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28 May 2004

Dear Ms. Engledow,

Financial Services and Markets Act Two Year Review:  
Changes to Secondary Legislation

Barclays Plc welcomes the opportunity to respond to the various issues raised within the HM Treasury Consultation Paper in relation to the positioning of financial promotions in relation to generic advice and regulated activities, specifically in the context of position of advice centres and the provision of advice to employees.

By way of background, Barclays Plc is a UK-based financial services group engaged primarily in banking, credit cards, investment banking and investment management. In terms of assets employed, Barclays is one of the largest financial services groups in the United Kingdom. The Group also operated in many other countries around the world and is a leading provider of coordinated global services to multinational corporations and financial institutions in the world's main financial centres. Barclays has been involved in banking for over 300 years and operates in over 60 countries.

Our detailed responses to all the questions raised in the Consultation are set out in the attached Appendix. We recognize that both advice centres and employers have an important role to play in the provision of financial advice and information on financial products, however the scope of advice and the services provided needs to be clearly defined to ensure both consumer protection and the most effective use of regulation to these areas.

Specifically, in relation to advice centres, we are of the view that a clear line should be drawn to distinguish information from advice and furthermore, that advice centres should provide information only in relation to financial services rather than give advice. We feel that if this approach were taken, it would largely remove the requirement for further regulation/legislation and avoid over-burdening these organisations. We also feel that to provide an exemption for these organisations on the basis that they provide only information would reduce the risk of mis-selling and enhance consumer protection. To introduce an accreditation system for advice centres would ensure an appropriate level of knowledge/competence, however we see little point in introducing such organisations to a training and competence scheme as such.

We view information provided within the work place as key in the interests of promoting consumer awareness and education. Pensions and other benefits offered by employers and to which the employer contributes are generally in the financial interests of the employee as they gain financial contributions or tax incentives for joining, which they would lose otherwise. We are therefore of the view that there should be no such restrictions placed upon employers when offering and promoting the benefits of such schemes as Group Pensions, Health Schemes, life Insurance and Sharesaves. Whilst there could be a benefit in employers offering a full financial advice service to employees, we would suggest that for many employees the value would be limited as often the amount available for saving, particularly for the long term, is likely to be restricted in the younger years. Rather than the provision of financial advice to employees, we would propose that a commitment to long term financial education and creating financial awareness in the workplace would be a much more proactive step.

Naturally, we would welcome the opportunity to discuss any of the matters raised in the Consultation of to clarify our responses. If you would like to do this, please contact either me (details above) or my colleague, Andrew Podd on 0207 068 1946.

Yours sincerely,

Brian A. Harte  
Director – Group Head of Compliance

## Appendix

### **Responses to questions raised in HM Treasury – Financial Service and Markets Act Two Year Review: Changes to Secondary Legislation**

#### **Financial Service and Markets Act Two Year Review**

##### Volume 1

- Q1. *Do you think that the current scope of the financial promotion restriction creates uncertainty or is unduly restrictive of the work of advice centres?*

Yes, there is uncertainty, particularly in relation to the “in the course of business” test. The scope of the financial promotion restrictions are not currently “unduly” restrictive, however as mortgage and general insurance regulation begins this will potentially become more restrictive.

- Q2. *Do you think that there should be a specific financial promotion exemption for advice centres?*

Yes, this would add clarity but the scope of service such centres are able to provide also needs to be defined. Further clarity around which advice centres would be covered by this exemption should also be included.

- Q3. *Is there a case for further legislation?*

Yes, by way of clarification around “in the course of business”.

- Q4. *Do you think that there should be additional legislation to confirm that advice centres are not carrying on regulated activities?*

Yes, this would clarify the situation for advice centres but agree that this may then create more uncertainty for similar “not for profit” organizations. The primary services carried out by such centres should also be sufficiently defined.

- Q5. *Do you agree with the proposed conditions for exemptions relating to advice centres?*

Yes, we agree with the proposed conditions in the interest of consumer protection. However, the first condition for exemption should be used cautiously as some advice centres may receive a commission for advice given, not on a profit-making basis but used for funding core activities.

- Q6. *Do you think that there should be other conditions (eg. minimum competence criteria and specific PII thresholds)?*

Yes, we agree in principle that there should be other conditions to ensure that adequate PII is held to ensure that consumers have access to adequate redress

in the case of mis-selling. However, we would question the ability of such organisations to pay for the PII cover if they are non-profit making organisations. Our current understanding is that most advice agencies arrange PII through umbrella bodies, therefore all Citizens Advice Bureaux, although individually independent, are covered by the PII policy arranged by Citizens Advice as part of the ‘package’ which allows them to belong to the network and use the Citizens Advice Bureau name. Similar agencies belonging to the adviceUK network are able to obtain PII through the adviceUK policy. Imposing a requirement for an agency to hold PII would have the effect of almost forcing it to apply to join one of these bodies, who already set minimum standards. Joining such a network would have an additional advantage of subjecting the agency to an accreditation system, which we consider important.

