

Financial Services Consumer
Panel response to:
H.M.Treasury: *Financial
Promotion - Third
Consultation Document*

Financial Promotion

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Introduction

1. This paper is the response of the Financial Services Consumer Panel ('the Panel') to the Treasury's consultation document 'Financial Promotion - Third Consultation Document'. The Financial Services Authority (FSA) established the Panel to advise the FSA Board on the interests and concerns of consumers, to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives and to keep under review and influence developments in financial services in so far as they impact on consumers. Further information about the Panel is available at the end of this document.
2. The Panel have also responded to Treasury's simultaneous consultation documents 'Regulated Activities' and 'Regulating mortgages'. All of the Panel's responses to public consultations are published on the Panel's website at <http://www.fs-cp.org.uk>.

Summary of recommendations

3. The Panel wishes to respond to aspects of this consultation where the proposals in the following areas cause us to fear that there may be some potential for consumer detriment.

Territorial Scope - para. 2.6 onwards.

4. The Panel understands the concern of the government that e-commerce should not be inhibited by inappropriate regulatory structures. It also understands the potential consumer benefit in terms of competition and access to a range of products that could flow from a single EU market. However, the strong concern of the Panel is that consumers should not be placed in a worse position as a result of the implementation of the mutual recognition model than they would be under the proposals to be applied to promotions made from the UK to the UK.
5. Furthermore, the Panel is concerned that there are no criteria in the document by which the government will judge at what point consumers are no longer "vulnerable to financial promotions".
6. The Panel therefore believes that this reserved power of choosing to no longer control incoming financial promotions should only be exercised when the regulatory regime that controls the particular in-bound promotion provides the same level of protection as the UK regime would for a similar promotion from within the UK. The Panel would like the government to adopt this approach and spell its policy out clearly.

Journalism - para. 2.34 onwards.

7. The Panel, in response to the first consultation, addressed the issue of "advertorials". This word has not reappeared in subsequent consultations, although the concept of an advertisement hidden in an "editorial" remains a concern. We feel that this is, perhaps, a greater concern in the local and regional, rather than national, press, and in magazines targetted at particular groups in society.

8. We would be concerned if an article or supplement, paid for by a financial services provider and for the purpose of financial promotion, were not thought to be a promotion. It remains essential that a paid-for advertorial is clearly labelled as such so that consumers will be clear that it is a financial promotion and not independent and unbiased journalism.
9. The concern of the Panel is that there should be a clear distinction made between the financial interest of the journalist and the publication. If a publication is paid to publish something amounting to a financial promotion then it should be clear in those circumstances that the financial interest is that of the publication, not that of the journalist writing the actual piece. That does not change our view of the position as to the scope for benefit of the journalist, which we address below.
10. Furthermore, it was noted that the question of indirect and direct benefit in the commentary was not the same question as was raised in the actual text of the draft Order, which referred only to obtaining a financial benefit, or avoiding a financial loss. We hope the final version will make it clear that it applies in the case of both direct and indirect benefit, and then defines carefully the circumstances where this indirect prohibition might apply.
11. The Panel considered the question of "benefit" and its possible scope if it is an indirect benefit. The case of a journalist "promoting" investment in a share in which he has a holding may seem a clear abuse. In those circumstances, we would support the view of the consultation paper that the relationship between the journalist and the product being promoted must be transparent, while noting the concern that it might take up inordinate space in a small article.
12. However, what is the situation if the journalist has a tracker fund, or a pension whose management is delegated to someone who may invest in that share without his knowledge while he/she is writing about it. What would happen were the shares/pension/tracker fund to be held by the

spouse or child? These questions arise because of the confusion between direct and indirect benefit, which must be clarified.

13. We would also be interested to know how the proposed rules would deal with an indirect benefit of the offer by the publication of further work to a freelance journalist, if s/he satisfies the client's requirements regarding a particular promotion s/he worked upon.

Business angels and informal capital raising - para. 2.41 onwards.

14. The Panel is concerned about the scope for abuse of those who are wealthy but of relatively little financial sophistication. We have in mind talented sportsmen and women who can be very highly paid at a young age, or lottery winners, for example. Our concern is whether someone in such a position could be asked by an unscrupulous IFA, solicitor or accountant to sign a document placing themselves outside the perimeter of protection, then have products marketed to them considering the interest of the adviser rather than the recipient.
15. We would prefer to separate the two activities, of certification and marketing. Certification is an objective, factual process. We think that it may be susceptible to undue influence if there is the prospect of being able to market other products to those people subsequently. One solution to this potential problem, that would maintain the integrity of that initial certification process, is that those who undertake it should then be banned from marketing those products that certification permits to those individuals that they have certified.
16. The Panel have been advised separately that this is unnecessary because potential certifiers will be required to provide suitable products and best advice. However, in the interests of clarity, we would like to see consideration given to a division of the two processes.

Further concerns arising from the Consultation Paper.

17. Finally, the Panel is concerned that because the provisions dealing with follow-up promotions are not very onerous, the criteria can be easily met,

and in consequence consumers could be inundated by consecutive promotions. In particular, the concern we have is that the criteria which must be satisfied are merely that;

- the follow up promotion must be from the same person,
- to the same recipient, and
- relate to the same regulated activity.

18. It does not, however, have to relate to the same investment and so a promotion in connection with, for example, an arranging activity relating to listed securities, could be followed by one relating to an arranging activity for contingent liability transactions. We believe that this could lead to consumer detriment if this exemption were to be widely used.

About the Financial Services Consumer Panel

The Financial Services Consumer Panel was established by the Financial Services Authority (FSA) in December 1998 to ensure that consumers' interests are represented in the development of the regulation of financial services. The Panel is independent of the FSA so that it can: advise the FSA on policy as it evolves, monitor the FSA's effectiveness in meeting its statutory objectives towards consumers, review developments in financial services where they impact on consumers, and publicly report its findings and recommendations. It can raise its own concerns and has resources to carry out its own research.

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 West Hertfordshire Hospitals 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 was Chairman of the Advisory Committee on Telecommunications for Disabled and Elderly People (until 31.12.1999) that provides advice to the telecommunications regulator, OFTEL, and is 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.

John Howard

Solicitor with extensive experience as a former presenter/editor of the daily consumer programme on Radio 4 'You and Yours'. John is currently a freelance broadcaster and his work includes presenting personal finance TV programmes. He is a member of Mortgage Code Compliance Board.

Vinod Kumar

Social scientist with market research skills and extensive voluntary and public sector experience of policy analysis and research. Now retired, Vinod has previously worked for the Commission for Racial Equality and was Head of Policy and Research at the Royal National Institute for Deaf People. He is currently Non-Executive Director of Barnet Health Authority, Board member of the South Barnet Primary Care Group and member of the Consumer Liaison Group of the Medical Research Council.

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.

Paul Salvidge

Paul is a former Senior Civil Servant with extensive 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.

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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