

Financial Services Consumer
Panel response to:
HMT Consultation Paper:
Financial Services and
Markets Act Two Year
Review: Changes to
Secondary Legislation

May 2004

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Paper: Financial Services and Markets Act two year review:
Changes to secondary legislation

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Summary

- I. The Consumer Panel's response to this Paper focuses on three main issues: advice centres; employers offering pension products; and the Financial Promotions Order. We have also commented on the additional issues raised by H M Treasury for future consideration.
- II. We were concerned that two of the major issues raised in the Paper – advice centres and employers offering pension products – are also relevant to work already underway as part of the Financial Capability Strategy and we would like HMT to ensure that these different initiatives are co-ordinated effectively.
- III. Advice centres: It seems clear from the Paper that H M Treasury accepts the need for confidential, independent, reliable advice for consumers of the kind provided by advice centres. The Panel too supports the work of advice centres which we regard as invaluable for consumers, although we believe that there is scope for accreditation of individual networks' training and monitoring programmes over time or even accreditation of individual advisers. It is for HMT to ensure that there are no legislative barriers to such a service being provided.
- IV. Employers offering pensions products: The Panel supports the exemption from the Financial Promotions Order of promotions made by employers in relation to the pensions options they provide. We would like the exemption to cover all the benefits which form part of a particular pension scheme, such as Permanent Health Insurance.
- V. Financial Promotion Order: The Panel is disappointed that HMT does not propose to amend the Financial Promotion Order so that pure protection long-term care insurance contracts are subject to the full financial promotion rules. There seems to be no rationale for this. The Panel has also responded separately to HMT's recent consultation

on Informal Capital Raising and High Net Worth and Sophisticated Investors. In our response we opposed a relaxation of the exemptions to the Financial Promotion Order for high net worth and sophisticated investors investing in unlisted securities as we believe that the Paper failed to take account of the risks to consumers which could arise from such a change.

- VI. Future work: A great deal of work needs to be done before standards in financial promotions are brought up to an acceptable level and we do not think that this is an appropriate area for speculation about reducing the level of consumer protection that is currently provided. The Panel would not support any move to limit the scope of the Financial Promotions regime and we are calling instead for it to be extended to all financial products.

Panel response to HMT Consultation Paper: Financial Services and Markets Act two year review: Changes to secondary legislation

Introduction

1. This paper is the response of the Financial Services Consumer Panel ('the Panel') to the H M Treasury (HMT) Consultation Paper on the Financial Services and Markets Act two year review: Changes to secondary legislation.
2. The Panel has commented on the issues raised by the Paper, rather than on the individual questions contained within it.

Detailed Issues

Advice Centres (Questions 1-9)

1. The Panel is not in a position to comment on whether FSMA currently imposes unreasonable restrictions on the flexibility of advice centres to provide information and advice to clients when it is needed. We feel that advice centres themselves are best placed to respond on this important issue.
2. Nevertheless it seems to the Panel that a requirement that advice networks should be authorised by the FSA and/or that individual advisers should become approved persons could impose a disproportionate burden on these organisations in terms of compliance requirements and other costs. We would not want to see the introduction of any regime that effectively reduced the current accessibility of the service to consumers, but this would not be incompatible with increasing standards and possible accreditation of individual networks' own training and monitoring programmes over

time, or even accreditation of individual advisers. Although not an exact parallel, an example of such a system already exists in Scotland, where advisers dealing with debt management administration must have the appropriate accreditation. Those agencies which do not have in house or national training programmes available will have to demonstrate that they have the ability to deliver what consumers need.

3. The Panel believes that it is important for advice agencies to have adequate professional indemnity insurance in place, so that consumers are protected if something goes wrong.
4. The Panel does not have access to information about the impact on advice centres, if any, of the restrictions on financial promotions imposed by FSMA and the Financial Promotion Order. Accordingly we are unable to comment on whether an exemption is necessary or appropriate.
5. We believe that the definition of "advice centre" contained within the Paper ("bodies providing free, confidential and independent advice to individuals") is inadequate. Advice centres should be not-for-profit organisations and they should not be part of a larger, profit-making business. Advice centres should also be members of a recognised body.
6. The Panel is concerned that the question of FSA authorisation or exemption for advice centres is being considered in isolation, when it clearly falls within the wider scope of the current debate on Financial Capability and generic advice. The FSA, one of the partners in the Financial Capability Strategy Group, is already taking forward specific work on generic advice which could have a significant impact on the role of advice centres. Whatever the outcome of the FSA's work, the proposals which are put forward will inevitably take account of the provisions of FSMA and the Regulated Activities Order.

