely to deliver the levels of redress that the customer is likely to be seeking? If the latter, it is unlikely that a tribunal determining cases on the basis of legal principles (in the manner that tax and employment tribunals currently do) would deliver significantly different outcomes from a court.

Q8 Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed

to make this effective? What risks might this introduce?

Without fundamental changes to its rules, structure, basis of reaching determinations, capacity and capabilities, RBS does not agree that FOS might be an appropriate body to determine a greater share of complex or higher value complaints (by which, RBS understands to mean larger 'medium sized' SMEs and above).

In this regard, RBS's view is aligned with that of UK Finance and its membership, which has raised compelling objections to FOS hearing higher value and more complex SME complaints. These include the following:

- As a consequence of growth, larger SMEs are also likely to grow in financial complexity. As these businesses grow they can no longer be adequately provided for within a mainly consumer-focused ombudsman service (especially without a significant increase in case compensation limits).
- These firms also have a much greater distinction between business and personal finances. A majority will regularly have formal external funding (most microenterprises do not).
- Moreover, as acknowledged in the FCA's 2015 discussion paper, indicators of the incidence of financial competence and the use of professional advice increase sharply amongst "larger SMEs"
- Further, it is inevitable that, in circumstances where higher value and more complex complaints are justified, consequential loss claims will often be much higher than the current £150,000 limit

RBS would also re-emphasise the main points outlined in the covering letter to this response regarding the strengths of the current FOS arrangements, which would be thrown into sharper focus if the remit of FOS were further extended to encompass larger commercial customers.

CP18/3 also highlights a number of the risks that could arise if FOS were to be asked to adjudicate on an even greater share of complex or high value complaints than currently proposed. These include:

- Whether an extension would actually bring a significant number of other businesses into scope and therefore be worthwhile on a cost/benefit basis;
- The lack of any appeal mechanism, which (for the reasons also set out by RBS in response to Q1 above) would become a more acute concern;
- If a more formal, quasi-legal procedure is to be adopted for particularly complex claims, whether it would become necessary or appropriate for FOS to determine different types of cases on different bases, and the inherent complexity and practical difficulties of designing and implementing such a model.
- The need for FOS to have increased number of 'specialist' staff with adequate understanding of unregulated products and services;
- Whether it is fair to allow larger/more sophisticated SMEs to access FOS and be eligible for higher-value awards while capping redress that consumers can recover – even where they may have suffered significant loss – at £150k.

For all of these reasons, which are central to the consideration of the appropriate model or mechanism to hear larger, more complex disputes and which (without fundamental change) are not adequately addressed by the current (or proposed extension to the) FOS model, RBS does not agree that the FOS is an appropriate body to consider complaints from a wider SME population.



Sent by Email to cp18-03@fca.org.uk

James Tallack
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

24 April 2018

Dear James,

Response to CP18/3: SME access to the Financial Ombudsman Service

Royal & Sun Alliance Insurance plc is a member of the RSA Insurance Group (RSA), a multinational insurance group with major operations worldwide. In the UK, RSA operates solely in the general insurance market. We welcome the opportunity to respond to this consultation on your proposals to allow more small and medium sized enterprises (SMEs) to refer disputes to the Financial Ombudsman Service (FOS).

General Comments

Generally, we are in support of proposals designed to afford SMEs appropriate mechanisms through which they are able to seek redress when they have suffered harm due to the actions of insurers. The insurance needs of SMEs vary significantly across the definition proposed from smaller SMEs who purchase homogenised fixed cover insurance products for standardised risks through to larger SMEs purchasing complex covers through an advised sale. RSA is of the view that both groups do not require the same level of protection when it comes to raising and resolving disputes. We also note that the expanded jurisdiction will create operational challenges for the FOS which will need to be addressed so that it is ready to handle the increased volume in and complexity of SME complaints.

Our comments and views on the specific questions posed in the Consultation Paper are set out below.

**Q1: Do you agree with our proposed changes to the definition of an eligible complainant?
Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?**

As noted above SMEs can vary significantly within the proposed definition from self-employed professionals and microbusiness seeking standardised products with fixed cover limits which can be sold simply and administered on a homogenised basis to larger SMEs insuring more complex risks often sold with the assistance of third party advisers. In addition, insurance needs across this spectrum can also vary widely based on the nature of the SME's activities.

The FOS will face higher case volumes with more complexity and higher value claims than fall within its current remit and it will need to ensure it acquires the additional skill sets and access to specialist resources necessary to be equipped to review complaints of this nature.

Royal & Sun Alliance Insurance plc No. 93792.

Registered in England and Wales, Registered office at St Mark's Court, Chart Way, Horsham, West Sussex, RH12 1XL.
Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority

Q2 Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

We agree that all three of these tests should be met in order to determine that a business is a small business.

Q3 Do you agree with our proposal to make guarantors eligible complainants?

We have no comment on this question.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

We do not believe a transitional period of less than 12 months allows sufficient time for insurance companies to put in place the necessary arrangements to give effect to these changes. In particular, identifying the businesses which could potentially be captured by these changes and making the necessary systems, process and communication changes will be challenging within the transitional period.

Equally, the FOS will need to undertake significant preparation to be able to assume this jurisdiction by the end of the year. The timing coincides with the independent review on the effectiveness of existing adjudication arrangements through FOS following recent concerns highlighted in the media in respect of the adequacy of resourcing and the consistency of outputs. Our view would be to delay the implementation until it is clear whether existing adjudication arrangements require modification or additional support.

Q 5 Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

We have no comment on this question.

Q 6 Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

As noted above we believe the broader FOS jurisdiction proposed will not only increase the volume of FOS eligible complaints but will also capture more complex commercial disputes. This has the potential to impact FOS resourcing and the skills set and expertise that FOS staff will need to possess and to access. We do not feel that the cost benefit analysis adequately takes into account these impacts.

Q7 Do you have any views on how access to redress might be improved for SMEs without the need for change to legislation, including but not limited to the areas where we have powers to make changes?

We believe other options do exist to provide an appropriate and adequate dispute resolution mechanism for SMEs. They could be in the form of FOS undertaking expanded support services to SMEs or in the establishment of a separate tribunal specifically to provide alternative dispute resolution for SMEs.

Whilst we can see the benefit of these alternative options, we note that any proposal to expand or change the FOS services or jurisdiction will result in an increase in its running cost and therefore a

likely increase in the fees payable by firms. We would therefore argue that any such expansion can only be justified where the change would deliver clear benefits for users of the FOS services.

Q8 Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

With the right operating model, resourcing and expertise the FOS could be an appropriate body to consider more complex or higher value complaints. As noted above however, to achieve this scale of change to the FOS by 1 December 2018 would be challenging and require additional budget, training and resource.

We would also argue that the combination of the broadening of the FOS' jurisdiction and the increase of the FOS award limits to £600,000 could see the FOS viewed as a low cost alternative to litigation through the courts particularly for businesses pursuing compensation. We believe that the current limit of £150,000 is appropriate and any increase in the limit should be supported by an analysis of appropriate data.

I trust that you will give due consideration to our comments. If you would like further detail or would like to discuss any of our feedback or suggestions, please do not hesitate to contact me on [REDACTED]

Yours sincerely,

[REDACTED]

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To the FCA

By email to: cp18-03@fca.org.uk

Response to CP18/03: "Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services"

Who we are and who we represent?

This response is provided by RPC on behalf of a working group of the International Underwriting Association¹ Professional Indemnity Forum ("IUA PIF"). In order to respond effectively to consultations such as this, the IUA PIF created a working group comprising of representatives from eight insurance companies that write financial adviser business (the "Working Group"). We understand that the IUA will be providing comments on the consultation paper from its wider perspective as a trade association. As noted, our comments below are focused on the particular professional indemnity insurance implications of the proposals.

Scope of response

It is not our intention to respond to each question set in the Consultation Paper. Indeed, this response addresses only part 4 of the Consultation: "Discussion: SME disputes not covered by our consultation" so, specifically, questions 7 and 8.

In particular, this response addresses the issues raised under the heading "Raising the Financial Ombudsman Service's award limit".

In summary, the Working Group considers that it would be wholly unjustified to raise the FOS award limit in respect of claims made by SMEs (or indeed at all).

"Raising the Financial Ombudsman Service's award limit"

The gist of the issue raised by the Consultation Paper is that, as a consequence of the proposed raising of the eligibility threshold for SMEs, more SMEs will have access to FOS and so this is likely to result in there being more complaints for which the FOS has jurisdiction but where possible redress will exceed the current award limit of £150,000.

The Paper then goes on to postulate that, in order to have a meaningful impact on the number of complaints where possible redress could be brought within the award limit, the limit might need to be quadrupled from the existing £150,000 to £600,000.

¹ The International Underwriting Association of London (IUA) represents international and wholesale insurance and reinsurance companies operating in or through London. It exists to promote and enhance the business environment for its members. The IUA's London Company Market Statistics Report shows that overall premium income for the company market in 2016 was £22.725bn. Gross premium written in London totalled £16.034bn while a further £6.691bn was identified as written in other locations but overseen by London operations. For further information about IUA and membership please visit their website, www.iua.co.uk under the section 'About the IUA'.

The Working Group's submissions

The Working Group is very clear that there is no reasonable justification at all for increasing the FOS award limit to cater for SMEs' losses (or otherwise).

The argument to potentially justify increasing the FOS limit appears, in essence, to be that SMEs (as opposed to individuals) are more likely to suffer losses that exceed the current FOS award limit of £150,000. This may or may not be correct but is frankly beside the point. The FOS is not intended to (and should not) provide a forum for *all* (or even the majority of) financial services complaints regardless of value. That SMEs may have more potentially high value complaints does not change the fact that the FOS is not a suitable forum for higher value matters.

As the paper itself recognises, the aim of the FOS is to provide a quick, informal and free (for complainants) dispute resolution service to the financial services industry and its powers and processes are specifically designed to meet this aim.

Firstly, and fundamentally, the FOS is not obliged to apply the law but can make decisions according to what an Ombudsman considers to be fair and reasonable.

Secondly, FOS final determinations are binding (if accepted by the complainant), enforceable in court and not subject to any form of appeal².

Thirdly, the FOS process itself is specifically designed with speed and informality in mind – by way of example only, the FOS almost never conducts hearings in person to enable witnesses to be questioned and has no power to require complainants to provide full disclosure of contemporaneous documents relevant to the dispute. As such, the FOS process does not provide a rigorous analysis of evidence – certainly when compared to a court process.

The fact the FOS does not have to apply the law, its decisions are not subject to appeal and its processes for analysing evidence are not as rigorous as the courts' means it can provide the quick, informal dispute resolution service it was designed to provide. However, these same features are singularly unsuitable for dealing with higher value complaints, which are often also more complex.

The fact that, when establishing the FOS, a monetary award limit was imposed at all illustrates that parliament did not intend the FOS to provide a dispute resolution process for all, or even the majority, of financial services disputes regardless of value. This contrasts, as the paper notes, with the Pension Ombudsman, for which parliament imposed no financial limit to the level of award it can make but imposed a very different process and jurisdiction – namely, it has to apply the law and firms have a direct route of appeal to the courts.

Financial adviser firms and their insurers alike are often frustrated by unpredictable FOS decisions that might be decided differently if the law was applied and a more rigorous analysis of the evidence was undertaken. In the round, such decisions are acceptable given the £150,000 limit and the quick and cheap resolution process. However, the higher the award limit the less acceptable it would be (for firms and their insurers) for complaints to be subject to the "fair and reasonable" FOS jurisdiction.

