Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Mr Kevin Dignan
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Dear Mr Dignan

Regulating Mortgages

This is the response of the Financial Services Consumer Panel (the Panel) to the Consultative Document issued by H M Treasury in February 2002. The Panel is an independent body established by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000 to advise the FSA Board on the interest and concerns of consumers. In addition the Panel also advises the government on the scope of financial services regulation.

First I should say that the Panel has warmly welcomed the Government's decision in December 2001 to extend the scope of the FSA to mortgage advice and general insurance regulation. We believe this will result in much better consumer protection than the previously proposed regime.

Definition of a mortgage
The Panel notes that the definition of a regulated mortgage contract remains unchanged from that approved by Parliament. The mortgages to be covered by the FSA regime will be those secured by first legal charges, on UK property, where at least 40% is residential accommodation to be occupied by the borrower or his or her immediate family. The Panel is concerned that the definition will not protect everyone who should be protected. These concerns are as follows:

First legal charge
The Panel believes that for many consumers there will be no difference in the potential for detriment (through mis-buying or mis-selling) between a first charge mortgage and a second (or further) charge mortgage or loan. The Panel is concerned that under the definition there is no protection for consumers with loans of over £25,000secured on their property by a second charge. These consumers will not be covered by the FSA or the Consumer Credit Act 1974. The Panel is concerned that the system of dual regulation for certain types of mortgage products is confusing for consumers and may make it difficult for consumers to be aware of and to exercise their rights under the regulations. The Panel believes that the FSA should regulate all loans secured on residential premises, including all second or subsequent mortgages and secured loans over £25,000.

The Department of Trade and Industry is currently consulting on the financial limits and exempt agreements of the Consumer Credit Act 1974 and the Panel hopes that the results of that consultation will be taken into account.

Loans secured on properties in the UK
The Panel is concerned by the exclusion of some consumers from regulatory protection by this definition - in particular consumers who have an income in £ sterling and therefore take out a mortgage in £ sterling from a UK lender on a property located outside the UK. In its previous response the Panel suggested that the Treasury should consider whether to supplement this test by including mortgages on non-UK properties where the mortgage is capable of being enforced in UK courts by the lender. The Panel would encourage the Treasury to revisit this issue.

Loans … at least 40% residential … occupied by the borrower or their immediate family
The Panel expressed concern that previous consultation documents did not provide any evidence on the success of this threshold in practice, or any indication of the number of properties that may be affected. The Panel believes that the 40% figure is too high and should be lowered. The Panel is also concerned by the exclusion of ex-spouses from the definition of 'immediate family'. The Panel believes that this is unjustified as it results in the exclusion of mortgages to purchase a property for an ex-spouse as part of a divorce settlement.

The Panel has stated that it would be more satisfactory to decide on the type of consumers who ought to be covered by mortgage protection and then construct a workable definition. The Panel believes that the Treasury should take this opportunity to construct an improved definition of mortgage contracts.

'Buy to let' mortgages
The Panel is concerned by the omission of 'buy to let' mortgages from regulation. As returns from equity markets have fallen, there has been a large increase in the use of 'buy to let' mortgages with many consumers being encouraged to enter this market as part of their investment and income strategy. The Panel believes that these consumers should be afforded some protection under the new regime and would urge the Treasury to address this issue.

Home Reversion Schemes
In addition the Panel notes that home reversion schemes, which allow mainly elderly consumers to release equity in their homes, will not be regulated whilst equity release schemes will be regulated. The Panel sees no reason for this differentiation. We think that, if home reversion schemes are not regulated, there is a risk that the market will promote them - rather than equity release schemes - merely to avoid regulation. The Panel is particularly concerned about this given the vulnerability of the main target market for these products.

Activities to be regulated
The Panel notes that paragraphs 14 - 15 of the consultation document states that arranging and advising on regulated mortgage contracts will only be regulated activities where they are carried on by way of business. Paragraph 15 gives

examples of activities that are not carried on by way of business and will not be subject to FSA regulation. The third example stated is 'advice and arranging in relation to regulated mortgage contracts carried out on an uncommercial basis, by Citizens' Advice Bureau and other community groups engaged in the welfare of their client base.' However on reading section 10, 'Advising on regulated mortgage contracts' of the proposed amendments to the Regulated Activities Order, it appears that such groups will be subject to FSA regulation.

The proposed amendment includes advice on the merits of a borrower varying the terms of a regulated mortgage contract. In advising clients on mortgage debts, advice agencies will sometimes, for example, explore the option of rolling arrears into the mortgage or the extension of the mortgage term to pay the arrears off. The Panel believes that the Treasury should carefully consider whether advice agencies should be subject to regulation.

Credit Brokers fees
The Panel can see no reason to disapply the £5 maximum fee limit for transactions which are not completed. The Panel believes that the fee has not resulted in brokers leaving the market and has provided a safeguard for consumers.

Variations to a mortgage
Paragraph 27 of the consultation paper lists possible variations which may be included within the conduct of business rules made by the FSA. The Panel suggests that increases in charges for redemption and de-coupling rates from Bank of England rate or the London Inter-Bank Offered Rate should also be added.

Appointed representatives
The Panel will be seeking appropriate training and competence requirements for appointed representatives.

Yours sincerely,

Colin Brown
Chairman
FS Consumer Panel

cc. Christine Farnish, FSA
Sarah Wilson, FSA

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