7. It needs to be borne in mind that whatever HMT decides about the future of advice centres, there are likely to be increased funding requirements which will have to be met.

Employers Offering Pension Products (Questions 10-18)

8. This is an issue which again has links with the work of the Financial Capability Strategy Group in that the Group has already identified "Financial Capability in the Workplace" and "Planning for Retirement" as priority work-streams. The Paper refers to the forthcoming Pensions Information Pack which also forms part of the broader overall picture. The Panel strongly supports the recent Budget proposal for employers to provide a non-taxable benefit in kind of £150 towards independent pensions advice in the workplace. This too should be part of the wider debate.
9. So far as the detailed proposals in the Paper are concerned, the Panel supports the exemption from the Financial Promotion Order of both real time and non-real time promotions made by employers in relation to the pensions options they provide. We would like the exemption to cover all benefits which form part of a particular pension scheme, such as Permanent Health Insurance. Any exemption for employers should relate only to explaining or promoting the terms, benefits and risks of their schemes. We do not think that limiting the ability of employers to make promotions by prohibiting reference to unfavourable comparisons with other pensions is appropriate.

The Financial Promotion Order (Questions 19-23)

10. HMT has decided that pure protection long-term care insurance contracts should be regulated as if they were investment products. The Panel is surprised and disappointed that HMT does not propose to amend the Financial Promotion Order so that these particular contracts are subject to the full financial promotions rules. These products are targeted at vulnerable consumers and full powers to act against

misleading promotions would have been a key tool in protecting consumers from mis-buying/mis-selling. HMT's approach is completely illogical and we urge HMT to reconsider.

11. The Panel has responded separately to HMT's recent consultation paper "Informal Capital Raising and High Net Worth and Sophisticated Investors". In our response we said that the Paper failed to take proper account of the risks to consumers of the proposals that had been put forward and that consequently we opposed them. We continue to do so.

Future Work

12. The Panel has been pressing the FSA for some time to deal more effectively with consumer detriment caused by misleading financial promotions. A matter of months ago the FSA undertook - for the second consecutive year - to increase its efforts to reduce the number of unclear and misleading advertisements. A new Department has been established to lead this work and will include staff visiting firms to assess their controls over financial promotions. We think that no consideration should be given to changing the basis of the FSA's regulatory approach until a detailed assessment has been made of the outcome of the new Department's work. We are also concerned that a risk-based approach would involve some kind of risk assessment of individual products or types of product, but that this would fail to take account the differing levels of financial understanding among groups of consumers. An advertisement for a product which appears to the FSA to be straightforward and/or low risk could pose serious difficulties for some consumers. HMT and FSA should also bear in mind that although advertisements aimed at retail consumers are an obvious priority, advertisements by their nature can be read by anyone and it would not be prudent to apply different standards to financial promotions which are perceived as being targeted outside the mainstream retail market.

13. The Panel would not support any move to allow some products to be promoted without regulation under the financial promotions regime, relying instead on the 'misleading statement' offence in FSMA to deal with advertisements which contain misleading information. On the contrary, the Panel would like the scope of the financial promotions regime extended to all financial products. We see no justification for a reduction in the safeguards for consumers on the lines suggested, particularly in the light of the FSA's acceptance that more rather than less should be done in this crucial area.

Who is on the Panel?

Ann Foster (Chairman)

Ann has over twenty-five years experience in the consumer movement. During that time she has worked at the National Consumer Council and has been Director of the Scottish Consumer Council. She has also served on various government advisory and expert groups on a range of subjects. Recently Ann has been a member of the Health Professions Council and of Postwatch, the Consumer Council for Postal Services. She is also a Council member of the Royal National Lifeboat Institution and member of its fundraising committee.

Dianne Hayter (Vice Chairman)

Dianne is on the board of the National Consumer Council and was, until 2004, on the board of the National Patient Safety Agency. She was formerly the Chief Executive of the Pelican Centre (a cancer charity). Before that she had periods as the Director of Corporate Affairs for the Wellcome Trust, Chief Executive of the European Parliamentary Labour Party, Director of Alcohol Concern, General Secretary of the Fabian Society, a journalist and trade union research officer. She is a member of the Labour Party and on their National Executive Committee. She is currently also a research student at Queen Mary College, London.

