FCA
Financial Services Consumer Panel

7 May 2025

Email: remedies.reviews@cma.gov.uk

Dear CMA,

Financial Services Consumer Panel response to CMA SME Banking Undertakings Review

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the CMA's **Review of SME Banking Undertakings.**

The Panel is an independent body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominantly on the work of the FCA, and we are responding to this consultation with a focus on the small business as a consumer of financial services.

The Panel's remit regarding small businesses as consumers of financial services includes businesses that have an annual turnover of below £6.5m, an annual balance sheet total smaller than £5m and fewer than 50 employees. We focus on SMEs' experiences as consumers of financial services.

For the reasons given in this response, we believe the CMA should adopt a cautious approach in making any changes to the SME Banking Undertakings.

Background

In 2015 the Panel responded to the CMA's review of the Undertakings in the context of the CMA's retail banking interim report on its investigation into retail banking[1]. In our response we encouraged the CMA not only to review the operation of the 2002 and 2008 SME banking undertakings put in place by the Competition Commission, but also to consider measures, and especially supply side measures, to improve access to finance for Micro and small businesses (MSMEs), the availability of banking products tailored to the needs of MSMEs; and the treatment of MSME customers by banks in terms of pricing, terms and conditions, and forbearance.

[1] https://www.fca.org.uk/panels/consumer-panel/publication/fscp_response_cma_market_study.pdf

We note the recent Call for Evidence by HM Treasury and the Department of Business and Trade on small business access to finance[2], which is relevant to many of such issues. The Panel's response to the Call for Evidence is attached as Appendix A.

Perimeter Issues

Small and medium sized enterprises (SME) lending is a longstanding FCA perimeter issue, as business lending is generally only a regulated activity where both the loan is up to £25,000, and the borrower is either a sole trader or a 'relevant recipient of credit' (RRC).

Consumer credit regulation does not currently apply to lending to limited companies, limited liability partnerships and partnerships consisting of more than 3 persons. The level of regulatory protection that an SME will receive when lending is therefore defined by the legal entity type that the business owner(s) has chosen to use, combined with the loan amount. Lending or hire of a value over £25,000 for business purposes is also out of scope of the CCA.

The long-standing perimeter issue of SME lending was also highlighted recently, because of the Federation of Small Business's super-complaint against the FCA. In a letter to the Chair of Treasury Select Committee in December 2024[3] the FCA was clear that it is keen to work with the Government on the reform of the CCA to ensure the matter is clarified and resolved.

This issue remains , and along with the HMT recent consultation from HM Treasury/ Department for Business and Trade's Call for Evidence - yet to be concluded, means that there remain important issues still to be addressed that would impact the area of SME lending.

Our view is, therefore, one of caution in making changes to SME banking undertakings until such time that there is greater clarity on both the FCA perimeter and the outcomes of the recent consultation.

Consumer Duty

There have been changes in the regulatory landscape for financial services since the remedy was put in place. The 'Consumer Duty' which applies for the benefit of smaller SMEs is significant in this respect.

However, given the recency of this change and until there is evidence of its effectiveness post implementation, the Panel believes it is too early to

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[2] https://www.gov.uk/government/calls-for-evidence/small-business-access-to-finance
[3] https://committees.parliament.uk/publications/45928/documents/228193/default/

rely on the Duty effectively dealing with the same underlying problems that the Limitation on Bundling Provisions were designed to address.

The Panel will watch with keen interest to see the outcome of the CMA's review and any subsequent changes to the lending landscape for small businesses. The Panel looks forward to engaging further on this topic as policy develops.

Yours sincerely,

Helen Charlton
Chair of the Financial Services Consumer Panel

Appendix 1 –**Financial Services Consumer Panel response to HM Treasury/ Department for Business and Trade's call for evidence - Small business access to finance**

FCA
Financial Services Consumer Panel

Email: enquiries@fs-cp.org.uk

8 May 2025

By email: accesstofinance@businessandtrade.gov.uk

Dear HM Treasury/ Department for Business and Trade,

Financial Services Consumer Panel response to HM Treasury/ Department for Business and Trade's call for evidence - Small business access to finance

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to HM Treasury/ the Department for Business and Trade's call for evidence on small business access to finance.

The Panel is an independent body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominantly on the work of the FCA, and we are responding to this consultation with a focus on the small business as a consumer of financial services. Note that our response focuses on small businesses (between 10 and 49 employees) and micro businesses (9 and under), as per the definitions in this consultation. Our answer will not focus on borrowing experiences of small businesses but rather on broad principles of what a good financial landscape for small business lending should look like and will highlight some of the Panel's thinking on what improvements could be made.

The Panel's remit regarding small businesses as consumers of financial services includes businesses that have an annual turnover of below £6.5m, an annual balance sheet total smaller than £5m and fewer than 50 employees. We focus on SMEs' experiences as consumers of financial services.

Small businesses are the lifeblood of the UK economy. They contribute 60% of employment and 48% of business turnover in the UK economy[4]. The lending landscape for these businesses has changed radically since the financial crisis of 2008. As stated in the consultation, 90% of Small and Medium-sized Enterprises (SMEs) lending provided immediately after the financial crisis was from the four largest banks. However, currently 60% of SME lending is supplied by challenger banks, non-banks including peer-to-peer lenders, credit unions as well as programmes run by the British Business Bank which have all stepped in to fill the void. Despite more players being involved in small business lending delivering more choice, it is notable that the cost of business borrowing has not dropped significantly (as per page 9 of the consultation), even with greater digitalisation of services.