The FOS is, of course, not the only forum available to SMEs (or indeed individuals). It is not the case that there is currently no alternative for those with higher value complaints. They are able to use the courts. The judicial system is patently the best forum for large and complex matters to be fairly decided. Bigger more complex cases justify a more rigorous investigation of the facts and analysis of the law, which is precisely what the courts are best placed to do.

² Whilst the FOS is, of course, subject to judicial review, this is not an appeal process as decisions can only be challenged (broadly speaking) on grounds of the FOS exceeding its own jurisdiction or reaching irrational decisions that are not fair or reasonable.

The Working Group notes that increasingly individuals and SMEs access the courts directly, without the use of solicitors, and can access barristers under the direct access scheme. As such, the courts are increasingly accessible for unrepresented parties and so using them need not involve excessive (or disproportionate) cost. That aside, to the extent that the court system truly is inaccessible for some SME businesses, the Working Group does not accept that the FOS (in its current guise) would be an acceptable alternative forum for higher value disputes.

The FOS is not the only less formal alternative to Court currently available³. A claim under common law does not necessarily mean the matter will end up in Court (in fact it is a rarity). The pursuit of claims via the English court system requires the parties to take several steps that are alternative to a court action. Before a claim can be issued at court, the parties are obliged to follow the steps of a pre-action protocol which requires parties to discuss a dispute before court proceedings are issued. In addition the parties have to consider alternative dispute resolution ("ADR") at several stages throughout a claim and it is our experience that more often than not parties resolve their disputes via some form of ADR before the issue of formal proceedings. So, there are plenty of lower cost ways of obtaining compensation and SMEs are usually more able to afford such costs in any event.

Moreover, let us not pretend that everyone who uses the FOS does so at no cost. Many consumers and SMEs use advisors to assist them with their complaints to FOS and pay for those services.

Conclusions

In short, the quick and informal FOS process, absent any ability to appeal, can only be justified where proportionality dictates these restrictions on the decision making process and firms' access to justice.

The award limit is there to ensure a proportionate balance of the competing interests between, on the one hand, a complainant's right to access redress free of charge, quickly and informally and, on the other hand, a firm's right of access to justice subject to a full investigation of the evidence and application of the law in a consistent and appealable manner.

It is the Working Group's firm view that £150,000 is the right limit when balancing a firm's right to access justice against consumer (including ordinary consumers and SMEs) protection and it should be applied regardless of the nature of the complainant.

If the award limit is increased then the Working Group considers that the existing jurisdiction and processes for the FOS will not be fit for purpose. The only way increasing the award limit could reasonably be justified would be if significant changes were made to the FOS' jurisdiction and processes. In particular, if the FOS were to have the ability to deal with higher value complaints (i) it should apply the law, and not just take it into account; (ii) its decisions should be subject to a route of appeal to the courts; and (iii) its processes should be changed to allow for a more rigorous analysis of available evidence.

The FCA should be under no illusion as to the likely significant impact that increasing the FOS award limit would have on the industry. Existing exposures for firms and their insurers to liabilities generated by FOS determinations are high enough as things stand; they will likely become intolerable if the award limit were increased without significant changes to the FOS process. At best insurance premiums will need to be significantly increased and very likely many insurers will revisit their willingness to participate in this class of business at all. This will then inevitably have a substantial detrimental impact on the supply and pricing of financial services of all kinds.

³ The Working Group also notes that other potential alternative approaches are mentioned in the paper, such as the mooted specialist tribunal for SME financial services disputes. These may in due course prove to be more appropriate alternatives to the court for higher value claims by SMEs.

In circumstances where the FCA itself acknowledges that an increase in the award limit will only benefit a relatively small number of disputes, an increase in the limit is patently unjustifiable.

[REDACTED]

From: [REDACTED]
Sent: 22 February 2018 16:14
To: cp18-03
Subject: Re: Response to consultation paper CP18/3 January 2018

To: James Tallack

From: [REDACTED]

Section 1.16 Guarantors

The proposed extension of the Financial Ombudsman's remit to cover Guarantors would put right a wrong that has caused a lot of suffering to a lot of people, and which for far too long has allowed the banks to unfairly take advantage of some of their customers.

The proposal to limit complaints to those beyond December 2018 is outrageous. The extension to guarantors should be enacted immediately and must apply retrospectively, without time limit, to complaints previously made to the Financial Ombudsman but excluded on the grounds that they were not within the Financial Ombudsman's remit at the time.

Section 1.21 Exclusion of dissolved companies

This exclusion is insane. Some of the worst abuses of power by the banks against some of their customers resulted (often deliberately by the banks) in companies ending up being dissolved. To exclude this group would be tantamount to saying to some banks: "You can behave as badly as you like and provided you force a company to be dissolved, then you can't be held to account by the Financial Ombudsman".



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FCA/Consultation CP18/3 (UPDATE AFTER 10 MAY 2018 – pages 5-12)

Consultation on SME access to the Financial Ombudsman Service and Feedback to CP18/3
: SMEs as Users of Financial Services - Response Friday 20 April 2018

Submission by: Jim Shannon MP for Strangford (Democratic Unionist Party – DUP)

I confirm that this Response to the Consultation may be posted on your FCA website as one of the public responses to the Consultation shortly after 22 April 2018. (not yet published at 30 May 2018)

1. **Background - speeches in or planned for the House of Commons on 18 January 2018 and on 10 May 2018 : P1 –P12 (18 April 2018 debate postponed due to Syria debates)**
2. **Responses to the eight questions posed by the FCA Consultation : Page 12 – Page 14**
3. **Additional information / commentary Page 15 – Page 16**

Background - Text of planned 6 minute full speech (limited to 4 mins speech – *italics not spoken*) by Mr Jim Shannon MP of Strangford in House of Commons on Thursday 18 January 2018 Backbench debate by APPG – Fair Business Banking.....

“That this House is deeply concerned by the treatment of small and medium-sized enterprises (SMEs) by the Global Restructuring Group of the Royal Bank of Scotland; notes that there are wider allegations of malpractice in financial services and related industries; believes that this indicates a systemic failure to effectively protect businesses, which has resulted in financial scandals costing tens of billions of pounds; further believes that a solution requires the collective and collaborative effort of regulators, Parliament and Government; and calls for an independent inquiry into the treatment of SMEs by financial institutions and the protections afforded to them, and the rapid establishment of a tribunal system to deal effectively with financial disputes involving SMEs.”

2.15 PM Mr Jim Shannon MP for Strangford “I thank the hon. Member for Norwich South (Clive Lewis) for securing this Banking debate and all right hon. and hon. Members who have spoken. We have heard significant contributions and good personal stories although, unfortunately, some were very hard to listen to.

In Northern Ireland, SMEs account for 75% of employment, 75% of turnover and 81% of gross value added. The private sector has clearly taken us away from the past, and it is important that we do so. I have written to the FCA, and Andrew Bailey in particular, outlining the case for UK SMEs.

As part of my research last September, almost a decade after the 2007/2008 financial crisis, I wrote to the Chief Executive of the Financial Conduct Authority (FCA), Mr Andrew Bailey, and asked him to set out what the FCA / FSA had achieved since 2007/2008 or still planned to do for our UK SME's. The FCA is chaired by the former KPMG Managing Partner, Mr John Griffith Jones, whose firm audited HBOS, including HBOS Reading. As many in this House will recall HBOS was described by the former esteemed Chair of the Treasury Select Committee, Mr Andrew Tyrie MP, as the second worst failure in British banking history,pause ... after RBS. I therefore also asked Mr Bailey what his Chairman and the FCA Board believed HMG and Parliament could still do to improve banking and their regulatory powers and processes for SME's. I have placed my 19 September 2017 letter and Mr Bailey's delayed response in his 7 page letter dated 20 November 2017 in the Members library. For the record I am delighted to see that the Chair and Members of the Treasury Select Committee are continuing the excellent work in this parliamentary session of pursuing and holding the audit regulator, the Financial Reporting Council, to account while I am also grateful to the Honourable Member for Loughborough who has already circulated this FCA correspondence to her parliamentary colleagues on the Treasury Select Committee. In short from Mr Bailey's letter I would like to make two relevant points to this debate. Firstly, the only planned action referred to in his reply is that the FCA expect to issue a Consultation in relation to expanding the role of the FOS to undertake more disputed cases with banks. As of last Friday, the Financial Ombudsman's Office did not know or could not tell me when the FCA would issue that Consultation.

The second point that arises is that the FCA Board apparently do not have any suggestions or comments or inputs on where it feels HMG and/or Parliament should consider further action in support of SME's. I hope the new Chair of the FSA and Board from April 2018, who I understand is to be another "2007/2008 financial crisis key lawyer / player" Mr Charles Randell, will consider that, in part, the FCA have a responsibility to provide what additional regulatory powers etc they believe they may need in their discussions with the newly appointed and capable City Minister, Mr John Glen MP, so he can assess carefully in the public interest of SME's.... and bring forward for debate and action in this House. When he settles in to his new role I will put down a few written questions on this matter.

I am reminded that the former Chair of the Treasury Committee referred to HBOS as the second-worst failure in British banking history—it was beaten, of course, by RBS. In our correspondence, Mr Bailey made a couple of relevant points. The only planned action to which his reply referred was that the FCA expected to issue a consultation on the expanded role of the Financial Ombudsman Service in undertaking more disputed cases with banks.

As of last Friday, however, nothing had happened, so everyone is dragging their heels, and the FCA board seems to have no suggestions or comments to make. I respectfully ask the Minister and Her Majesty's Government what action they would consider taking to further support SMEs.

In parallel with that strategic question to the FCA, I was aware from my DUP Parliamentary colleague, Mr Sammy Wilson MP (and a Vice Chair of the APPG), that the APPG for Fair Business Banking is proposing an independent Tribunal type system and process. I considered it useful that I might gain some more insight and knowledge in to the FOS capability/capacity to undertake these type of banking cases both today for microenterprises and in a broader remit. Therefore during the summer recess my parliamentary aide submitted an FOI raising a number of specific questions to the Financial Ombudsman Service.

I have also placed in the Members library the FOS responses and my email exchanges but in essence their "mis-selling complaint records" only really begin in sufficient detail from July 2015.

I select just three pieces of information to share in our debate, while commending Members read the email exchanges and letters since my initial FOI in August 2017.

Firstly, since July 2015 some 633 mis-selling complaints for fixed rate commercial loans and mortgages have been considered by the FOS for microenterprises. 183 of those could or would not be considered by the FOS.

Secondly, 21 of those cases were upheld with awards of greater than £75,000; of which had recommendations of greater than £150K. The FOS does not track whether their recommendations above £150K are actually acted on and whether the successful complainant business actually receives the monies recommended above the current statutory award limit from the bank.

Finally, the average time taken to resolve fixed rate commercial loan complaints was 163 days with the longest 10% of complaints (60+) being resolved in 397 days.....more below.

I am aware from my right hon. Friend the Member for East Antrim (Sammy Wilson) that the all-party group on fair business banking proposes an independent tribunal system, which is good news. I am also aware that a freedom of information request has shown that since July 2015, the FOS has considered some 633 mis-selling complaints from micro-enterprises regarding fixed-rate commercial loans and mortgages. Some 21 were upheld with awards of greater than £75,000, and some recommendations were for as much as £150,000, but are the successful complainant businesses actually receiving from the bank the money recommended above the current statutory award? I can say now that some of my constituents have not. It is absolutely disgraceful that while their complaints have been upheld, the moneys are still lingering somewhere other than where they should be—with the complainants.

In the short time I have, I want to illustrate my point with the case of a large family dairy farm in Northern Ireland. It took out a £1 million loan with Danske Bank on the day of the highest LIBOR rate, on 1 October 2008, and since the day of £1 million loan drawdown on 22 January 2009, the farm has paid almost £500,000 in capital and—wait till you hear this one—£535,000 in interest, including another £62,000 because it moved to another bank. That bank has really screwed them, if I can use that word. I do not know if it is unparliamentary language and I apologise if it is, but that is how I feel. The Democratic Unionist party is watching how the FOS process handles this mis-selling case.

