

Financial Services Consumer  
Panel response to: FSA  
Consultation Paper 80:  
*Reforming Polarisation: First  
Steps*

**Reforming Polarisation: First Steps**

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## Summary

1. The Panel sees this First Steps consultation as an opportunity in some very specific areas to broaden access to certain financial products, and we await consultation later this year on more fundamental changes to the polarisation regime. We support the need for a wide-ranging discussion that is properly informed by research and analysis. We are not convinced that this consultation fully addresses all the possible risks, even in the context of the specific areas covered. There are areas in this CP where the proposals appear to prejudge the outcome of the later discussion and consultation.
2. In the case of **stakeholder pensions** we fully support the need to liberalise the regime so that a product provider which does not offer its own can instead offer a stakeholder product of another firm. We see no clear rationale for going beyond this point, either by allowing firms to offer stakeholders from other firms when they are already offering their own, or by allowing firms to offer more than one stakeholder from other firms.
3. We do not support the proposal to make immediate changes to the rules for **CAT-standard ISAs**. We see no basis for pre-empting the wider discussions that will take place later in the year.
4. We agree that the current regime for **direct offer advertisements** may be misleading consumers as well as distorting competition. We agree that it is sensible to change the regime, providing the FSA ensures that there is no confusion for consumers about the basis on which the financial promotion is made.
5. The Panel seeks reassurance that consumers will be given the information they need, at the right time, so that they are appropriately protected. Should the FSA go ahead with the proposal that firms should be able to offer a multiplicity of other firms' stakeholders and ISAs, then most if not all of the following would be required:

6. A requirement that firms must disclose clearly not only what they can advise on but also what they cannot. This would mean referring specifically to stakeholder pensions or CAT-standard ISAs as appropriate, rather than to some catch-all phrase (such as “adopted products”)
7. Requiring advisers to explain their status for different products, and the consequences of this for consumers. Standardising new terminology, so that explanations are more easily communicated and are common to all firms
8. A proactive commitment from the FSA that it will seek to explain to consumers that there has been a change in the regime.
9. Mystery shopping of pension sales, to ensure both that the correct information on stakeholder pensions is being given, and that personal pensions are not being recommended where stakeholders would be more appropriate.

## Consumer Panel response to Consultation Paper 80: Reforming Polarisation: First steps

### Introduction

10. In our response to the London Economics report we acknowledged the fact that the polarisation regime might not always work in consumers' interests. We did not rule out the possibility of radical change, but we argued that the analysis and development work had not yet been done to support an early move to a significantly liberalised regime.
11. However, any dilution of polarisation could also bring risks and we are not convinced that this consultation fully addresses all the possible risks, even in the context of the specific areas covered. For this reason, we believe that there needs to be greater clarity on what is essential or important to do now, and what more properly belongs to later debate. There are areas in this CP where the proposals appear to prejudge the outcome of the later discussion and consultation.
12. If all the proposals in CP 80 were accepted, the consequence would be an awkward halfway house which begins to create the existence of a significantly more liberal regime before the development of a strategy which communicates that change to consumers. This would particularly be the case for those product providers who are currently entirely in the tied sector but who, under the proposed changes, could in April be selling and advising on a range of stakeholder pensions and ISAs including their own. We agree that the benchmarked nature of stakeholder pensions will protect consumers from potential harm in relation to those products. But we worry that the existence of product providers who have many of the characteristics of a multi-tied firm will – in the absence of an effective communications strategy – create an opportunity for consumer confusion and misselling by firms in relation to other (non-benchmarked) products.

## Responses to Questions raised in CP 80

Q1	Comments are invited on the rationale for making the changes described to the polarisation rules in so far as they affect: <ul style="list-style-type: none"><li>- SHPs</li><li>- CAT standard ISAs</li><li>- Direct offer advertising</li></ul>
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13. As noted above, the Panel's view is that the rationale for making the changes confuses two things. On the one hand there are instances where there is a consumer benefit in making changes to the regime now, and on the other there are those where there is no great imperative other than a longer-term ambition to relax the polarisation regime substantially. Our view is that the changes implemented in April should be capable of standing alone, rather than anticipating later liberalisations. Our response to Q1 below sets out where we think the dividing line appropriately lies.

