

Financial Services Consumer  
Panel response to: FSA  
consultation paper 29: The  
Permission Regime

## The permission regime

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## Introduction

1. This is the response of the Financial Services Consumer Panel (the Panel) to the Financial Services Authority (FSA) Consultation Paper 29: *'The Permission Regime'*. Further details about the Panel are at the end of this response.

## Good consultation practice

2. In policy areas such as this, which are both technical and complex, it is difficult to identify the areas which are of specific interest to consumers and how the FSA intends to meet its consumer protection and public awareness objectives through this regime. Most consultations appear to be directed at technical not lay people. **For future consultations, we urge the FSA to include a consumer impact statement or summary of the key aspects of its policy proposals for consumers. We would also encourage the FSA to repeat the approach used for Consultation Paper 28 on "The Comparative Information Scheme" by producing a short factsheet which summarises in clear terms the key elements of the consultation paper. Both industry and consumer consultees have found this approach extremely helpful.**
3. What is missing from this consultation paper is a simple early explanation that the permission regime is the heart of the regulatory system since for the most part, authorisation automatically follows permission. The other parallel element is that the type of regulation a business is subject to (prudential only or prudential and conduct of business) arises from the type of permission. This is important not just for consultation purposes, but, as we go on to note, for the FSA Register and for the FSA's public awareness objective.

## Elements of the permission regime

### **Q1. The FSA would welcome comments on:**

- ***the three elements of the permission regime;***
  - ***the categories within each element of the permission regime set out in Annex A of this Consultation Paper;***
  - ***the approach proposed in relation to ISA management and similar activities;***
  - ***the use of the Notification Rules; and***
  - ***the examples set out in Annex B of this Consultation Paper***
4. The FSA's approach which links the permission regime to regulated activities is logical and reasonable. We welcome the proposal that a separate permission will be required for activities that pose particular risks to consumers, such as pension opt-outs and transfers.

5. We note that the customer classification is detailed in the FSA's statement on "*The Future Regulation of Inter-Professional Business*"; it would have been helpful for the consultation paper to spell out the specific implications of the customer classification for the permission regime.
6. **We support the proposal that ISA fund management and similar activities should require specific consent from the FSA.**
7. We note that the 'holding of client money' is not a regulated activity under the Regulated Activities Order and therefore not listed as a permission in Annex A; although it is mentioned under requirements in paragraph 2.16 of the consultation paper and in paragraph 2.17 under Notification Rules. We are concerned that it is not clear from the consultation paper how the FSA intends to deal with the holding of client money. **Because of the customer risks involved in the holding of client money, we think the FSA should restrict the power to hold client money to persons suitably qualified to do so. This is an essential aspect of consumer protection. The power to hold client money should also be included on the Register.**
8. We note the approach outlined in Chapter 8 for firms currently regulated by recognised professional bodies, but see our response to FSA Consultation Paper 30.

***Q2. The FSA would welcome comments on the general outline of how the powers in Part IV of the Bill will be exercised by the FSA.***

9. We do not wish to make any comments on this aspect of the Consultation Paper.

**Application of the permission regime to inwardly passported EEA firms**

10. The application of the permission regime to inwardly passported firms poses additional challenges to the FSA to make permissions understandable to consumers. This is because of the different terminology used in the directives and the need to align the activities that passported firms are permitted to undertake with the permission regime for the purposes of the FSA Register.
11. There is an added level of confusion for consumers if companies operating under home country authorisation offer a different level of protection and redress for consumers.

***Q3. The FSA would welcome comments on the relationship between the permission regime and other regulatory requirements?***

12. The Consultation Paper (paragraph 5.8) is ambiguous about the relationship between the Ombudsman Scheme and the permission regime in that it seems to imply that some customers will not be able to gain

redress through the Ombudsman Scheme if the firm did not have a specific permission. We are pleased to note that this does not seem to be the case as far as private consumers are concerned in that the FSA's consultation on "*Consumer complaints and the new single ombudsman scheme*" confirms that the Scheme will be able to deal with complaints about a firm if it breached the terms of its permission.

## The FSA Register and communication with consumers

### ***Q4: The FSA would welcome comments on the future content of the FSA Register, and how it should be issued.***

13. Our overriding concern is how consumers will understand the protections afforded by FSA regulation including regulatory language used in the permission regime. We fully endorse the FSA's approach outlined in Chapter 6 to describe the permission granted to a firm in a way that is readily understandable by consumers. **It is vital that the regime including the FSA Register and other information that is disclosed is understandable and useable by consumers.** This will be a challenging task. It will be complicated to explain that regulatory protection is associated with firms being authorised and that the nature and degree of protection that consumers can expect regulation to provide varies with the permission a firm is granted with some permissions only being subject to prudential requirements and others being subject to conduct of business requirements. Added to this there is the difficulty of the language used in the permission itself. To give just some examples, consumers will not understand what activities are covered by terms such as:

- dealing in investments; or
- accepting deposits.

14. Another area for confusion is the term "authorised person" used in the Bill to refer both to firms and individuals. The FSA needs to adopt simple and clear language so that consumers are not confused between firms and individuals. **We recommend that the language used for information included in the FSA Register is subject to rigorous consumer testing.**

15. **As much useful information as possible needs to be placed on the Register. This should include permissions; requirements; limitations, whether firms have been required to reapply for authorisation during the grandfathering period; disciplinary action; and any specific exclusion about which the public need to be aware. Indeed, as the FSA develops its risk ratings for firms a case could be made for including this if it was deemed to be in the public interest. We support the inclusion of enforcement action on the Register, as this could have a deterrent effect.** We appreciate that it will difficult to include meaningful information about training and qualifications on the

Register unless the FSA decides to include individuals on the Register, nevertheless, if the permission categories are made clear to consumers, this should enable them to identify specialists (e.g. firms capable of providing advice on opt outs and transfers).