Yvonne Gallacher, OBE

Yvonne is Chief Executive of Money Advice Scotland, set up in 1989 by the Scottish Consumer Council. She has over sixteen years' experience of consumer credit/money advice issues and of working with vulnerable consumers in a variety of roles, including debt counsellor, trainer and manager. She has also lectured and co-authored a Guide to Money Advice in Scotland. Yvonne is presently a member of the Financial Capability Group and a member of the NCC Advisory Group. Yvonne is a recent past member of the Scottish Consumer Council.

Harriet Hall

Harriet is a solicitor with considerable experience of consumer policy and retail financial services. She is a former legal officer with the National Consumer Council, where she has worked on the needs of low income consumers, banking, credit, mortgages, regulation of equity release and long-term care insurance, the Financial Services and Markets Bill and the proposed EU directive on distance selling of financial services.

John Howard

John is a journalist and broadcaster with extensive experience of consumer issues having been the principal presenter of the daily consumer programme on Radio 4 'You and Yours' and numerous other financial programmes on radio and television. He is a qualified solicitor and is a member of the Mortgage Code Compliance Board.

Vinod Kumar

Vinod is a social scientist with market research skills and extensive voluntary and public sector experience of policy analysis and research. Until recently, he was Head of Policy and Research at the Royal National Institute for Deaf People, and he has previously worked for the Commission for Racial Equality. Since his retirement, Vinod has been a Non-Executive Director of Barnet Primary Care Trust and a member of the Consumer Liaison Group of the Medical Research Council. Currently he is a patient representative on the Research and Advisory Committee of the National Institute for Clinical Excellence and on the Department of Health's advisory committee on consumer involvement in research.

Stephen Locke

Stephen is a National Consumer Council Board member and a member of the Committee of the premium rate communications services regulator, ICSTIS. He was previously a Director of the Transition Project setting up Ofcom, working on secondment from the Independent Television Committee where he had been the Director of Advertising and Sponsorship. Stephen has also worked at a senior level in management consultancy and in the consumer movement, as a Director of Research and Policy at the Consumers Association.

Nick Pearson

Nick has worked for AdviceUK since 1997 as National Debt Advice Co-ordinator; he also works as a part-time consultant to CPP Group on its new Financial Health product. With a career spent in advice organisations including the National Association of Citizens Advice Bureaux where he was Manager of the Money Advice Support Unit, he has particular experience of credit, debt and personal finance issues and of working with vulnerable consumers.

Adam Philipps

Adam has extensive experience of market research, including research into consumer financial products. He is Managing Director of Real Research, his own market research consultancy, and is a Council Member of ESOMAR (the world association of market research professionals), also chairing ESOMAR's Professional Standards Committee.

Paul Salvidge

Paul is a former senior civil servant with experience of regulatory work, employment law, competition, consumer protection, telecommunications, financial services and company law. He was previously Competition Policy and Consumer Affairs Director at the Department of Trade and Industry.

Robert Skinner

Robert has been Director General of the Money Advice Trust since April 2003. In this role he has responsibility for the running of National Debtline in Birmingham, the Trust's training activities and its traditional work as a fund-raising charity partner for the agencies working in the money advice field. Prior to joining the Trust, Robert

spent over 25 years working for Barclays Bank and held a number of senior positions in the Private Banking and Corporate businesses. He has served as a Director of the Office of the Banking Ombudsman and as a member of the BBA Code of Banking Practice Review committee.

Richard Smethurst

Richard is Provost of Worcester College, Oxford University; previously a non-executive Director of IMRO, he chaired their Training Standards Panel. He has served as an economic adviser in Whitehall, and on the Monopolies and Mergers Commission, where he was Deputy Chairman.

Dave Watts

Dave is a partner in a media business, which is involved in publishing, editing and journalism - personal finance plays a large part in this. He is a former editor of Which? and Money Which? and former Assistant Director of Consumers' Association. He was also a policyholder representative on the Insurance Brokers Registration Council for nine years.

How to contact the Panel

Financial Services Consumer Panel
25 The North Colonnade
Canary Wharf
London
E14 5HS

Tel: +44 (0) 207 066 9346
Fax: +44 (0) 207 066 9711
Email: enquiries@fs-cp.org.uk
Website www.fs-cp.org.uk