Q7. *Do you agree with limiting the exemptions to mortgages, endowments, pension products and shares?*

We agree that the exemption should only apply to specific products and believe that such centres should only advise (if they are to advise at all) on basic areas of financial planning, such as bank accounts and savings schemes and avoid more complex areas of financial planning such as pension planning, endowments and especially high risk areas such as direct investment in shares.

Q8. *Do you think that an exemption limited only to members of certain established networks of advice centres provides a better alternative?*

We are of the view that, in the interest of consumer protection, any exemption should be limited to accredited networks of advice centres whose advisers would be adequately trained for the advice/information they provide as per Q6.

Q9. *Do you think that exemptions for advice centres could have regulatory consequences for other bodies besides advice centres?*

Yes, we consider that if there is to be an exemption for advice centres, there may be consequences for other bodies such as debt counselling services, Samaritans and similar counselling services, debt consolidation services, solicitors and accountants. As such, we believe that any exemption should be limited to voluntary/non-profit making organisations.

Q10. *Do you agree that there should be an exemption for both real time and non-real time promotions made by employers (option 1c)? If not, which of options (1a) and (1b) do you prefer?*

We are of the view that any exemption should be limited to real time financial promotions (Option 1 (a)) in the interests of consumer protection and therefore reducing the risk of mis-selling to employees.

Q11. *Do you agree that any exemption should be subject to conditions and not unrestricted?*

Yes.

Q12. *Do you agree with the conditions outlined in paragraph 4.31?*

- 1) Employers should only be able to make promotions in relation to the categories of investment offered through that employer, for example, stakeholder pensions, sharesave schemes, group personal pension schemes and health schemes.
- 2) In principle, this is a logical suggestion, however, it would appear to exclude certain pension schemes such as stakeholder, which employers may be obligated to provide but not contribute and group personal pensions where the employer may not make a contribution.
- 3) Yes, we agree with this condition.
- 4) Yes, we agree with this condition.

Q13. *Do you think that there should be other conditions?*

Yes, we believe that there should be a further condition that employers can only provide generic rather than specific advice to employees, if they are to provide advice at all.

Q14. *Do you think that the exemption should contain an additional condition restricting the ability of employers to provide individual advice to employees?*

We do not wish to consider that employers would be in a position to provide such advice and doubt that many would wish to do so. We would also question whether providing *specific advice* and *financial promotions* would actually require two exemptions.

Q15. *If so, do you think that limiting the ability of employers to make promotions by a requirement that they do not provide pensions advice in relation to a person's individual circumstances is an appropriate condition?*

Yes we agree, however see response to Qs 13 and 14 above.

Q16. *Do you think that limiting the ability of employers to make promotions by reference to the definition of the activity of advising in Article 53 RAO is an appropriate condition?*

Due to the limited activities in which employers engage we consider this is appropriate.

Q17. *Do you think that limiting the ability of employers to make promotions by prohibiting reference to unfavourable comparisons with other pensions is a viable alternative condition above?*

We are of the opinion that consumers should be armed with the necessary information to make an informed decision. Comparisons may be appropriate but we can see no merit in prohibiting only ‘unfavourable’ comparisons.

Q18. *Do you agree that there should be no restriction on which employer’s representatives can promote the employer’s pension schemes?*

We are of the opinion that there should be greater flexibility given to representatives promoting an employer’s pension scheme. If specific, individual advice is given relative to the benefits provided by the employer, then that advice, to the extent that it highlights the generic advantages of that benefit eg. availability of employer contributions, advantageous tax position on employee contributions, should be allowed. We would further suggest that only certain representatives would be in a position to be providing such information/advice to employees eg. HR specialists.

Q19. *Do you agree with the proposed changes to the Financial Promotions Order?*

Yes.

Q20. *Are there any further changes to the Financial Promotions Order which you think should be considered?*

No.

Q21. *Do you agree that the current article 69 of the Financial Promotions Order is too complex and should be simplified?*

Yes.

Q22. *Do you agree with widening the scope of the exemption but widening the circumstances?*

Yes.

Q23. *Do you agree with the proposed specific conditions for the exemptions to apply?*

Yes.