There are lots of other cases as well. Another bank that has treated small businesses in Strangford with disdain is the Ulster Bank. It has “restructured” its loans—that is its way of describing what appear to be deliberate destabilising assaults on small businesses. How do we quantify compensation for lost opportunities? The fact is we cannot. Small businesses have gone under, drowning as they watch the Government bailing out bankers. I call for the return of the old-fashioned code of truth, honesty, fairness, common decency, integrity and transparency throughout the whole banking industry. I call for the return of the bank manager who actually knows people, rather than glancing at an online profile. It is time that we did our best for our people.”

Extracts from Hansard John Glen Economic Secretary to the Treasury

“The motion calls for an independent inquiry into the treatment of SMEs by financial institutions, reflecting the frustration addressed by Members across the House today in respect of the experience of their constituents. A number of contributions have also focused on the proposed new tribunal system to deal with financial disputes between banks and SMEs.

As the industry, the FCA and the Treasury progress discussions on this issue, all avenues will be considered. The FCA is undertaking a review, and it launched a discussion paper on SMEs in November 2015. **I feel that that is a very long time ago, so I am reassured to be able to report to the House that it will be making a statement on Monday 22 January on its 2015 SME paper and on its consultation on widening SME eligibility for the Financial Ombudsman Service.** I shall look carefully at what it comes up with. The FCA has promised to consult on widening the remit of the FOS for small businesses—the detail of that will be known—and to take a view on SMEs’ access to redress more broadly. I hope and believe that we will see significant steps forward.....

I fully recognise the frustration that the hon. Gentleman is expressing, but I also said that the Government rule nothing out. We will see what the proposals are and respond accordingly. I think that that is a reasonable position given the relationship between the Government and the FCA.

And in an intervention to the Economic Secretary Rt Hon John Glen MP

Ian Paisley (North Antrim) (DUP) The Minister is making a thoughtful speech. Can he assure the House that the FCA will not be a toothless bulldog and that it will actually have some bite?

Tuesday 17 April 2018 Backbench Debate - postponed beyond 18 April 2018 with Emergency Syria and anti-Semitism debates to 10 May 2018 .

Backbench debate by APPG – Fair Business Banking.....

“Short” Debate held on Thursday 10 May 2018

Redress for victims of banking misconduct and the FCA

“That this House welcomes the public disclosure of the Section 166 report into the conduct of GRG; is concerned about the fundamental difference of tone and emphasis between the summary produced by the FCA and the full report; believes this calls into question the strength and independence of the regulator; notes that the concerns raised in the debate on 18th January with regard to the financial services sector, which is not limited to RBS, and its advisors not only persist, but are amplified by the conclusions in the report; calls on the Treasury to instruct the FCA to move on to phase 2 of the investigation into the root causes of RBS GRG by a body independent to the FCA; and once again calls for a full independent inquiry into the full financial services sector and the associated industries that have allowed misconduct to thrive, and the establishment of an independent mechanism for redress for businesses.”

Planned speech by Mr Gregory Campbell MP for 17 April 2018 (postponed) – removed at Original page 5-7 and then on 10 May 2018 with restriction to 4 minutes.

My DUP colleague Mr Jim Shannon MP, in his speech on 18 January, brought the House’s attention to a case of a large family dairy farm in my constituency. Their [REDACTED] is Jim’s constituent. As members may recall the Minister acknowledged the legitimacy of Jim’s uncharacteristic language when he said *“that Danske Bank has really screwed them, if I can use that word. I do not know if it is unparliamentary language and I apologise if it is, but that is how I feel”* as he told the House that *“since the day of £1 million loan drawdown on 22 January 2009, the farm has paid almost £500,000 in capital and—wait till you hear this one—£535,000 in interest, including another £62,000 because it moved to another bank.”*

Let me tell the House about the conduct and actions of Danske since Jim’s speech – right up to TODAY’s redemption of Danske debt. The Dairy farm brought the £1m Fixed interest Loan to an end in March 2018, as it implemented its move to their new Bank and organised to begin trading as a Limited Company on 1 May 2018. The next day 23 March 2018 Danske created a new bank account of some £579K including all of that £62K + break cost and the remaining capital outstanding sum. Although it had three options in the contract available those involved In Danske consciously chose to apply to this £579K by FAR the MOST ONEROUS option – that was an increase in the Lending Margin from 1.5% to a daily interest rate of 6.55% , which is hardly the appropriate conduct / proportionate to their situation and a mis-selling complaint and the five Senior Managers and Certification Regime (SM&CR) Conduct rules - integrity , due skill , care and diligence , pay due to the interests of customers and treat them fairly etc .

Meantime the farm met each and every one of its other £12K loan repayment and interest obligations to Danske in March and April and would have readily accepted a charge equal to the daily Bank Libor rate of about 0.5%.or about 7 % of the c £5072 charged by Danske since 22 March 2018 to TODAYs redemption, whilst in the transition to their new Bank and Limited Company status. But NOT ONLY did Danske charge this £5072 sum but they wanted a further daily interest charge on ALL their accounts, despite delays by Danske and incredulously (in bold in their letter) a £6 charge for the CHAPS fee ... to transfer the £1.25m in redemption funds TODAY.

The House should hear that this sum is identical to the Debt my constituents started with, .. after repaying over another £1.25m in repayments, interest and charges to Danske , from January 2009 STAGGERING.

This is also the Bank who told my constituents, as can be seen in the transcript of the recording on the highest Libor rate day 30 September 2008/1 October 2008, that the money market screens showed a rate of 5.05% over 15 years. Experts on a pro bono basis calculate and have since provided copies of the money market screens for those days which show in fact that the Danske swap rate was c 4.69% - enabling Danske to take an undisclosed Mark to Market (MTM) income of £25K from Day 1 – which Danske continued to sustain in its entirety in the £62k break cost despite the mis-selling complaint and the Directors of the Farm deciding not to accept a Novation of that Fixed Interest Loan contract.

Furthermore it seems that the 1.5% Lending Margin portion of the 6.55% and equal to £107K since the outset of the contract was SOLELY to cover the farm Default, and of course instead of Refinancing the structure of the Loan when low milk prices and trading was tough Danske continued to lend more money through what Danske call their Dairy Support Loan Facility. Which in fact was really an overdraft immediate repayment facility and within which this Farm has incurred some £28K in interest and charges since 2015 so that the fixed loan payments could continue to be made. Of course they never defaulted and in fact every penny has been transferred TODAY, despite the fact that Danske had insufficient land security.

In the only letter my constituents ever sent directly to their CEO Mr Kevin Kingston, at the end of last month seeking these final redemption figures, he did not even have the courtesy of a personal reply under the Senior Managers and Certification Regime. Perhaps because he was engaged elsewhere as Danske Bank NI is the bank, which just on Tuesday, was reported as the MOST profitable company in Northern Ireland. Its Profits before tax rose from £117m in 2016 to £145m in 2017 and Mr Kingston was quoted as saying “We are absolutely delighted to have retained top spot in the Belfast Telegraph’s listing of the Top 100 companies in Northern Ireland for the fourth year in a row”.

Following a 50 minute interview with the FOS on 15 March 2018 and this 22 March 2018 decision the Farm’s pro bono support team will shortly update their Claim to the FOS and FCA accurately to some £400K + .

We also know from the SAR disclosures of the Danske Credit Committee applications that the Directors of the Bank have already taken an impairment in the total debt well in excess of that £400K+ will they now reverse that in to profits for 2018?

I leave the House to draw its own conclusions..... as all this in a context in which my colleague Mr Shannon MP, in his concluding remarks in that 18 January speech, stated *“I call for the return of the old-fashioned code of truth, honesty, fairness, common decency, integrity and transparency throughout the whole banking industry. I call for the return of the bank manager who actually knows people, rather than glancing at an online profile. It is time that we did our best for our people.”*

Finally, I want to have on our record too, by quoting part of a 21 November 2017 letter from the FCA CEO to Mr Shannon MP and the TSC, under Mr Andrew’s Bailey’s heading Senior Managers and Certification Regime....

"In response to the recommendations of the Parliamentary Commission for Banking Standards (PCBS) HM Treasury legislated to implement a new Senior Managers and Certification regime (SMCR) for all deposit takers. This regime has been in force since March 2016. HM Treasury has since legislated to extend this regime further to cover all authorised persons from 2018. Among other things the SMCR incorporates high-level Conduct rules reflecting the standards expected of all staff. These focus on employees acting with integrity, skill, care and diligence : and with regard to the interests of customers – as well as being open and cooperative with regulators: and observing proper standards of market conduct."

For most firms the Conduct Rules will apply only to regulated activities (and any activities necessary to carry these out). (and I want to emphasise this) "However, under the banking regime the Conduct Rules apply to everything someone does on behalf of their firm, whether its regulated or unregulated or linked to financial services at all. In Practice this means that we can hold bank senior management to account for breaches of conduct rules in relation to activities, such as lending to small companies, which are otherwise unregulated."

We hope Members, SMF1 and SMF2 in Danske Bank and other Banks and the staff throughout the FOS and the FCA recognise the significance of this in relation to SME loans.

It does not seem to us, or at least visibly yet, with these Danske actions, and the recent actions regarding Jes Staley at Barclays in seeking to pursue the identity of a whistleblower, that the FCA SM & CR is NOT yet having the appropriate impact on Bank conduct and behaviour?

I ask the House to support the Motion. "

Planned speech by Mr Jim Shannon MP for 17 April 2018 (postponed) – removed – we include here his actual speech on 10 May 2018 and planned speech but restricted to 4 minutes.

- 2.59.35 pm to 3.03.33 pm

Due to the restriction to four minutes I was unable to deliver the full speech so I include the Hansard version initially to meet that Deputy Speaker imposed speech limit

• Jim Shannon (Strangford) (DUP)

First, I congratulate the hon. Member for East Lothian (Martin Whitfield) on securing the debate. In my last speech on this matter in this House, I referred to a farm in the constituency of my hon. Friend the Member for East Londonderry (Mr Campbell); the family live in my constituency. I remind the House that they paid back half a million pounds in capital and £535,000 in interest, including £62,000 just to leave the bank they were with and go to another bank. The bank had the audacity to charge £6 for a transfer fee on the £1.25 million balance. **What bank was this? It was the bank I am with—the Danske bank ..in Northern Ireland, the most profitable company in Northern Ireland, with profits of £117 million in 2016 and of £145 million in 2017.**

Its chief executive has said: "We are absolutely delighted to have retained top spot in the Belfast Telegraph's listing of the Top 100 companies in Northern Ireland".

Would it not have been better had it been in the top 100 for customer care and looking after its customers? That is what we should have had, instead of it trying to make more dividends for its shareholders.

In the time I have available, I shall be speaking about [REDACTED] who have also had a nightmare situation with Danske bank in relation to their property development business, [REDACTED], which has sites at [REDACTED] of some 44 units and [REDACTED] in east Belfast, with a plan to build some 47 apartments. On 7 May 2007, Danske advanced the company £1.25 million, which was matched by the business, which had been successfully trading for a decade. Danske subsequently took an additional charge of £300,000 on their family home.

This story is dreadful, and, as happens all too often, it involves health issues. The company was finally insolvent in May 2010. On the preliminary reading, [REDACTED] personal efforts to pursue the matter with the FCA are interesting and resonate with much of what I have heard from right hon. and hon. Members in this Chamber today. [REDACTED] is a classic case of where the Financial Ombudsman Service should not be involved now or in the future. It shows why we believe the tribunal is the correct complementary solution, to run alongside the right expanded remit of the FOS.