The Panel believes that a sound lending market for small businesses should have the following principles:

1. It should be accessible to all small businesses – including those in the very early stages, such as micro business and start-ups, which currently can be poorly served.
2. Loans should be affordable
3. Small businesses should be able to access free or reasonable cost advice before entering into a loan to ensure that it's the right credit choice for them
4. Small businesses should be supported when financial difficulties arise
5. Small businesses should have access to redress where a lender's standards fall short

Open Banking One-Stop Shop

The Panel supports the creation of a 'one-stop shop' for small business credit facilitated by Open Banking. We believe that this will make it easier to see all financial information related to small businesses in one place so that lending decisions can be made easier and more speedily. The information will also be more up to date than current systems. By not having the full financial picture about small businesses, lenders might be more cautious in extending loans or may not charge the business an appropriate interest rate due to this information asymmetry. We recognise, however, that many small businesses use platforms such as Stripe, Square and Ebay to make payments and these transactions are not visible to banks. To gain a holistic picture of the finances of these small businesses, transactions on platforms will need to be taken into account.

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[4] https://researchbriefings.files.parliament.uk/documents/SN06152/SN06152.pdf

The sharing of small business information via Open Banking should only take place with the business' full permission. Given the rise in online fraud, Open Banking must ensure that robust systems and processes are in place to keep information safe.

Personal Guarantee

Most small business loans require a personal guarantee if other collateral is not available. Through our liaison with the Federation of Small Businesses, we are aware of their super complaint to the FCA concerning the nature of these agreements particularly on micro businesses where the business has been sold. Small and micro businesses that are set up as limited companies are not afforded the separation between personal and business financial obligations if they sign a personal guarantee. Directors of large businesses that are limited companies rarely find themselves in a position where they are personally liable for the business' debt.

In the case of the solo entrepreneur who trades as a limited company and has signed a personal guarantee, the situation can be quite fraught if they fall ill, experience a life changing event or there is a downturn in the economy. These circumstances often make the owner particularly vulnerable and subject to considerable stress. It's worth bearing in mind, that in these situations, the only asset of value that someone may have left is their home, and the prospect of losing it because of a personal guarantee can be very concerning.

We note that the Lending Standards Board (LSB) has issued guidance to lenders in September 2024[5] about personal guarantees to ensure more frequent communication to borrowers about the status. The Panel believes that this is a step in the right direction, but certainly more could be done, as it is quite possible that personal guarantees are one of the reasons why small business borrowing is more subdued in the UK, compared to other countries as highlighted in the consultation. We note that LSB guidance is a voluntary standard, rather than obligatory and therefore problems may still arise whereby borrowers who have signed personal guarantees are pursued for debt, years after they have sold the business.

Perhaps the issue of guarantees and collateral should be reviewed holistically, as it was pointed out in 2014 that in the UK 83% of loans over £100,000 require collateral compared to 29% across the EU. This kind of disparity could also go some way towards explaining differences in growth

[5] https://www.lendingstandardsboard.org.uk/lsb-announces-stronger-protections-for-smes-using-personal-guarantees/

rates in SMEs in the UK compared to the rest of the EU[6]. We would also ask the Government to reflect on the situation in relation to personal guarantees and the position that a personal guarantor is put in, where as an individual, under the Consumer Duty rules they would have various protections, but as small business they do not have those protections. .

Other Funding Initiatives

There is a need to consider other policies such as the proposed Public Offer Platform (POP) regime which will allow smaller businesses to raise investment funds, with different rules applicable for sums below and above £5mn. POP will make it easier and more attractive for small and medium-sized businesses to raise capital outside the public market in an effective and efficient way, helping those businesses access a broader investor base that can drive innovation, create value and promote growth in line with the FCA's secondary objective of enhancing international competitiveness and growth[7]. We would encourage the government and the FCA to understand whether and how initiatives such as POP truly reflect the needs of, and are relevant to, small and micro businesses.

Closing Points

For the Government's growth agenda to succeed there is a need to ensure that small businesses can grow and the ability to borrow at appropriate terms is key to this. However, any expansion in lending to support the growth agenda must not be done at the expense of exposing them to inappropriate risk.

When considering small business access to finance, the Government must look to good examples from abroad, particularly in countries with similar economies. Additionally, the issue might need input from behavioural economists to understand more about the decision-making rationale of why small business owners who would prefer to forgo growth because of debt concerns[8]. A recent study from the Money Advice Trust (MAT) found that 29% of business owners who wanted to grow their businesses were deterred because of money worries.

Finally, we note that the evidence provided in the consultation indicates that most small businesses would opt firstly to go to their own bank for a loan (page 16 of the consultation), but other data suggests that they are

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[6] https://committees.parliament.uk/writtenevidence/49961/pdf/
[7] https://www.fca.org.uk/panels/consumer-panel/publication/20241018_fscp_response-to-fca-cp-on-the-new-public-offer-platform-regime.pdf
[8] https://moneyadvicetrust.org/latest-news/three-in-ten-small-businesses-say-worries-about-finances-a-barrier-to-growth/

more likely to be refused a loan from their own bank (page 14 of the consultation). Information like this ought to be shared widely, via business advisory networks, MAT and lenders so that small businesses know where to spend their efforts in pursuit of loans to grow their businesses. According to the same MAT report, just under half of small business owners indicated that they didn't know where to go if they needed support with their business finances[9].

The Panel will watch with keen interest to see the outcome of the consultation and any subsequent changes to the lending landscape for small businesses. We close by urging the Government to ensure that the principles of a good small business lending, outlined at the beginning of this response, are embedded in any new initiatives forthcoming. The Panel looks forward to engaging further on this topic as policy develops.

Yours sincerely,

Helen Charlton
Chair of the Financial Services Consumer Panel

[9]https://moneyadvicetrust.org/latest-news/three-in-ten-small-businesses-say-worries-about-finances-a-barrier-to-growth/