### **Stakeholder pensions (SHPs).**

14. There is a clear need to change the regime quickly in order to ensure that consumers are not offered a standard personal pension rather than a stakeholder pension simply because a tied firm does not have a stakeholder product to offer. So we fully support the need to liberalise the regime so that a product provider which does not offer its own stakeholder can instead offer a stakeholder product of another firm. We see no clear rationale for going beyond this point, either by allowing firms to offer stakeholders from other firms when they are already offering their own, or by allowing firms to offer more than one stakeholder from other firms.

**CAT-standard ISAs.**

15. We can see no great urgency for making immediate changes to the rules for CAT-standard ISAs, and indeed the London Economics report suggested that the improvements to competition and access from such a move were likely to be small. We can, however, see some dangers for consumers if product providers begin to offer a range of stakeholder and ISA products that are imported from other firms without a researched form of disclosure for consumers that explains the capacity in which the firm is acting. In the absence of proposals on any such disclosures, we see no basis for pre-empting the wider discussions that will take place later in the year.

**Direct Offer Advertising**

16. We agree with the analysis that the current regime for direct offer advertisements may be distorting competition and misleading consumers. The possibility of consumers being misled particularly arises where IFA firms use direct offer methods to market products without any obligation to assess the quality of that product and without any knowledge of the recipient's needs. Given that these dangers already exist, we agree that it is sensible to change the regime providing the FSA "ensure[s] that there is no confusion [for consumers] about the basis on which the financial promotion is made" as stated in para 4.12 of CP80. We believe that to ensure this the FSA may need to go beyond the proposal in para 5.2 that the advertisement must make clear that no advice was being given and to say where consumers can get advice if they are unsure about suitability.

Q2	Comments are invited on the proposed timing of the changes to the polarisation regime
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17. We agree that it is helpful to introduce the changes for stakeholder pensions so that they are effective from the date of their introduction on 6 April 2001. For reasons explained, above, we do not support the proposal to change the regime for CAT-standard ISAs from the same date.

Q3	Comments are invited on the proposed scope of these rule changes
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18. See our response to Q1 for comments on scope.

19.Q4	Comments are invited on the proposed COB rule changes intended to give effect to these interim changes to the polarisation rules
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20. We have particularly focused on the communications implications of the proposed Conduct of Business rule changes, and our comments on these are given at Q8 below.

Q5	Comments are invited on whether a high level approach would be easier to understand and free from unintended side effects
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21. The “high level approach” referred to in the question would involve an amendment that simply said that where products were adopted by one provider firm from another they will be treated as if they were a product from a marketing group associate (as defined in CP45a). This would mean that the consumer got no special explanation of how the adopting firm was able to offer products from other providers, and could lead consumers to think that the relaxation in rules applied to all products. We would not support a high level approach.

Q6	Comments are invited on the proposed SRO rule changes intended to give effect to these interim changes to the polarisation rules.
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22. No comment.

Q7	Are provider firms content that section 16 and similar restrictions do not impose a constraint to the envisaged relaxation to the polarisation rules?
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23.No comment.

Q8	Comments are invited on the appropriateness of these consumer information measures
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24.The Panel will want to be reassured that consumers are given the information they need, at the right time, so that they are appropriately protected. The main reason why the Panel rejects the proposal that firms should be able to offer a multiplicity of other firms’ stakeholder and ISA products is that this represents a major change from the current regime but does not have the communication strategy warranted by such a change.

25.The potential for consumer damage is as follows:

26.Consumers who are already unsure about the polarisation status of a tied adviser will be further confused when that adviser is able to offer products from more than one company. This is likely to be a particular problem with consumers taking financial advice from banks. The harm in this case is that consumers may be less likely to seek out truly independent advice, because of the adviser’s apparent ability to offer a wider range of products.