Those of us in the all-party group on the Connaught Income Fund have come across many episodes and examples of where the FCA has failed in its duty as a regulator. We have read of the actions, or indeed the inactions, of the Financial Services Authority and FCA, and the FCA board should hang their heads in shame. **Past victims have been ignored.**

I am conscious of the time and I am trying to race through this. I hope I am not talking too fast, Madam Deputy Speaker. If I am, I apologise to the Hansard people, who are probably writing furiously at this moment in time and trying to decipher my Ulster Scots. I wish to draw the attention of Members to early-day motion 1162, which we tabled in order to give Members the chance to record their concerns about how the cases of past victims have been looked at. The FCA board has asked: *"Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018?"*

That approach is wrong. Let us get it right. I do believe in the tribunal system—I think this should be done—and I wish to conclude by mentioning an article by Richard Samuel on 5 February 2018 headed "Banking disputes: time for a tribunal". In our view, he sets out compelling and convincing logic for why we should have both the FOS and tribunals.

I urge the Minister to look towards that. As I always do, I look to him for a positive and helpful response. **Hand on heart, I ask him to help our constituents.**

Followed by what I had planned to say .. plan 6.45 mins

In my speech in January I brought the House's attention to the case of a large family dairy farm in my Rt Hon Friend's constituency in East Londonderry. We have been working together here since July 2017 as their [REDACTED] is my constituent.

As members may recall the Minister acknowledged the legitimacy of my uncharacteristic language when I said "that Danske Bank has really screwed them, if I can use that word. I do not know if it is unparliamentary language and I apologise if it is, but that is how I feel" as I told the House that "since the day of £1 million loan drawdown on 22 January 2009, the farm has paid almost £500,000 in capital and—wait till you hear this one—£535,000 in interest, including another £62,000 because it is moving to another bank."

My Rt Hon Friend for East Londonderry is unable to be here today but it is right and proper that he tell the House at an appropriate time the full details of how that transpired since, as his constituents finally exit Danske Bank TODAY. Suffice to say that on Tuesday of this week I noted with dismay and disappointment, after just reading the Danske Debt Redemption letter sent on behalf of their CEO, that it included (IN CAPITALS) a sentence reminding the Farm that they also ensure they add the CHAPS transfer fee of £6 to the c £1.25m balance they were remitting!! The House should hear that this sum is almost identical to the Debt they started with in January 2009 .. after remitting more than that in capital repayments, interest and charges to Danske, when the Bank of England interest rate has been mostly 0.5%STAGGERING.

To compound that on Tuesday evening we realised where their CEO was when I had read their letter at 8.30 am. He was attending a business breakfast in Belfast Waterfront where Danske Bank NI was reported as the MOST profitable company in Northern Ireland.

Its Profits before tax rose from £117m in 2016 to £145m in 2017 and Mr Kingston was quoted as saying "We are absolutely delighted to have retained top spot in the Belfast Telegraph's listing of the Top 100 companies in Northern Ireland for the fourth year in a row". ...a few seconds *perhaps my "uncharacteristic language / feelings then and since can be understood by all Rt Hon Members.*

Furthermore since hearing the many speakers and stories in that Backbench debate in the House in January, local media coverage in my Strangford constituency and a referral from Sir Jeffrey Donaldson MP I have been approached by more constituents. Today I select [REDACTED] who also have had a nightmare situation with Danske / Northern Bank in relation to their property development business [REDACTED] with sites at [REDACTED] of some 44 units and [REDACTED] in the East of Belfast with a plan to build some 47 apartments Danske advanced on 7 May 2007 the company £1.25 (matched by the business) which had been successfully trading for a decade The Bank appointed a top NI RICS surveyor to carry out a valuation to support the Credit Committee Application, though the business had to pay for the Valuation. Danske subsequently took an additional charge of £300K on their family home in 2008.

Their story is dreadful with the all too often health issues and the company was finally insolvent in May 2010. Today that Fashoda site has substantial social housing whilst the [REDACTED] were declared bankrupt in 2014. Our preliminary reading of [REDACTED] personal efforts to pursue with the FCA make interesting reading and resonate with much of what I hear from Rt Hon Members in this and past debates. I wrote to Mr

Andrew Bailey at the FCA and Ms Caroline Wayman at the FOS to do a personal deep dive in to how their organisations have dealt with Mr Armstrong. Ms Wayman responded to my letter very promptly setting out all the dates and communications with Mr Armstrong and with which he concurs. Mr Armstrong is, however in my view, a classic case of where the FOS should not be involved now or in the future and ~~why~~ we believe the Tribunal is the correct complementary solution alongside the "right" expanded remit of the FOS. Mr Bailey's response from the FCA and their chronology of interactions / actions with the Armstrongs are awaited.

As a Vice Chair of the APPG on the Connaught Fund I know Mr Speaker, we have and will hear many episodes of where the FCA has failed in its duty as a regulator today, but the more I read of the actions or should I say inactions of the FSA/FCA in this case the more I feel that the FCA Board should hold their heads in shame. I am now observing / experiencing it myself elsewhere in other research since September 2017, which I have recently shared with CEO Mr Andrew Bailey and hope to meet next month.

Now to return to bigger strategic picture for all of the UK economy and SME's throughout our nation. I begin by reminding the House about the last debate and what our competent Minister had appropriately stated in his Opening Remarks "The FCA is undertaking a review, and it launched a discussion paper on SMEs in November 2015. **I feel that that is a very long time ago**, so I am reassured to be able to report to the House that it will be making a statement on Monday 22 January on its 2015 SME paper and on its consultation on widening SME eligibility for the Financial Ombudsman Service.....and his statement concluded "I fully recognise the frustration that the hon. Gentleman is expressing, but I also said that the Government rule nothing out. We will see what the proposals are and respond accordingly. I think that that is a reasonable position given the relationship between the Government and the FCA."

Despite what has and is happening in this House and elsewhere this FCA Board and CEO approved a Consultation Paper (CP18/3) which had Q4 (and Q5 for Guarantors) consciously and deliberately ask

"Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018?"

In effect past victims could be ignored. That is the reason why on the 16th April 2018, in addition to the many speeches in multiple debates in this House in the last decade, I and my DUP colleagues brought an Early Day Motion to the House in which we continue to seek the widest possible cross party support for this EDM 1162. We ask all Hon Members to please sign this EDM to add to the speeches from this House so that in effect the FCA know we cannot ignore past Banking victims

1162 FINANCIAL CONDUCT AUTHORITY CONSULTATION ON THE FINANCIAL SERVICES INDUSTRY AND SMEs

16:4:18

Jim Shannon
David Simpson
Paul Girvan
Ian Paisley
Sir Peter Bottomley
Gavin Robinson

★ 6

That this House recognises the progress of discussions on the financial services industry involving the Financial Conduct Authority (FCA), HM Treasury and small and medium-sized enterprises; welcomes the current FCA review and launch of the CP18-3 consultation paper following the backbench business debate on RBS Global Restructuring Group held on 18 January 2018; notes with special reference Q4 within the FCA Consultation (CP18-03) which asks about the date of coming into force for changes introducing small businesses as eligible complainants and such changes only applying to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018; further notes that the FCA has the powers and sets the rules on how the Ombudsman should handle complaints further; notes that the jurisdiction of that service is published as part of the FCA's handbook, in the section called Dispute Resolution (DISP) rules; complaints and that DISP 2.8.2 is found within Chapter 2; and asserts that the FCA must add with immediate effect a clause (C) stating that if the complainant brought their complaint to an hon. Member at any time from 1 September 2007 to 21 April 2018 and has a written acknowledgment or some other record of action on the complaint, from that hon. Member during that period; to ensure that the FCA cannot ignore past banking victims.

In short I believe we cannot allow the FCA to ignore past banking victims and that **SMEs should have the CHOICE of options in seeking redress within two parameters (in addition to commercial court) :-**

1. Within FOS with an expanded remit for claims / awards of up to £500,000 for businesses which are currently trading. This implemented after any further appropriate training and resourcing, management and governance reviews in FOS. I believe that the overall principle of providing a "fair and reasonable" solution is an appropriate ADR mechanism and it is a matter of implementation and culture – not more law.

OR

A "Financial Services Tribunal" as proposed by The APPG Fair Business Banking. We understand that this proposal is predicated on Employment Tribunal principles and I believe should be available for any claims of £10,000+ for those SMEs which continue to trade AND for those SMEs and Guarantors which have been the subject of insolvency or bankruptcy proceedings. This solution is quasi-judicial and is the most appropriate for the highest value complaints.

I note with endorsement that The All Party Parliamentary Group on Fair Business Banking (APPG) has announced that a research project will be carried out into the best way of establishing an independent resolution mechanism for complex financial disputes. The Centre for Policy Studies will produce policy recommendations into how this mechanism will be set up, how it will be funded, who will be able to access it and on what basis it will make decisions".

I and my Party look forward to contributing to this research. I would add that we consider the recent article in the Law Society Gazette by Mr Richard Samuel on 5 February 2018 headed "Banking disputes: time for a tribunal" in which, in our view, he sets out compelling logic of

why we should have both the FOS and Tribunals, is convincing. We have noted that he, like myself (Mr Shannon MP, Mr Brian Little and Mr Paul Moore as part of our Written Submission – SME0025- and 56 Page Annex 1 to the TSC Inquiry on SME Finance) have a Written Evidence submission published on the TSC website for their SME Finance Inquiry on 17 April 2018. It is SME0003.

Finally following the Minister statement in the January debate once we had received that CP18/3 Consultation we made arrangements with the FOS to visit so that the DUP had the best available information and research available to us in finalising our Response Submission to the FCA.

On the morning of this postponed debate on Tuesday 17 April 2018 I visited with others the Financial Ombudsman CEO Canary Wharf in what was a very good meeting where we were able to ask and receive answers to some twenty five of our questions with their senior team of four. A few other items remain to be clarified advised. One of the team, the CEO of Vedanta Hedging, has formally offered to provide c100 hours of free training per year to the FOS on certain “complex” financial areas, as he understood the FOS’s remit is to help the most vulnerable and smallest SMEs, as they are passionate about financial education for SMEs for these “complex” topics.

I have since provided our comprehensive Submission to the FCA and Mr Andrew Bailey by the closing date of that Friday 20 April 2018 and I expect it / like all the other non-confidential Consultation responses will be published on the FCA website shortly.

This has enabled me to finalise my Draft Submission as follows....no change from Original

Questions posed by the Consultation CP18/3

Overall we welcome this Consultation intent but believe it should only be one of the Options available to SMEs and that they alone should have the CHOICE as to which dispute resolution choice they wish to pursue with only two parameters restricting same.

Q1. Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

Yes the definition and thresholds appear appropriate but see Q2 below.

Q2. Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

Whilst the tests seem appropriate we consider that any two of the criteria is sufficient to qualify as an eligible complainant. All three should not be required for eligibility.

Q3. Do you agree with our proposal to make guarantors eligible complainants?

Yes

Q4. Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

The FCA is well aware from multiple debates in the House of Commons (most recently Thursday 18 January 2018 as the 17 April 2018 debate is to be re-scheduled) that there are many SME cases since the financial crisis in 2007/2008 which merit truth and justice across multiple banks. The FCA Consultation fails to set out whether the FCA does not have the powers to apply this process retrospectively.

At present the rules setting out how the Ombudsman should handle complaints and the jurisdiction of the service are published as part of your Financial Conduct Authority's handbook, in the section called Dispute Resolution ("DISP") rules: complaints. DISP 2.8.2 found within Chapter 2, states

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service :

(2) more than

(a) six years after the event complained of ; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgment or some other record of the complaint having being received;

AND SHOULD BE ADDED

(c) for all eligible complainants (from 1 December 2018) if the complainant referred the complaint to their sitting Member of Parliament at any time from 1 September 2007 to 18 January 2018 and has a written acknowledgment or some other record of action on the complaint, (including but not limited to the FSA, FCA, FOS, HMG) from their sitting Member of Parliament (MP) during that period.

(Note: Penderleith BOE report in October 2012 of the UK financial crisis re Northern Rock and most recent Banking debate in the House of Commons on 18 January 2018 and before FCA Consultation issued on 22 January 2018.)

The FCA should include this paragraph in an update to their Handbook coincident with the introduction of this Option being available to all eligible complainants from the FCA proposed 1 December 2018. This addition (within the FCA Handbook powers alone) would at least provide a credible OPTION for some SMEs and together with our support for the APPG for Fair Business Banking proposal of a Financial Services Tribunal as an ADR option for any SME, should be sufficient for HMG to legislate in a timely manner in this Parliament term for those SME's which seek redress by an alternative dispute resolution process.

Any cases, with Claims exceeding £10,000, prior to 1 September 2007 should be addressed through the proposed "Tribunal" system. There is a well-established and well- respected tribunals system, now run under the Courts, Tribunals and Enforcement Act 2007 which provides a model for that future "Financial Services Tribunal" system here. In our research we read an article in the Law

Society Gazette on 5 February 2018 by Mr Richard Samuel with which we agree when he states "..... in my view, FOS's expansion is to be warmly welcomed and enthusiastically supported. The greater the ADR services available to a greater number of complainants in financial services disputes, the better served is the public interest. But Expansion of FOS's ADR services is but one half of the required solution; a structural deficit in access to justice remains. This is no the FOS's fault (although those in it and connected with FOS have interpreted my writing as finding fault with it, for which I am, no doubt, to be criticised). On the contrary, the fault is with the primary forum of dispute resolution – the courts – to which FOS's ADR service is an alternative. The courts must be within reach of businesses with claims against banks for the justice system to work. The suggestion of a tribunal is the solution to the problem with the other half of the justice system: the courts, not FOS."

Q5. Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

See response to Q4.

Q6. Do you agree with our cost/benefit analysis? Are there other costs or benefits we ought to have considered?

No view

Q7. Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

As will be evident above we consider the Consultation should be only one Option which should be available to eligible SMEs in the UK.

Q8. Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3. What changes would be needed to make this effective? What risks might this introduce?

See below

ADDITIONAL QUESTIONS/POINTS

(A) AWARD LIMITS: Although in para 4.17 the FCA state “We have powers to change the limit on the awards the Ombudsman can make within its compulsory jurisdiction. The current limit of £150,000 was increased from £100,000 in 2012” we do not see any question seeking our views on this subject although the FCA Consultation sets out some perspective from Paragraphs 4.17 to 4.33.

In the FOS FOI 2803 reply dated 26 September 2017 the FOS stated at page 3 *“In regards to questions 7, 8 and 9, our statutory involvement in a complaint ends once we’ve issued a final decision and so we do not monitor the degree to which a business pays compensation out to a consumer, or if they pay over our award limit. This means that we would only hold this information if the parties to the complaint got back in touch with us and manually reviewing this would exceed the appropriate limit. However, I would like to assure you that if the complainant gets in touch to say that they have not received the award, we would first raise this with the individual business and then with the FCA, which can use its regulatory powers to make a financial business pay the award up to our award limit.”*

We do believe that on balance it does make sense as the FCA say at paragraph 4.23 that the award limit available to the Ombudsman should be increased to £500,000 including direct consequential losses and that it remain within a “fair and reasonable basis” process. **In our view this should happen immediately for these cases and the FOS should have the task in the public interest of ensuring they follow up and know what the Banks actions have been.**

We did note with interest (FOS FOI 2383) that in the larger mis-selling complaints for fixed rate commercial loans and mortgages that out of the 21 cases at the FOS, that had an award of £75,000 or over, two were made by an Ombudsman while the rest were resolved informally between the parties without a formal Ruling. However I do believe that if the eligible complainant believes their claim is more than £500,000 including consequential losses then this should NOT be within the FOS process. Instead the complainant should pursue through the proposed Financial Services Tribunal process.

We believe that with the relevant powers of disclosure and appropriate training/number of competent resources within the FOS AND that the SMEs have the option of choosing to seek redress in the FOS OR via Financial Services Tribunal OR Court then the parties to the highest value complaints might properly expect the basis for decision making and the investigation process to more closely resemble those of a court – for example a Tribunal with hearings etc i.e. if their Claim is more than £500,000.

(B) SMEs redress of dissolved companies and companies in insolvency proceedings

INSOLVENCY : We agree that the FOS process is NOT appropriate for these SMEs **HOWEVER** we have been concerned to listen over the last decade to stories of SMEs (most recently RBS – GRG) who are no longer in business, many of whom earnestly believe they were driven out of business by banks – some of which were bailed out and owned by HMG. In the interests of truth and justice we believe that this represents another reason why HMG should consider and then legislate carefully for the **OPTION** of a Financial Services Tribunal which would include these type of cases where

“the complainant referred the complaint to their sitting Member of Parliament at any time from 1 September 2007 to 21 April 2018 and has a written acknowledgment or some other record of action on the complaint, (including but not limited to the FSA, FCA, FOS, HMG) from their sitting Member of Parliament (MP) during that period.”

(Note Penderleith BOE October 2012 report for start of the financial crisis re Northern Rock and most recent Banking debate in the House of Commons on 18 January 2018 and before FCA Consultation issued.)

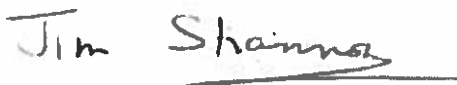
Again HMG should bring forward such primary legislation in the current Parliamentary term and well before May 2022 as we recognise the inclusion of the Insolvency aspects will prove important in bringing forward an appropriate truth and justice legal solution within a Financial Services Tribunal.

(C) Resources / Funding + other

I recognise that the FOS have recently published their "Our plans for the year ahead (2018/2019)" and that by the end of 2018/2019 they expect to have drawn significantly on their reserves in dealing with our long term strategy for dealing with the fallout of mass PPI mis-selling. They expect to consult on proposals for their funding model for the future later this year and I would endorse that the FCA and FOS should begin to work through the assessment of the potential workload and costs associated with considering the past banking victims from 1 September 2007.

Furthermore I consider that HMG should make some contribution to this cost for the remainder of this parliamentary term given the billions of taxpayer monies expended to bail out the banks. Some of that funding could be used by FOS to draw on some independent expert resources where they considered that useful in fulfilling their Mission.

The FCA Consultation has not set out whether any additional powers are needed for the FOS (for example in relation to Disclosure) and I believe that this should be explored further to ensure that the FCA (and/or Parliament) can consider same if needed.



Jim SHANNON MP
Member of Parliament
Democratic Unionist Party
Strangford Constituency

Friday 20 April 2018 - update Pages 5 to 12 on Wednesday 30 May 2018

Copy Mr John Glen MP - Economic Secretary to the Treasury
Mrs Nikki Morgan - Chair and Members of the Treasury Select Committee

Mr Andrew Bailey - FCA Chief Executive
Ms Caroline Wayman - FOS Chief Executive and Chief Ombudsman

 APPG for Fair Business Banking

James Tallack,
Financial Conduct Authority,
25 The North Colonnade,
London
E14 5HS

Via email: cp18_3@fca.org.uk

17 April 2018

Dear Mr Tallack,

CP18/3: Consultation on SME access to the Financial Ombudsman Service

The following is submitted on behalf of the Society of Lloyd's in response to the FCA consultation regarding SME access to the Financial Ombudsman Service (FOS).

Responses

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

We agree with the proposed changes and think that the proposed size thresholds are broadly correct.

We support the proposal in the response from the Lloyd's Market Association (LMA) to amend the definition of an "eligible complainant", to recognise that micro-enterprises will be included in the new definition of "small business".

We would like to emphasise the point, also made by the LMA, that the method for calculating the number of employees needs to be specifically prescribed in DISP to ensure consistent application. Without such prescription, it is not clear whether employee counts should be conducted on a nominal basis or in terms of Full Time Equivalents (FTEs).

We assume that the rights of small businesses to refer complaints to the Ombudsman in DISP will not lead to other changes to the FCA Handbook and that they will continue to be treated as "commercial customers". This will mean retaining the existing rules on application in ICOBS, for example. Furthermore, the Consumer Insurance (Disclosure and Representations) Act 2012 will continue to apply to consumers and not small businesses. The FOS approach to complaints submitted by small businesses will need to take these, and other, distinctions into account.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

A business should meet all three tests to be considered a small business, as qualification on the basis of a single test may give a misleading impression of the overall "weight" of a company.

Modern companies, particularly in the technology sector, may well generate large revenues from small numbers of employees. For example, Facebook acquired WhatsApp for \$19bn in 2014, when WhatsApp only had 55 employees. When Facebook acquired Instagram for \$1bn in 2012, Instagram only had 12 employees. Firms may also rely heavily on outsourcing, retaining only a core of employees, but nevertheless have significant turnover and a large balance sheet.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

We do not have a specific view on this question.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

The implementation date for the changes should be deferred by one month to 1 January 2019 in order to align with FCA complaints reporting timelines.

Contextualisation data is required for this complaints reporting and it takes time to assemble and analyse the policyholder counts which are a constituent part of this data. Deferring the implementation date would provide Lloyd's market participants and other affected firms with an opportunity to produce the requisite policyholder count data for the new categories of eligible complainant. It may not otherwise be possible to produce this data in sufficient time for the submission.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

We do not have a specific view on this question.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

We do not have a specific view on this question.

If you have any questions regarding our responses, please contact me via:

[REDACTED]

Yours sincerely,

A large, irregular black redaction mark covering a signature.Two lines of text completely redacted with black ink.

Government Policy & Affairs

Telephone 

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

•

•



THE SOCIETY OF PENSION
PROFESSIONALS
leading pension thinking

Email: cp18-03@fca.org.uk

James Tallack
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Our Ref: JM/JP/4.17.2

April 23rd 2018

Dear Mr. Tallack,

CONSULTATION PAPER 18/3: CONSULTATION ON SME ACCESS TO THE FINANCIAL OMBUDSMAN SERVICE AND FEEDBACK TO DP 15/7 – SMES AS USERS OF FINANCIAL SERVICES

We welcome the opportunity to contribute to the above consultation.

INTRODUCTION TO THE SOCIETY OF PENSION PROFESSIONALS (SPP)

SPP is the representative body for a wide range of providers of advice and services to work-based pension schemes and to their sponsors. SPP's Members' profile is a key strength and includes accounting firms, solicitors, insurance companies, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. SPP is the only body to focus on the whole range of pension related services across the private pensions sector, and through such a wide spread of providers of advice and services. ~~We do not~~ represent any particular type of provision or any one interest - body or group.

Many thousands of individuals and pension funds use the services of one or more of SPP's Members, including the overwhelming majority of the 500 largest UK pension funds. SPP's growing membership collectively employs some 15,000 people providing pension-related advice and services.

This consultation has been considered by SPP's Financial Services Regulation Sub-Committee, which comprises representatives of actuaries and consultants, insurance companies and lawyers.

RESPONSES TO THE CONSULTATION QUESTIONS

Question 1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

We agree with the proposals and our main question is whether the Ombudsman will have sufficient resources to meet the expected increased demand for its services.

Question 2: Do you agree that all three tests (employees, turnover and balance sheet) should need to be met for the Ombudsman to consider an SME a small business?

Yes.

