



HM TREASURY

Guidance for bodies seeking designation as super-complainants to the Financial Conduct Authority:

**summary of consultation responses
and Government response**

February 2013



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Introduction

1.1 The summary of responses to the consultation *A new approach to financial regulation: draft secondary legislation* included a summary of responses to the consultation on the draft criteria and guidance for bodies applying for designation as super-complainants to the Financial Conduct Authority (FCA). The summary of responses is reproduced below, followed by the Government's response.

Summary of responses

1.2 The fact that designated consumer bodies will be able to make super-complaints to the FCA was welcomed, as was the general alignment of the new process for designating such organisations with the existing approach taken by the Department for Business, Innovation and Skills.

1.3 A range of opinions was expressed on the issue of what bodies should be able to make super-complaints. On the one hand, there was some concern that allowing organisations with a trading arm or representing small and medium sized enterprises (SMEs) to make super-complaints would allow for mis-use of the system, and allow it to be captured by commercial interests. Other respondents argued that bodies representing the interests of SMEs should be allowed to make super-complaints, but that this needed to be balanced carefully with supporting consumer protection.

1.4 A number of respondents discussed the requirement for consumer bodies to be able to "demonstrate that they are able to deal with any competition and economic issues involved in super-complaint cases, whether through in-house experience or using external advice". This requirement received some support, but some respondents felt this might either preclude smaller organisations which would not have the resources to fulfil this criterion, or limit the type of super-complaints that would be valid to those around competition, when other problems may also give rise to consumer detriment.

1.5 Some respondents asked the Government to consider measures to reduce potential administrative burdens on bodies which applied to be designated to make super-complaints to both the FCA and Office of Fair Trading. One respondent suggested that HM Treasury should seek comments on applications from bodies to become super-complainants, when they are posted on its website.

Government response

The types of bodies which should have access

1.6 The Government believes that SME's can face similar challenges to individuals in co-ordinating complaints to the regulator about financial services as private individuals. This can be the case even for medium sized businesses. There are a number of safeguards in place to ensure that the mechanism is not misused by SME representatives:

- in order to gain designation a consumer body must demonstrate a track record over a number of years of representing the interests of consumers and show that it is constituted, managed and controlled so as to be expected to act with independence, impartiality and integrity;
- the Treasury is able to de-designate bodies which abuse the mechanism so bodies have a limited opportunity to misuse the mechanism before they may lose the ability to make complaints; and
- super-complaints are restricted to matters which are damaging to the interests of consumers of financial services. The FCA will not accept super-complaints on other matters and bodies must agree to take account of the FCA guidance on submitting a super-complaint.

1.7 These safeguards also apply in relation to the concern from one respondent that the provision for bodies with trading arms to have access to the mechanism would allow a trading firm to set up a non-trading arm to gain super-complainant status and make complaints on its behalf. In addition the criteria only allows designation of bodies with trading arms "provided profits are only used to further the aims of the consumer body and arrangements are put in place to deal with conflicts of interests". There is no scope for the designation of "sham" consumer bodies within the existing framework.

1.8 The Government has therefore decided that it should be possible for SME representatives and bodies with trading arms to be designated as super-complainants, subject to the safeguards already provided. The Government has amended the guidance to further clarify the matters it will take into account in considering an application from an SME representative body whose membership includes some unauthorised persons.

1.9 The FCA will consider whether there is scope for further reducing any risk of misuse arising from the extension of the mechanism to SMEs in finalising its guidance on submitting super-complaints.

Ability to deal with economic and competition issues

1.10 Super-complaints will be treated as priority by the FCA due to the requirement to respond to the complaint within 90 days, and can be very resource intensive. It is therefore important that designated bodies are willing and able to devote resources to generate properly formed complaints. While super-complaints may cover a range of issues which are damaging to the interests of consumers, they are intended to have a focus on the analysis of competition problems or market failures which, in many cases, is likely to help inform a response by the regulator. Bodies which are not willing or able to undertake such analysis are still able to inform the regulator of consumer detriment outside the fast-tracked super-complaint process. The Government has therefore decided to retain the requirement for consumer bodies to be able to "demonstrate that they are able to deal with any competition and economic issues involved in super-complaints, either through in-house experience or using external advice".

Reducing administrative burdens and publicising applications

1.11 The super-complaints regime for financial services markets is distinct from the cross-sectoral super-complaints regime provided for in the Enterprise Act 2002. Separate guidance for consumer bodies that wish to be designated as “super-complainants” under the Enterprise Act regime is available on the website of the Department for Business Innovation and Skills.

1.12 The Government agrees that it should minimise unnecessary duplication of process for bodies seeking designation under both the Enterprise Act 2002 and Finance Act 2012 regimes. While bodies applying for designation under both regimes will be responsible for providing accurate information to the Treasury and BIS separately (neither department will act as a sole point of contact responsible for passing information to the other), the Government can confirm it will accept applications and updates via email to allow bodies to copy correspondence to both departments more easily. In addition, HMT and BIS undertake to co-operate in the handling of applications from bodies seeking designation under both regimes with a view to minimising the burden on applicants (for example by co-ordinating requests for further information).

1.13 The Government also confirms its intention to invite comments on applications during the 12 week period in which they will be posted on the Treasury’s website.

HM Treasury contacts

This document can be found in full on our website: <http://www.hm-treasury.gov.uk>

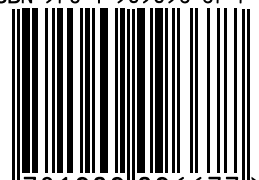
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