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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.

¹https://www.fs-cp.org.uk/sites/default/files/fscp_banking_culture_-_report_-_final.pdf

²We 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>

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

⁵https://assets.publishing.service.gov.uk/media/53eb6b73ed915d188800000c/SME-report_final.pdf

⁵[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

Sue Lewis
Chair
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> pg169

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