Question 3: Do you agree with our proposal to make guarantors eligible complainants?

Yes.

Question 4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on December 1st 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from December 1st 2018? If not, what transitional period do you consider appropriate?

We agree with the proposal.

C:\Users\jtallack\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\8E2852R7\6 Ltr James Tallack CP 18-03.docx

The Society of Pension Professionals
Quantum House, 22-24 Red Lion Court, London EC4A 3EB T: 020 7353 1688 F: 020 7353 9296
E: info@the-spp.co.uk www.the-spp.co.uk

A company limited by guarantee. Registered in England and Wales No. 3095982



Question 5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on December 1st 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after December 1st 2018?

It will be helpful to have clarification of whether firms are expected to identify guarantors when taking on new business.

Question 6: Do you agree with our cost benefit analysis? Are there other costs or benefits, which we ought to have considered?

We have no comment.

Question 7: Do you have any views on how access to redress might be improved for SMEs, without the need for changes to legislation, including, but not limited to, the areas where we have powers to make changes?

One possibility would be to make available Alternative Dispute Resolution.

Question 8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

Again, our main concern would be that the Ombudsman might not have appropriate resources to consider the complaints in question.

Yours sincerely

James Tallack,
Financial Conduct Authority,
25 The North Colonnade,
London E14 5HS

19 April 2018

Dear James,

**SMALLER BUSINESS PRACTITIONER PANEL RESPONSE TO CP18/3: SME
ACCESS TO FOS**

The Smaller Business Practitioner Panel has some general observations to make on the subject of access to the Financial Ombudsman Service (FOS) in the context of your consultation.

Finding a mechanism to help a larger group of Small and Medium-sized Enterprises (SMEs) to be able to resolve issues with financial suppliers is a good idea. In particular, these firms need a suitable mechanism to deal with banks that may have an unequal strength in the relationship. Some form of dispute resolution that already exists would be ideal. However, placing these issues in the domain of FOS runs the risk of making the situation worse.

We understand that FOS recognises it will have to develop new expertise in the area of consumer finance to cope with this extra responsibility. It already has some expertise in these areas, although there is little information on how reliable those results are, as they are not subject to external review or oversight. Since the consultation was published, we have seen the Channel 4 Dispatches programme which raised serious questions about training and competence within the organisation. We look forward to seeing the results of the review by independent experts which FOS has commissioned, and its recommendations, which may have implications for whether the FOS should be given further responsibilities.

There is a worry that the main driver for the FCA's proposal is to give SMEs some recourse when dealing with large banks. However, the way it is written, it will also include more complex finance arrangements for a diverse range of agreements, including specialist machinery. If smaller finance providers perceive an additional risk of FOS action, which FOS will be quick to point out is not precedent-driven and therefore hard to assess, they will react either by tightening the terms of their agreements, increasing the price to reflect the risk, or ultimately withdrawing from the market.

If however there is a dispute resolution system in place that seems reasonable and balanced, then smaller financial firms would react far more positively.

This is therefore a golden opportunity to develop a much more appropriate dispute resolution system for SMEs rather than extending the FOS regime. It could indeed become the template for a better dispute resolution system in future.

We would be happy to discuss this work further if required,

Yours sincerely,

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From: FCA CP18/3 <no-reply@fcamail.org.uk>
Sent: 22 January 2018 18:42
To: cp18-03
Subject: Online response form submission for CP18/3

Thank you for your submission. Your responses are given below:

Reference 220118645711

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Q5: Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Q7: Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

No. These proposals will not help victims of LPA Receivers who are not regulated and therefore when banks use them to do their dirty work, victims have no protection.

Is your response confidential? No

Your details

Company Threshold Properties

Name [REDACTED]

Position [REDACTED]

Address [REDACTED]

Postcode [REDACTED]

Telephone [REDACTED]

Email [REDACTED]

In what capacity are you responding? as an individual

From: [REDACTED]
Sent: 22 January 2018 15:15
To: cp18-03
Subject: Consultation on SME access to the Financial Ombudsman Service

Dear FCA,

I am writing in response to your Consultation on SME access to the Financial Ombudsman Service (<https://www.fca.org.uk/publication/consultation/cp18-03.pdf> and <https://www.fca.org.uk/publications/consultation-papers/cp18-3-consultation-sme-access-financial-ombudsman-service>).

Q1:

Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

We are an FCA authorised Payment Service Provider, and many of our customers are SMEs. We operate Europe's leading payment escrow service.

So we would be impacted by the proposed changes, and our liability significantly increased against our interests.

As paragraphs 2.5 to 2.9 of the consultation makes clear, accurately in our view, it is not currently practical or possible for SMEs to take legal action against FCA authorised or registered firms – the barriers listed in the consultation are too great to overcome.

Nevertheless, even though the proposals would increase our liability greatly, we welcome the proposals to include SMEs in a similar way to the way micro-enterprises are already protected.

We welcome these proposals on the grounds of fairness, as we believe that it is unacceptable that SME firms are currently effectively disenfranchised from any enforceable legal rights for breach of FCA rules against their FCA authorised suppliers at this time.

In Paragraph 2.8 of the consultation, the FCA explicitly states that SME businesses (rather than individuals) who suffer a breach of FCA rules by their bank or payment provider have no effective recourse whatsoever for that breach by the bank/PSP.

A bank or PSP can break FCA rules, and until now there has been no comeback available to an SME client whatsoever – the FCA can reprimand the firm for the rule breach, but in almost all situations the FCA do not get involved in individual rule breach cases, so this will not in practice occur on an individual case basis.

The reality is that a bank can treat its SME client unfairly (acting unfairly is against FCA rules), but there is no procedure or punishment for so doing, and so the FCA rules are toothless and unenforceable in relation to SME clients.

Paragraph 2.16 of the consultation spells this out explicitly – *'SMEs have limited options for resolving complaints and seeking redress'*.

We therefore welcome the proposal to change the definition of an eligible complainant.

See also our answer to Question 7 below

Q2:

Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

We do not understand why all three tests need to be imposed simultaneously for the SME protection to be granted. This will seemingly unfairly impact firms who are SMEs but on the wrong side of one of the rules, and who have no other recourse to unfair treatment or a breach of the rules.

These firms have in reality no negotiating capability to negotiate special terms for themselves with banks and PSPs. They

are provided standard business contracts, and will either have to accept them or find another supplier (with similar unnegotiable conditions).

So we strongly believe that the 3 tests should be alternatives and not cumulative ('or/or' rather than 'and/and').

Q7:

Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

Paragraph 3.18 of the consultation states that the FCA proposes not to change existing rules which exclude SME Fintechs from protection.

So an FCA regulated Fintech that is abused by a bank, will have no recourse to justice or remedy except via a Court Case against the bank.

And paragraphs 2.5 to 2.9 of the consultation make it clear that this route is impracticable and impossible to the Fintech.

DISP 2.7.9 states:

The following are not eligible complainants:

(1) (in all jurisdictions) a firm, payment service provider, electronic money issuer, CBTL firm, designated credit reference agency, designated finance platform or VJ participant whose complaint relates in any way to an activity which:

(a) the firm itself has permission to carry on; or

(ab) the firm, payment service provider, electronic money issuer, CBTL firm, designated credit reference agency or designated finance platform itself is entitled to carry on under the Payment Services Regulations, the Electronic Money Regulations, the MCD Order, the Small and Medium Sized Business (Credit Information) Regulations or the Small and Medium Sized Business (Finance Platforms) Regulations; or

Please note the phrase 'relates in any way' in the above DISP rule.

The FOS apply this phrase widely (as it seems apparently is its drafted intention).

Since micro-enterprises and SME firms will interact with their supplier banks in the course of their regulated business, any action of the micro-enterprise or SME will be regarded by the FOS as relating 'in any way' to the SMEs underlying regulated activities, and be disbarred from the FOS.

We have first-hand experience of the FOS applying the rule and definition in this manner.

So a regulated micro-enterprise or SME Fintech firm can experience unfair and adverse treatment by its bank (unrelated broadly to the SMEs regulated activities, but nevertheless counted as applying by the FOS) and not be eligible for FOS protection, due to this exclusion and the interpretation of the wide phrase 'in any way'.

There is just no rational for this rule being applied in this way whatsoever.

Why should most micro-enterprise and SME firms be protected from unfair treatment by their banks, but not Fintech regulated micro-enterprises and SMEs in areas not directly related, but very vaguely-indirectly related, to their regulated activities ?

So under the proposals there will remain no real recourse for a bank's unfair treatment of its micro-enterprise or SME Fintech clients.

As a result expect Fintech competition to continue to be stifled by this lack of accountability of large banks (every Fintech needs a bank account, but according to the proposals there will be no recourse to fair treatment of those bank accounts).

This breaches three of the FCA's core purposes: promoting competition, promoting innovation, and ensuring well operating-markets.

Please let me know if you require any further information or clarification on the above.

Best Regards,

Tel: [REDACTED]

Mobile: + [REDACTED]

Email: [REDACTED]



22 April 2018

Dear Sirs,

UKCFA Response to "SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services"

The UK Crowdfunding Association (the "UKCFA") is the UK's trade association for crowdfunding platforms and their supporters. Amongst other things, the UKCFA promotes the interests of the crowdfunding industry by upholding good practice and engaging with regulators, governmental bodies and other stakeholders.

The UKCFA welcomes the Financial Conduct Authority's (the "FCA's") recent publication "*SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services*" (the "**SME access document**") and appreciates the feedback and engagement the FCA has sought to obtain following its initial Discussion Paper published in 2015 titled "*Our approach to SMEs as users of financial services*". As the SME access document discusses, many smaller businesses continue to struggle to resolve disputes with financial services firms and seek redress; and such small businesses include smaller/newer financial services firms such as UKCFA members who rely on larger firms for banking services to support their operations. We appreciate the FCA's proposal to increase the number of businesses who qualify as "eligible complainants" but still believe there is room for further expansion. We have set out our response to specific questions outlined in the SME access document below.

Q1: Do you agree with our proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

The SME access document proposes expanding the definition of an "eligible complainant" so that more entities will be able to refer complaints to the Financial Ombudsman Service (the "**Ombudsman**"). The UKCFA appreciates the work the FCA has carried out in relation to expanding the definition to include a new category of "small businesses" and understands this decision is a matter of judgement. However, we believe the definition should be expanded further. Many of our members - and also their customers (i.e. startup/scaleup businesses that have raised funds on crowdfunding platforms - have experienced difficulties when attempting to resolve disputes due to the inability for small businesses to refer complaints to the Ombudsman and therefore are unable to get clarity over a complaint or an ultimate resolution. These small scale early stage businesses have reduced bargaining power, particularly in comparison to much larger financial services businesses. As mentioned in our response to the FCA's "*Our Approach to Competition*" in March 2018, this factor combined with the struggle to access



banking services leads to various obstacles in the way of progress regarding innovation and competition in the crowdfunding industry.

The UKCFA believes the proposed size thresholds of a new category should be broadened to include firms with more than 50 employees. In this way, small start ups who are growing quickly in terms of headcount, but do not necessarily have the adequate resources, will have the possibility to resolve financial services disputes. On page 21 the SME access document points out that those above the small business threshold are likely to be "sufficiently sophisticated and resourced". We disagree with this statement and believe there are many small businesses who do not yet have sufficient resources but still do not fall within the proposed threshold.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

In addition to the aforementioned expansion of the definition, the proposal that all 3 tests need to be met to fall into this newly formed category further restricts those who will be able to access the Ombudsman. Small businesses often do not have access to legal resources, and whilst some may have a larger headcount, they are often not close to meeting the other two tests. In light of this, we believe these 3 tests should act independently.