27.There is scope for cynical abuse by some advisers who may choose to attract business by promoting access to low-cost adopted products but then offer a more expensive product from their own range

28.Consumers may be exposed to differential charges without understanding that certain charges (in particular, a charge for advice) are separate and “on top”.

29. Consumers may be confused by the distinction between information and advice. This particularly applies to the proposed disclaimer for direct sales that advice is not offered – we know from numerous pieces of research that consumers simply do not understand what “advice” in the regulatory sense is, and what the consequences are for them (eg in respect of redress) if they choose not to take advice.
30. Consumers may simply not understand what is being disclosed to them – particularly if firms end up adopting terminology such as “adopted packaged product”. This could leave some consumers unaware of the range of products available (blunting the pro-competition effects of change) or unaware of which complaints procedures apply to which products.
31. There is a number of steps that the FSA could take to reduce the potential for consumer confusion and harm. The extent to which it is proportionate to take these steps will depend on the mix of proposals that the FSA decides to adopt. If it decides to go ahead with proposals for multi-sourcing of stakeholder and ISA products then we believe that most if not all of the following will be required:
32. A requirement that firms must disclose clearly not only what they can advise on but also what they cannot. This would mean referring specifically to stakeholder pensions or CAT-standard ISAs as appropriate, rather than to some catch-all phrase (such as “adopted products”)
33. Requiring advisers to explain their status for different products, and the consequences of this for consumers. The exhortation in paragraph 5.9 of the CP that firms and intermediaries should not miss opportunities to explain and clarify the position for consumers is, we believe, weak. It is not reflected in rules or guidance, nor is the reference in the same paragraph to senior management responsibility to ensure that consumer queries are handled successfully.

34. Standardising new terminology, so that explanations are more easily communicated and are common to all firms
35. A proactive commitment from the FSA that it will seek to explain to consumers that there has been a change in the regime. This may involve, for example, producing a new factsheet (along the lines of ‘New ways of buying pensions ...’) that could be given to consumers at the point of sale.
36. Mystery shopping of pension sales, to ensure both that the correct information on stakeholder pensions is being given, and that personal pensions are not being recommended where stakeholders would be more appropriate.
37. We are also concerned about another aspect of communication with consumers. Provider firms without their own stakeholder product may decide not to offer another firm’s stakeholder, and in this case there will be a danger of consumer confusion and detriment. It may not be clear to consumers that there is a gap in the product range on offer. They may even approach the company intending to buy a stakeholder but lacking the right vocabulary, with the result that they are sold a standard personal pension. The possibility of confusion will be made worse if terms such as ‘stakeholder-friendly’ remain in use. The Panel believes that existing suitability and disclosure provisions will be inadequate to deal with this complicated situation, and serious consideration should be given to (a) a positive obligation on tied advisers to point out the absence of a stakeholder from their product range, and to indicate that they are available elsewhere, and (b) a ban on the use of terms such as ‘stakeholder-friendly’ to describe products which are not stakeholder pensions.

