

Fiona King
Investment Business Policy Dept
Financial Services Authority
25 The North Colonnade
Canary Wharf
LONDON
E14 5HS

25 February 2000

Ref: Client Money.VGR.0200.doc

Dear Ms King

This is the response of the Financial Services Consumer Panel to the Financial Services Authority (FSA) Consultation Paper 38, '*Protecting Client Money on the failure of an authorised firm*'. The FSA established the Panel 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.

Consultation Paper 38 asks for responses on a number of specific questions ranging from points of principle about the primary aim of client money regulation to questions of detail about the operation of client money accounts. This response focuses on two particular areas: which of the three identified options would be most equitable for private consumers; and the extent to which consumer protection might be enhanced through greater disclosure on the part of the firm.

Choice of options

On balance we are persuaded by the argument that Option 2 – the Modified Single Pool Method – would be the most equitable option for ordinary private consumers. Our reasons for reaching this view are those which are set out in the CP: it offers consumers the possibility of a quicker return of more of their money, thus enabling a more equitable relationship between risk and return.

However, this support is contingent upon the FSA being able to specify rules governing the allocation of priorities between customer groups which are:

- workable in practice;
- give private consumers first priority between customer groups, and to a degree which is reasonable and appropriate in the context of the limits to protection available from the Investors Compensation Scheme (or its successor); and

- unlikely to attract legal challenge. We seek reassurance from the FSA that, in the event of a default, prioritising the allocation of money with private consumers at the top of the list would be legally enforceable. We would be very concerned if a change by the industry to a system of a modified single pool resulted in delays in the allocation of money to private customers as a result of customers contesting the distribution.

Disclosure and understanding

We believe that it would be unreasonable to expect retail consumers to be able to evaluate the strength of credit and risk management of the firm with which they do business. Nor is it reasonable for retail consumers to understand how their own exposure to risk varies according to the risk appetite of a firm's other clients. Additional disclosure on the part of the firm, whilst it may be welcome, does not alter this position because:

- as the CP acknowledges (para 3.2), many retail consumers enter into business with firms precisely because they lack the expertise to make these sorts of judgement; and because
- consumers would need to update their evaluations on a continual basis, not just at the point of entering into an agreement, and
- we see no prospect of consumers being given the information they would need for the evaluation, and in a sufficiently timely manner.

Please don't hesitate to contact me if you have further queries.

Yours sincerely,



Barbara Saunders
Chairman
FS Consumer Panel

Financial Services Consumer Panel

Biographies

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 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 from 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 former 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.