Q4: Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

We agree that the changes, which we believe should include an enlargement of the small business category as outlined in this response, should come into effect on 1 December 2018 and apply to complaints made from this period.

We would be happy to answer any further questions that the FCA may have in relation to the above response.

Yours faithfully,

UK Crowdfunding Association, on behalf of its members



UK Finance Response to FCA Consultation on SME access to the Financial Ombudsman Service (CP18/3)

April 2018

Preface

1. UK Finance was formed on 1 July 2017 to represent the finance and banking industry operating in the UK. It represents around 300 of the leading firms providing finance, banking, markets and payments-related services in or from the UK. UK Finance has been created by combining most of the activities of the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.
2. Our objective is to work with our members to build a more customer-focused and innovative finance and banking sector, cementing the UK's role as a global leader in financial services for the benefit of the wider economy. The interests of our members' customers are at the heart of this work.
3. UK Finance has made access to finance and the treatment of SME customers a core priority since its launch. In total, our members provide business banking current account services to about 3.7 million small and medium sized enterprises (SMEs) and support a further 2 million firms that operate through a personal account. UK Finance members also provide a wide range of other financial services across the business community. UK Finance's membership also includes invoice finance and asset-based lending providers, who support around 40,000 UK client businesses with working capital support.

Key points

4. UK Finance members are broadly supportive of the proposals in the consultation raise the threshold to enable more businesses using regulated products to access the Financial Ombudsman Service (FOS). However, we are concerned that the timelines are too ambitious and pose a delivery risk to both regulated firms and the FOS. We believe a six-month period for implementation following final publication of rules would be appropriate, to enable both the FOS and banks to prepare for the changes, including updating systems and training. We provide some detailed comments below which might help ensure the effectiveness of extension.
5. While bigger businesses will not always be involved in more complex disputes, there is a broad correlation between the size of the business and the complexity of the issues that may arise. Therefore, an extension of the FOS' remit should be accompanied by appropriate upskilling, resourcing and access to expertise.
6. Recognising that even with the proposed extension a perceived gap would remain in protections for SMEs, particularly for some complex cases, UK Finance has commissioned an independent review into the complaints process and alternative dispute resolution (ADR) landscape for the SME market. The independent review is being led by Simon Walker CBE, former Director General of the Institute of Directors.

7. The FOS plays an important role in resolving disputes, but given the differing levels of evidence, analysis, causation and rigour that the FOS brings to its decision (as compared with a Court which do not have the same requirement to resolve disputes quickly and with a minimum of formality) our members would be concerned by any increase in significantly more complex cases, or increased awards, which could potentially have a much "wider book impact" (particularly for smaller firms).
8. The overall SME level of complaints with banks remains a very small portion of total transactions undertaken by businesses with their provider, and of those that result in a complaint the vast majority are resolved satisfactorily in-house. However, ensuring the industry serves the whole 5.7 million of UK SMEs is vital and we are committed to continuing to rebuild trust and confidence in the financial services sector.

Simon Walker's independent review into complaints handling and alternative dispute resolution for SMEs¹

9. Simon Walker's review will be an evidence-based, comprehensive analysis of the scale and complexity of banking disputes with SMEs. It will examine different dispute resolution processes, including those operating in different sectors and countries, and is intended to produce evidence-based conclusions to support recommendations for the industry and government to take forward, as appropriate. The Review will consider how to address the needs of businesses that may have larger or more complex disputes that may not be appropriate for the FOS to adjudicate or out of scope but are possibly not suitable for the Courts.
10. Mr Walker's review is not intended to conflict with this consultation on FOS extension. However, his evidence and recommendations will be of relevance and interest to the FCA. Mr Walker has committed to keeping the FCA informed on the progress of this review and he will ensure a copy of the final report is shared. He expects the review to be completed by Autumn 2018.
11. Mr Walker will publish his findings with full editorial control. As part of the review, he will be engaging with policy makers and MPs, amongst a wide range of other business groups and other stakeholders.

Standards Framework for Invoice Finance and Asset Based Lending

12. Given the scope of the proposals, the content of this response is substantively informed by the perspectives of statutorily regulated UK Finance members providing regulated products and services to customer businesses of a size likely to be impacted by the proposed threshold changes.
13. It should also be noted that, as the FCA is aware, UK Finance also maintains the Standards Framework for Invoice Finance and Asset Based Lending, which was established by the Asset Based Finance Association prior to its integration into UK Finance.
14. This Standards Framework sets and enforces the standards expected from members (both banks and non-bank specialists) in the treatment of client businesses that use invoice finance and asset-based lending. It is overseen independently by a Professional Standards Council (PSC) and includes an independent complaints process currently provided by Ombudsman Services.
15. It is not currently anticipated that the proposed changes will have a direct impact on this Standards Framework, however the PSC is keen to review progress on this issue, as well as on the Walker ADR Review, to ensure that the Standards Framework continues to evolve and complement the other key elements of the conduct agenda.

¹ Mr Walker was appointed by a diverse selection panel comprised of representatives from the Fair Business Banking and Finance APPG, and the Federation of Small Businesses as well as the independent chairs of the UK Finance SME Advisory Group and the IFABL Standards Council.

16. The PSC was pleased to respond to FCA CP17/37 on Industry Codes of Conduct and would be further pleased to provide a more detailed update to the FCA on the work currently being undertaken on the Standards Framework if that would be helpful.

Proposed reforms to Financial Ombudsman Service

17. As noted above, the industry is broadly supportive of the proposed extension of the access threshold for the FOS. We provide detailed comments below on the consultation paper questions. Overall complaints represent a small proportion of all interactions between banks and their business customers. Where these cannot be solved satisfactorily within a bank process however, the FOS has a crucial role.
18. It is also worth noting that as the proposed change is primarily about transparency and simplicity, the current FOS aware limit of £150,000 compensation per case remains appropriate. This figure was increased in 2012 and, while international comparisons are difficult because of exchange rate movements, the UK level does not seem out of line with many other countries with similar ombudsmen arrangements, as shown below. Given that the FOS is most likely to encounter less complex disputes, the award limit rightly reflects this.
19. As the FCA's analysis in CP18/3 notes, any increase would need to be substantial as the primarily outliers are those seeking consequential loss. As considered below, this could pose significant challenges to the current operating model of the FOS, i.e. decisions based on a 'reasonable basis' and made quickly and, indeed, may prove challenging to any ADR scheme outside the formal courts system. The Walker Review will consider this and related questions.

Table 1: Non-EU Thresholds and Compensation Limits for Ombudsman Banking Complaints

Country	Compensation Cap (£)	Business Size Cap? (Yes or No)	Detail of Size Cap
Australia	287,000	Yes	20 staff, unless manufacturing then 100
Canada	199,000	No	
South Africa	117,000	Yes	Turnover – about £300k per annum.
New Zealand	106,000	No	

Sources – Scheme Websites, currency conversions to £ May 2017

Specific Comments of UK Finance to the Consultation Questions in CP18/3

Q1: Do you agree to the proposed changes to the definition of an eligible complainant? Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?

20. UK Finance members support the principle of changing the definition of eligibility as outlined in CP18/3 and views the proposed threshold levels as appropriate in terms of coverage.
21. With a multitude of thresholds, used for 'small business' and 'SME', it can be confusing for businesses and providers to determine if complainants are in or out of scope of various protections. It is equally difficult and expensive for banks and other providers to put in place systems and controls to ensure customers are treated in the right way depending on whether they meet a test. Any moves that aligns some of these would be welcome.
22. UK Finance members believe that the current arrangements for small business complaints generally works. When an eligible complaint cannot be speedily resolved to the satisfaction of the customer, the current regime includes a simple, free ombudsman service with compensation powers up to £150,000 (possibly higher in some cases). Providing more businesses with access to this approach is a welcome proposal.
23. We note that there is a growing recognition of the £6.5m turnover as a widely used threshold. For instance, the Standards of Lending Practice for Business Customers launched in 2017 covers businesses up to a turnover of £6.5m.² This is also the size of business which the Small Business Commissioner's remit is focused on and is also the threshold for accessing the independent complaints process element of UK Finance's independent *Standards Framework for Invoice Finance and Asset Based Lending*.
24. Ring fencing requirements for larger UK banks introduced following the Vickers Report also adopt a minimum £6.5m threshold. By 2019 larger banks must place all small business customers' deposits and related financial services within a ring-fenced operation.³
25. The small business threshold based on 50 employees has recently been adopted by the newly created office of the Small Business Commissioner, which has recently been established to work mainly on non-financial commercial disputes and late payment and other poor payment practice. The work of the new Commissioner has just begun, although the primary legislation is in place in the Enterprise Act 2016.⁴ However, this new service is likely to be a high-profile activity for the small business community in years to come so consistency in thresholds would be helpful. Overall therefore, the turnover threshold is a very appropriate one.
26. On the asset threshold, some of UK Finance's members believe that there should be alignment to those used in the Vickers Report and subsequent ring-fencing legislation which is businesses with less than £6.5m turnover, less than 50 employees and less than £3.26m of assets – rather than the £5m asset figure proposed under these rules which would essentially create another regulatory definition of a small business.

Q2: Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

27. The principle of straightforward, well publicised and understood tests to confirm eligibility of inclusion in the enhanced FOS regime is fully endorsed by UK Finance members.

² These are overseen independently by the Lending Standards Board.

³ Banks can use a higher boundary and include all SMEs as well within the ring fence using a £25 million turnover threshold.

⁴ See <https://www.gov.uk/government/publications/small-business-commissioner-and-unfair-business-practice-enterprise-bill-factsheet>

28. While the values suggested for these tests appear appropriate in the main, some anomalies may still arise. For example, some small firms which use part time or casual staff may find the employment test an issue. An events company, for example, which hired in 100 staff for a month a year for a major event during which period a complaint was referred to the FOS. Clear rules and guidance would be needed to ensure such activity did not preclude a complaint from being considered by the FOS if the other two tests were met.
29. One solution to this challenge could be making it a requirement that only two of the three definitions had to be met. Turnover is the most easily accessible information (and most widely used by banks) so this should be compulsory in all cases. Members have different views on whether this would simplify the challenge or not.
30. We also note the on-going European Commission review of their SME definition. While not directly relevant here, the developments in Brexit negotiations and planning may result in HM Treasury changing the current usage of the EU micro-enterprise definition across legislation and regulation.

Q3: Do you agree with our proposal to make guarantors eligible complainants?

31. UK Finance members agree with the proposal to make personal guarantors of corporate loans eligible complainants.
32. However, we believe there needs to be clarity around the precise protection extended to guarantors. For example, UK Finance members would readily accept that guarantors should have a right to complain about the advice, customer service and treatment they receive during the completion of the administrative process required to register a guarantee (or any ongoing administrative actions during the lifetime of the guarantee). It would seem inappropriate however to extend this further to a give the guarantor the right to complain about the subsequent treatment of the business entity. If this was done, for example, it is likely that this would primarily be triggered in cases where the finance provider sought to call in the guarantee when terms and conditions had been breached. In many cases, the right to complain may be forfeit in such circumstances as the guarantee would be called in because of a firm being in financial difficulties, where business customers are out of scope of the FOS regime.
33. If the company itself was ineligible to complain to the FOS (for example if it were in an insolvency process or was not an eligible micro-enterprise or small business), it does not seem appropriate that it could still complain 'through the back door' via a complaint by its guarantor. This is clearly most acute when the guarantor is also the business owner and would appear to be contrary to policy and the intended spirit of the expanded principles.
34. Banks and the FOS will also require further clarity from the FCA on how multiple guarantors should be treated. It would be easiest to deal with these as one complainant, but this might not be considered appropriate by individual guarantors.

Q4 Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not, what transitional period do you consider appropriate?