Q9	Should consumers be directed to contact the firm that sold the product or the firm that issued the product as the main contact point for complaints?
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38. The Panel believes that customers should be free to choose which firm to approach, but we agree that responsibility for handling the complaint must be clear and that a default point of contact is essential to avoid buck-passing. The arguments over which firm it should be are finely balanced, and are likely to be affected by market developments. On balance, the Panel believes that the firm that sold the product should be the party with ultimate responsibility for complaints. For a consumer buying from an otherwise tied adviser, this will be easier to understand than the alternative. We appreciate that as time passes the substantive focus of a customer's potential complaints will shift away from the advice received and towards the administration of the product, and hence from the seller to the product provider, and consumers might therefore find it odd to complain to the seller late in the life of a product. But the 'product-provider' option would make little sense to consumers early on and would put them at a disadvantage when complaining about advice.
39. Our view is that the consequences for consumers of any new regime should be spelt out clearly, and that responsibility for handling the complaint (both the initial contact point and thereafter) should be explicit.
40. We have one further concern in relation to complaints, prompted by the ability of provider firms to adopt products provided by an overseas regulated insurer (insurers authorised to carry on long term insurance business in Guernsey, Jersey, the Isle of Man, Iowa and Pennsylvania). The obligation in the draft COBs rule 5.1.4B states that the adopting firm must have no reason to doubt that the overseas person will deal with customers in the UK in an honest and reliable way. This issue is not dealt with in the main part of the Consultation Paper, and the background to it is not clear to us. But we obviously have some concern about the possibility that firms may adopt products – provided by UK or overseas firms - where consumers might be treated unfairly, and where there was no obligation on the adopting firm to perform any due diligence in advance.

## Other comments

41. There are two further areas of the CP that the Panel would like to comment on but which are not specifically covered by the questions asked.
42. Monitoring. The first of these areas relates to the FSA's plans to monitor how consumers and the industry respond to changes that it plans to implement in April. There are two reasons for wanting to do this. Firstly, to check that the new requirements are bedding down as planned and that firms are doing all that they can and should to make the situation clear to consumers. This could include an element of mystery shopping. The second reason is to see whether there is anything that can be learnt from how firms and consumers respond to the changes that would help inform the debate about the more radical changes which will be discussed later this year. We know that, on current timing, there is unlikely to be sufficient time to take lessons learnt in First Steps into account in the consultation on Next Steps. The further consultation should be delayed until the lessons learnt so far can be incorporated. Failing that, there is still value in feeding in those lessons while the debate on Next Steps is being held.
43. Research and analysis. We note and welcome the commitment in CP 80 to commission consumer research in the coming months to inform the development of the Next Steps consultation. In our response to the London Economics report we called on the FSA to undertake analysis in a number of areas, including but not limited to consumer research. We hope that the FSA will look again at our comments, so that the Next Steps debate can take place against a background of well-informed and well-grounded facts and hypotheses.

## 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?

#### Colin Brown (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.

#### Ann Foster (Vice-Chairman)

Ann is a former Director of the Scottish Consumer Council and has over twenty years' experience in the consumer movement. She is also a member of the Consumer Council for Postal Services. She was formerly Director of Government Affairs with Monsanto.

#### Jean Gaffin

Jean chaired OFTEL's Advisory Committee on Telecommunications for Disabled and Elderly People until 31 December 1999 and is currently a Non-Executive Director of Harrow & Hillingdon Healthcare NHS Trust. She has extensive experience of working on behalf of vulnerable consumers. Previous posts 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, set up in 1989 by Scottish Consumer Council. She has over thirteen 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 has also lectured and co-authored a Guide to Money Advice in Scotland. Yvonne is presently a member of the FSA Consumer Education Forum and Credit Union Consultation Panel. Yvonne is a member of the Scottish Consumer Council.

## **John Howard**

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

## **Vinod Kumar**

Vinod is a 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.

## **Nick Pearson**

Nick is the National Money Advice Co-ordinator for the Federation of Information and 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 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 on 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. Other research has included 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.

## **Harriet Hall**

Harriet is a solicitor with considerable experience of consumer policy and retail financial services. She is a former legal officer with the National Consumer Council, where she worked on the needs of low income consumers, banking, credit, mortgages, regulation of equity release and long-term care insurance, the Financial Services and Markets Bill and the proposed EU directive on distance selling of financial services.

## **Dianne Hayter**

Dianne is the Chief Executive of a new cancer charity, the Pelican Centre. She is the former Director of Corporate Affairs for the Wellcome Trust and was previously the Chief Executive of the European Parliamentary Labour Party and, prior to that, Director of Alcohol Concern. She has substantial voluntary sector and trade union experience.

## **How to contact the Panel**

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