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Dear Jivan

Consultation on guidance under section 234F relating to super-complaints and section 234D references

This is the Financial Services Consumer Panel's response to the consultation paper on guidance under section 234F relating to super-complaints and section 234D references.

The Panel has always supported the provision, set out in the Financial Services Act, for the Financial Conduct Authority (FCA) to accept and respond to super-complaints from designated consumer bodies. We believe this will help reduce the risk of wide spread market failures and will ultimately deliver better outcomes for consumers, although we have yet to decide whether to apply for super-complainant status ourselves.

The Panel believes that the draft guidance is generally clear and well set out. We have some specific points, which we have set out in detail below.

Discussion prior to submission

Page four of the guidance states that complainants are encouraged to discuss their complaints with the FCA prior to formal submission. The Panel welcomes this supportive pre-screening approach. We believe it will ultimately help streamline the process and enable both the submitting body and the FCA to plan efficiently. This will be particularly important given that submitting super complaints is resource intensive and the consumer landscape, and organisations within it, are changing in terms of size and resource.

We believe these early discussions will also help ensure complainants are fully aware of the evidential threshold and level of detail the FCA will require, in determining whether a further investigation into the complaint is warranted.

234D - what award the Financial Ombudsman Service (FOS) would be likely to make

We feel that this section – on how a ‘relevant person’ would be able to indicate what award (or direction) the FOS would be likely to make in relation to the conduct that is the subject matter of the reference – could be made clearer. We assume that the indication would be made based on the FOS’ published approach, yet this is not obvious so we believe needs further clarification.

Wider issues relating to the super-complaints mechanism

The Panel would like to see the new FCA super-complaint mechanism aligned with the existing Enterprise Act (EA) super-complaint process, in order to avoid unnecessary work for those who wish to register under both, or are already registered under the EA and wish to register with the FCA.

Finally, we suggest that the FCA engages with the Office of Fair Trading (OFT) when designing the specifics of the mechanisms and in considering potential issues. Whilst this is a new part of the FCA’s toolkit, the OFT has extensive experience in dealing with super-complaints, and we are sure it will be willing to share its experiences in this regard. This will help to ensure that the super-complaint mechanism remains an effective tool that these organisations can use without additional reservations.

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel