

Rt Hon Nicky Morgan MP
Chair, Treasury Select Committee
House of Commons
London
SW1A 0AA

22 January 2018

Dear Nicky

Consultation Paper: Access to redress for small and medium-sized enterprises

Today, we have published a Consultation paper setting out proposals on how we can improve the access of small and medium sized firms (SMEs) to dispute resolution services which are independent of the financial firm of which they are a customer. Our CP contains proposals which will provide around 160,000 more SMEs in the UK with access to the Financial Ombudsman Service (FOS) on the same grounds as individual consumers and micro-enterprises. We are also proposing that personal guarantors of corporate loans should have the right to refer unresolved disputes to FOS (currently this right only applies to guarantors of non-corporate loans).

Our proposal applies to SMEs defined as businesses with fewer than 50 employees, annual turnover of under £6.5m and an annual balance sheet total of under £5m. Based on the analysis we set out in our consultation, we believe that businesses above these thresholds should 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 estimate there are around 40,000 medium-sized businesses which fall outside the scope of our proposals. These businesses account for around 0.7% of the total SME population by number.

We are also inviting feedback on whether, in addition to raising the eligibility thresholds, further changes to the FOS might be required. In particular, we have looked at:

- whether we should increase the binding award limit above the current £150,000; and
- the challenges posed by the fact that directors of businesses that have been dissolved or are in insolvency proceedings are generally unable to obtain redress from the FOS. Such directors will often consider it a result of a financial services firm's misconduct that the business went into insolvency proceedings in the first place. However, the Government would need to change insolvency law in order for redress to be paid to the directors, rather than the business's creditors.

I believe today's consultation will make a significant difference to businesses across the country. Expanding access to quick and informal redress for small and medium-sized businesses will help to ensure that when things have gone wrong there is access to proper redress. While this treats the 'symptoms', my hope and expectation is that our changes will over time help to address the 'causes', contributing to better service to business customers in the first place.

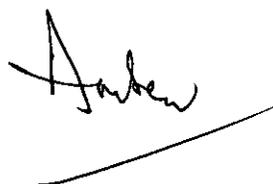
In your speech in the debate last Thursday, you suggested that one solution could be a new dispute resolution regime for SMEs. This is a proposal that I have previously supported, both in an interview with The Yorkshire Post in January 2017 and in past oral evidence to the Committee. Issuing our CP does not mean that I have turned against that view, but I do believe that FOS will be able to develop their service to meet the needs of SMEs, something that I have discussed with Caroline Wayman. Also, as I have said to the Committee, the alternative regime is not within our powers to deliver, and I hope you understand that we feel that we should not wait any longer to see if something materialises.

This CP is the second of the two that at our last hearing I mentioned we would issue. The other was issued before Christmas and covers the proposed regime for approving industry codes and standards and thereby using them to judge the application of the Senior Managers and Certification Regime to activities outside the regulatory perimeter. In the debate last week, a number of MP's advocated an extension of the regulatory perimeter to include SME activities. This would be a way to put into effect rules to be applied by the FCA, and thus also to judge whether the requirements of the SMCR are met by individuals. Again, this alternative approach is not within our power to deliver. Moreover, I am not sure it is justified if we can make the SMCR operate through a robust policing of industry standards which for the first time would have teeth. This is a debate I would be happy to participate in if that would help to judge between potential alternatives.

Last, I would like to offer a few observations on last week's debate. I set out in my letter to you on 28th November the legal reasons why we are not able to publish the full skilled persons report, as supported by your own Specialist Advisers. A number of speakers in the debate suggested that our decision not to publish was a result of pressure from RBS, or fear of legal action by them. This is inaccurate. Our decision was based on legal advice, and had nothing to do with any stance taken by RBS. I have no regard for any views that RBS or indeed any other party involved in this has on what is a matter of law. Moreover, I saw that one speaker suggested that the report of our legal advice had been leaked. This, too, is inaccurate; it was obtained by a Freedom of Information request.

In my letter of 28th November, I reiterated our commitment to report on the outcome of the further investigation we are conducting on RBS GRG. I will write to you nearer the time with proposals on how we might best do this.

Yours Sincerely



Andrew Bailey
Chief Executive