Q5 Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

35. UK Finance members believe that a six-month implementation period from the publication of final FCA rules would be appropriate to ensure that both banks and the FOS have sufficient time to prepare for the change.

36. For banks, moving the eligibility criteria upwards will require systems changes, staff training and updating online and branch-based publicity material. Most financial services have an annual plan for such changes to minimise customer disruption which are drawn up in Q3 each year for the following year. It is also important that major UK banks are currently in the process of unprecedented internal restructuring to comply with Ringfencing rules over the coming months.
37. UK Finance also strongly believes that there will be some benefit to all stakeholders, and particularly business customers to allow Simon Walker's independent review to conclude on what additional changes and processes should accompany a FOS extension.
38. In terms of ensuring the FOS has a sufficient implementation period, members have some concern with the proposed timeline in terms of the FOS being able to upskill and be adequately resourced in time to deal with the increased volume and complexity of claims. Given the small volume of likely more complex cases, the FOS may also consider utilising external expertise, which may take some time to source and finalise arrangements with.
39. We think implementation would also benefit from the conclusion of – and lessons from – the independent review which the FOS has commissioned to assess current complaint handling processes, subsequent to dialogue with the Treasury Select Committee.⁵ Whilst not likely to be in any way comparable in terms of volume, the FOS has acknowledged that the unprecedented volume of PPI cases had caused "significant pressures".
40. While UK Finance has no detailed knowledge of the specific operational requirements of the FOS itself in implementing these proposed changes, it is generally accepted that considerable work will also be required to increase the resources available to the FOS to implement these changes. UK Finance will await the views of the FOS about the practicality of any accelerated implementation to meet a December 2018 timeline without a loss of current high standards of service and business knowledge.
41. Overall, we believe the implementation period for both industry and the FOS as currently proposed may be too aggressive. It is critical that the extension is delivered well to ensure business customer confidence. We believe that it would be sensible to provide a 6-month period from final publication of the FCA rules to implementation to be an appropriate timeframe, which would minimise any delivery risk.
42. Regardless of the final implementation date agreed, UK Finance agrees that the changes should only apply to business customer activities after the point in time selected. This will be particularly relevant for the proposed changes to allow guarantors to complain given the maturity profile of loan arrangements.

Q6: Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

43. No comments are made on the technique employed. However, we note that all cost-benefit exercises ultimately rely on data quality and assumptions made, which is acknowledged to often be extremely difficult and rely on best endeavours. Small changes to the assumptions made can lead to a significant final impact.

Q7: Do you have any views on how access to redress for SMEs might be improved without the need for changes to legislation?

44. Banks are already committed to the use of formal and informal methods of ADR, including direct party-to-party settlement negotiations and mediation. Identifying and mapping further solutions and mechanisms that could produce fair redress options from both SMEs and finance providers is crucial. We anticipate that the independent Walker Review will make

⁵ <https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/FOS-Morgan-Letter-annexes-200318.pdf>

important recommendations in relation to providing better information about what is already available, as well as any new structures that may be necessary.

45. UK Finance would suggest that more can also be done regarding awareness of redress options. This may be better addressed through industry or sector specific initiatives led by trade associations and supervised by the FOS. We are engaged regularly with members, professional bodies, business groups and government on what more can be done with this regard.

In this context, we would also note again the work being done through UK Finance's independent Standards Framework for Invoice Finance and Asset Based Lending. Further information was submitted by the Professional Standards Council in response to CP17/37 and the PSC would be pleased to provide any further information.

Q8: Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex and higher value complaints from SMEs?

46. For those complaints which will come into scope of the FOS because of these proposed rules, there will clearly be a level of up-skilling and resourcing increases required. The FOS itself is best placed to assess what these challenges are; however, we note that (whilst by no means a rule) larger businesses are more likely to have more complex disputes. Care must also be taken to ensure that increased attention on business complainants should not be at the detriment of consumer redress, given that evaluating a complex business dispute can be much more time-consuming and resource intensive than a more straightforward dispute.
47. Even for those businesses eligible for the FOS because of this extension, UK Finance members do not believe it can be the place for all complex and higher-value cases to be considered. In fact, we have concerns that to attempt to do so would be potentially to the detriment of both complainants and financial services firms.
48. We are very mindful that financial service firms accept the role of the FOS currently knowing that their investigations are on a "reasonable case" basis. The FOS is not applying strict rules of law but is more making a judgement if the bank is acting "fairly". While FOS staff gain a considerable degree of knowledge during the work they do, the scrutiny and investigation of the FOS is still well (by its nature) short of a full legal process and judicial review.
49. If the complexity of the cases, or awards being sought rose significantly, UK Finance members would maintain that the courts, expert conciliation or mediation are more appropriate to ensure they are considered appropriately, particularly given banks responsibilities to shareholders and depositors. This is particularly given the potential for high value claims set precedents which would require consistently concluded decisions.
50. While rules of "precedent" do not operate from decisions of the FOS in the same way as decisions of a Court, it is axiomatic that any decision of the FOS will have a wide impact across a book of similar business within an individual firm. Given the differing levels of evidence, analysis, causation and rigour that the FOS will bring to its decision (as compared with a Court) we believe it is important that the FOS be mindful of this potential "wider book impact" and, indeed, the prudential impact such decisions may have on a firm, particularly for smaller providers.
51. Thus, while the industry supports the principle of customers being able to have their complaints reviewed and considered by independent bodies, we have an ongoing and longstanding concern that FOS decisions that follow a lower standard than a Court, in terms of process and evidence, have the potential to pose a significant prudential risk if a decision is questionable, contestable or wrong (notwithstanding opportunities open to Firms to contest such decisions through Judicial Review or similar). It is not our position that the FOS should judge cases according to whether or not it would cost a firm money (or indeed imperil the ongoing existence of a firm) however we do think that the sensible management of the "book wide" risk outlined above is a relevant consideration before the jurisdiction of the FOS is expanded in the way contemplated.

52. While few, it is inevitable that where these higher value and complex complaints are upheld, the claims for loss consequential will often be much higher than the current award limit of £150,000, often a multiple of this, and the FOS is not best suited to evaluate these claims, which would require a fundamental change to its model.
53. Businesses above the proposed limit of the rules (as we note above) are an extremely small proportion of the business community. They are far more likely to have external and internal specialist advice and have the resources to access the court system.
54. Where complex and high-value disputes, and non-FOS eligible businesses, which might not be best placed to be considered by the FOS, might be more appropriately dealt with will be a key constituent of Simon Walker's independent review.
55. We therefore believe that while the FOS plays an important role for micro-enterprises today and is well placed to bring other small businesses into scope, there is no evidence that the FOS should seek to fundamentally change its model if arbitrating more complex and higher value complaints. Any such change would require a significant reconsideration of whether the 'reasonable basis' approach of the FOS could be maintained.

Conclusion

56. UK Finance supports the proposed extension of the Financial Ombudsman Service, though our members have some concerns on the timetable proposed. Further clarity is also required on the exact eligibility of guarantor complaints to ensure this does not have unintended consequences.
57. UK Finance's commissioned independent review, we believe, will provide actionable recommendations on what more can be done to provide SMEs with options for redress, including how this might fit with wider FOS eligibility criteria. We will ensure the FCA is kept informed of its progress.
58. We would be happy to discuss any of the above response or facilitate further engagement with industry on the proposals.

ENDS

FCA CP18/3 - Consultation on SME access to the Financial Ombudsman Service and Feedback to DP15/7: SMEs as Users of Financial Services

April 2018

About Zurich Insurance Group

Zurich Insurance Group is a leading global insurer, providing life insurance and general insurance products and services to retail and corporate customers in more than 170 countries. Zurich's UK Life business is a leading provider of pensions, investment policies and protection products, available through financial intermediaries. UK Life also provides pensions and protection policies for the corporate market available through employee benefit consultants. The UK General Insurance division supplies personal, commercial and local authority insurance through a number of distribution channels.

Executive Summary

We welcome the opportunity to contribute to this consultation.

We are supportive of the proposals made by the FCA. In our view the most important factor is to ensure firms are not distracted from handling all complaints promptly and fairly, regardless of whether the customers has a right to subsequently refer their issue to the FOS. Like many firms, we have slightly different disclosures and processes for handling complaints, depending on whether the customer has FOS rights, so it is important that the rules around eligibility are clear and unambiguous.

Response to Consultation Question 1

**Do you agree with our proposed changes to the definition of an eligible complainant?
Are the proposed size thresholds broadly correct or would different thresholds or criteria be more appropriate?**

We consider that the definition of an eligible complainant is clear and we are broadly supportive of the levels of protections proposed. These are consistent with our experience as these thresholds seem to fall into the range we have for small businesses that we deal with directly.

We understand why the FCA is looking to protect SMEs and agree that the new 'small business' definition will only capture those SMEs that would benefit from the protections proposed. In our experience, most firms that would fall under the FCA's wider definition of an SME would probably be dealt with by an Adviser or Broker. As they have a third party intermediary who would help resolve the issue, there is less need or likelihood for the Ombudsman to get involved.

We also note that these changes will also necessitate us to ask Broker firms more questions around their customers, to understand if they do qualify as an SME under these revised rules. Whilst we do not believe that this will be a major concern, this will have a knock on impact on our current processes and procedures and we will need to provide further training to our staff to cover any potential future complaints from Brokers/SMEs, with the associated cost implication.

Zurich are aware that the IUA (International Underwriting Association) will be providing feedback on the proposed increased award limits and whether an increase from £150k to 500k

is fair, just and reasonable. Zurich believe that this could affect smaller financial services firms as they may not be able to hold the required funds in capital adequacy if the limits are increased to the larger amount. This could have a disproportionate impact on those firms against the additional protection that level provides for the SME.

Response to Consultation Question 2

Do you agree that all 3 tests (employees, turnover and balance sheet) would need to be met for the Ombudsman to consider an SME a small business?

Yes we agree that the qualifying criteria for SMEs proposed by the FCA should include all 3 tests. The revised rules will provide clear criteria for all members of staff who may receive or handle a complaint from or on behalf of a SME that if these criteria have been met the SME is eligible to receive the FOS rights information.

Response to Question 3

Do you agree with our proposal to make guarantors eligible complainants?

We do not have any comments on this question. Thank you.

Response to Consultation Question 4

Do you agree that the changes introducing small businesses as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding acts or omissions of the firm which occur from 1 December 2018? If not what transitional period do you consider appropriate?

Yes we agree that the changes described in the Consultation Paper should come into effect from the 1st December 2018. However, we would ask that the FCA consider other legislative changes which are affecting the DISP rulebook (i.e. Insurance Distribution Directive) and if the FCA would allow firms to choose whether to amend their processes and procedures from the IDD implementation date or from the 1st December. We believe that this would benefit firms and make it easier for them to train staff cohesively across all DISP changes, aiding their understanding and minimising firm's costs.

Response to Question 5

Do you agree that the changes introducing guarantors as eligible complainants should come into effect on 1 December 2018 and that they should apply only to complaints made to a firm regarding guarantees or security given on or after 1 December 2018?

We do not have any comments on this question. Thank you.

Response to Question 6

Do you agree with our cost benefit analysis? Are there other costs or benefits we ought to have considered?

We do not have any feedback on this question. Thank you.

Response to Question 7

Do you have any views on how access to redress might be improved for SMEs without the need for changes to legislation, including but not limited to the areas where we have powers to make changes?

We do not have any comments on this question. Thank you.

Response to Question 8

Without legislative change, do you think the Ombudsman might be an appropriate body to consider a greater share of complex or higher value complaints from SMEs than is implied in our proposals for consultation in Chapter 3? What changes would be needed to make this effective? What risks might this introduce?

We do not have any comments on this question. Thank you.