16. A related issue, that is not covered in the consultation, is the implications of permission regime for the information that firms will be required to disclose to consumers. We hope that this will be covered in a future consultation. We stress the importance of ensuring that permissions are disclosed using language that is readily understood by consumers.

17. **We support the proposal to place the Register on the Internet but this must not be the only means of access as many consumers do not have access to the Internet or the skills and confidence to use it. Consumers should continue to be able to call the FSA helpline for information on the FSA Register.** As the consumers using the Register on the Internet will not necessarily go on to speak to FSA staff for advice, it is vital that that the Register does not mislead (e.g. lead consumers to think that a firm is authorised when it isn't) and imperative that it is kept up-to-date.

**Q5: The FSA would welcome comment on:**

- i) whether such a publication [a summary of changes to the FSA Register] would be useful; and**
- ii) if so, what it should contain; how often it should be issued; and in what form?**

18. We support publication of changes to the Register. It could be used by commentators looking at market trends and may be useful to consumer advice agencies and some consumers that want to keep abreast of changes to the Register. At the very least, we would like to see changes published in hard copy and on the Internet, perhaps with a press summary on changes of interest.

## **Cost benefit issues**

**Q6: The FSA would welcome comments on the cost benefit implications of the proposals in this CP?**

19. **Chapter 9 does not identify specific benefits to consumers nor identify any costs associated with the production of the Register. The conclusion that the approach is broadly similar to that of the existing regulators does not take into account the FSA's aim to make the Register accessible to consumers and implies a minimal approach to public information, which would be both regrettable and inadequate.** The FSA has the opportunity to go significantly beyond the information included in the Securities and Investment Board (SIB)

Register. This is both necessary and desirable in order to meet the FSA's public awareness and consumer protection objectives.

## About the Financial Services Consumer Panel

The Financial Services Consumer Panel was established by the Financial Services Authority (FSA) to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives. There are eleven members of the Panel representing a broad range of consumer interests. The Panel is independent of the FSA – it can raise its own concerns, initiate its own research and publish its own reports.

### Who is on the Panel?

#### Barbara Saunders (Chairman)

Barbara is a public interest member of the PIA Board. She is an independent consumer consultant and past Chairman of the Council of the Insurance Ombudsman Bureau. Among other public and professional appointments she is a Non-Executive Director of the St Albans and Hemel Hempstead NHS Trust and a member of the Architects Registration Board.

#### Colin Brown (Vice Chairman)

Colin is an independent consultant specialising in consumer affairs. Previously Deputy Director of Research at Consumers' Association and Senior Fellow at the Policy Studies Institute, he has over 20 years' experience of social and consumer research.

#### Jean Gaffin

Jean is Chairman of the Advisory Committee on Telecommunications for Disabled and Elderly People (until 31.12.99) that provides advice to the telecommunications regulator, OFTEL, and a Non-Executive Director of Harrow & Hillingdon Healthcare NHS Trust. She has extensive experience of working on behalf of vulnerable consumers. Previous positions include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care.

#### Yvonne Gallacher

Yvonne is Chief Executive of Money Advice Scotland, which was set up by the Scottish Consumer Council. She has over 10 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 is Co-Director and Secretary of the Government funded Lead Body for Advice, Guidance, Counselling & Psychotherapy (CAMPAG). Yvonne is a member of the Scottish Consumer Council.

### **Joan Harbison**

Joan is Chief Commissioner of the Equality Commission for Northern Ireland. She was Chair of the Commission for Racial Equality for Northern Ireland since its inception in 1997 and is a former Chairman and member of the Executive Committee of the Northern Ireland Association of Citizens' Advice Bureaux. She has held a number of public appointments including being Vice Chairman of the Eastern Health and Social Services Board and the Northern Ireland Standing Advisory Commission on Human Rights and was a founding member of the Human Fertilisation and Embryology Authority.

### **Noel Hunter**

Noel is County Trading Standards Officer for Warwickshire. A National Council member of the National Consumer Council, he also chairs the Management Board of the Institute of Trading Standards Administration and is an adviser to the Local Government Association.

### **Gerald Lanchin**

Gerry is a Vice President of the National Federation of Consumer Groups. He is a former Under Secretary of the Consumer Affairs Division of the Department of Trade and Industry and author of "Government and the Consumer". His involvement in consumer protection includes being a former Council Member of Consumers' Association and of Consumer Congress Committee. He was the first chairman of the Direct Mail Services Standards Board and a member of the Data Protection Tribunal for 10 years.

### **Nick Pearson**

Nick is the National Money Advice Co-ordinator for the Federation of Independent Advice Centres. 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.

### **Richard Smethurst**

Richard is Provost of Worcester College, Oxford University; he chairs the Training Standards Panel of IMRO, of which he is a non-executive Director. He has served as an economic adviser in Whitehall, and the Monopolies and Mergers Commission, where he was Deputy Chairman. Richard lectures widely on financial and economic topics to businessmen and adult education groups. He is President of the National Institute of Adult Continuing Education.

## Jane Vass

Jane is an independent consumer researcher specialising in financial services. She was previously Head of the Financial and Economic Research Group at Consumers' Association and is still author and editor of a number of Consumers' Association publications in addition to other research, including work for the National Consumer Council. Her current committee memberships include: Council of the Ombudsman for Estate Agents, the Inland Revenue Tax Law Rewrite Project Consultative Committee and the FSA Training Advisory Panel.

## 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

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