

Financial Services and Markets Bill Parliamentary briefing

Introduction

1. The Financial Services Consumer Panel ('the Panel') was established to advise the Financial Services Authority (FSA) on the interests and concerns of consumers. We are independent of the FSA – we can raise our own concerns, initiate research and publish reports.
2. We warmly welcome the Financial Services and Markets Bill and some of the changes made to the Bill as a result of the pre-legislative scrutiny process and comments from consumer groups. We have outlined in this briefing areas where the Bill does not yet provide adequate protection for consumers.

Public awareness objective (Clause 4)

3. We support the public awareness objective and fully endorse its interpretation by the FSA to include the development of financial literacy skills as well as the provision of advice and information. **But the wording of this objective should be amended to make explicit the FSA's role in improving and developing the public's financial skills.**
4. Empowering consumers to make informed decisions; to ask the right questions; and to shop around when purchasing financial services and products is in the interests of all market participants. This would contribute to the development of a more competitive market and benefit firms and consumers alike.

Consumer protection objective (Clause 5)

5. Consumer groups have expressed concern that clause 5(2)(d), "the general principle that consumers should take responsibility for their decisions", may be read out of context by some, and undermine the sentiments of the consumer protection objective. We welcome the statement in the Government's response to the Joint Committee that Clause 5(2) of the Bill should be read as a whole. We remain of the view, however, that **since caveat emptor exists as a general principle in contract law, its formulation in the Bill, clause 5(2)(d), is unnecessary and it should be deleted.**
6. We think the clause as drafted fails to recognise fully the particular difficulties some consumers face because of the complexity of financial products and the need many consumers have to rely on the expertise of a professional adviser to assess which financial products are suitable to meet their needs. Recognising the responsibility of the professional adviser in that process would counterbalance the responsibility placed on consumers.

Disadvantaged consumers (an addition to Clause 2(3))

7. Whilst we recognise that reducing financial exclusion is a matter for Government, we think the FSA should be required to have regard to the needs of

disadvantaged consumers. Such an amendment would require the FSA, for example:

- to look at the particular needs of low income consumers for advice and information on the few products that are suited to their needs;
- to allocate the costs of regulation in a way that is not burdensome on small not-for profit organisations such as credit unions, now within the FSA's remit; and
- to set compensation limits for the Compensation Scheme which reflect the needs of those least able to sustain a financial loss.

This should be added to the list of things FSA should have regard to.

Consumer Panel (Clause 9)

8. We welcome Clause 9 of the Bill that puts the Panel on a statutory footing. However, this does not go far enough in ensuring that the Consumer Panel can play a fully effective role. **We call for the following changes and additions, possibly in the form of a schedule to the Bill:**

- **Remit:** the Panel is extremely concerned by the definition of consumers in Clause 9(7) as limited to consumers “who use or are or may be contemplating using, services provided by authorised persons in the course of carrying on regulated activities”. We are concerned that whilst the FSA may still set up the Panel with wider terms of reference than would result from clause 9 alone, that the FSA are under no obligation to do so. The Panel should be able to examine whether there is a case for regulation for financial services not currently regulated (e.g. - the debate on mortgage regulation); or consider the needs of financially excluded people who are not currently using or contemplating using financial services. We strongly urge amendment to Clause 7(9) for ‘consumers’ to be defined as those ‘who use or who are potential users of financial services’.
- **Consultation:** there should be an obligation on the FSA to consult the Consumer Panel on matters which impact on consumers.
- **Sufficient funding:** The Bill should contain a requirement for the FSA to provide resources and funding to enable the Panel to carry out an annual work programme in accordance with an agreed budget, and for the Panel to be accountable for its expenditure in its Annual Report.
- **Publication:** a right for the Panel to publish its work and its views, which reflects current practice in the Panel’s terms of reference agreed by the FSA.

Ombudsman Scheme & cost rules (Clause 205 (4))

9. Redress is a key component of consumer protection and consumer representatives have always argued that access to the Ombudsman scheme must be free to consumers. We are concerned that clause 205(4) gives the FSA power to make rules authorising the award of costs by the Scheme against complainants. This completely undermines the principle of ombudsman schemes which to date have been free to consumers. The Financial Ombudsman Service (FOS) will have powers to reject cases that are frivolous or vexatious. The FSA and FOS have proposed that the FOS will not at present introduce such rules and we do not consider there is any justification for introducing a power for the FSA to enable the Ombudsman to recover its costs from consumers. **Clause 205 (4) is unnecessary and should be deleted.**

10. Information about consumer complaints from the Ombudsman Scheme is an important source of evidence of regulatory problems for the FSA. The Bill should require the Ombudsman Scheme to provide information on complaints to the FSA which would need details of the firms involved to take regulatory action if necessary.

Mortgages and long term care insurance

11. We have called for the statutory regulation of mortgages by the FSA and believe that this is key to reducing consumer detriment. Our research highlighted that consumers stretched by the house buying process are less likely to shop around or withdraw from a mortgage application at a late stage even if it is not a good deal. This made them more reliant on advisers and susceptible to poor advice and our research found numerous examples of consumer detriment and some evidence to suggest that the voluntary code was not working effectively to protect consumers. This is supported by research carried out by the Consumers' Association and trading standards officers (LACOTS). **We strongly recommend that the FSA regulates the sales, marketing and advice of mortgages to prevent:**
- the cross-selling of products associated with mortgages, lack of transparency of costs and of whether or not associated products are compulsory may result in consumers taking out products that are poor value for money compared with the competition; and
 - poor quality advice may result in consumers taking out mortgages that are unsuitable for their circumstances. This includes setting up interest-only mortgages and providing no advice on a repayment vehicle, leaving some consumers without any means of paying off their capital.
12. We fully endorse the Joint Scrutiny Committee's recommendations that long-term care insurance should be included in the FSA's remit from the outset, and are disappointed at the Government's response to date.

Barbara Saunders
Chairman
Financial Services Consumer Panel
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