

<i>Foreword</i>	3
<i>Executive summary</i>	5
<i>Chapter 1: The Panel</i>	8
<i>Chapter 2: The context for our work</i>	11
<i>Chapter 3: Review of the year</i>	20
<i>Chapter 4: Issues for the coming year</i>	44
<i>Appendix 1: Terms of reference of the Financial Services Consumer Panel</i>	48
<i>Appendix 2: Who is on the Panel?</i>	50
<i>Appendix 3: Publications and press releases</i>	53
<i>Appendix 4: Topics discussed by the Panel</i>	57
<i>Appendix 5: Panel members serving as consumer representatives on other FSA bodies</i>	62
<i>Appendix 6: Meetings with external bodies</i>	63
<i>Appendix 7: Comments on FSA response to Consumer Panel Annual Report 2000</i>	65
<i>Appendix 8: Glossary of terms and abbreviations</i>	70
<i>Contact details</i>	77

This is the third report of the Financial Services Consumer Panel and it covers the 15-month period from January 2001 to March 2002. Our aim here is to combine an account of the Panel's activity, a summary record of the advice we have given to the Financial Services Authority (FSA), and an assessment of the FSA's effectiveness in pursuing its consumer-related objectives.

Since our last report, the FSA has received its full legal powers. For the first time in the UK, a single financial regulator is charged with maintaining market confidence, promoting public understanding, securing appropriate consumer protection, and reducing financial crime. As part of the accountability system for this powerful new regulator, the Financial Services Consumer Panel has been established to represent consumers' interests – and the FSA has been given an obligation to listen. Under the Financial Services and Markets Act 2000, the FSA must consider the Panel's representations and, if the regulator disagrees with the Panel's views or proposals, it must give its reasons in writing. In practice, the FSA has shown itself keen to engage with the Panel and to respond to our suggestions, and we have had no reason to remind the FSA of its new legal obligation, or to invoke the Act to extract a response.

As Chapter 3 shows, this has been a very full year for the Panel. It has been a time of rapid change in the world of financial services, partly because of the continued assembly and refinement of the new regulatory system, but also because of developments in products and government policy towards savings and pensions. Low inflation, share price volatility and low investment returns have presented a new and challenging set of market conditions. For consumers, the importance of financial regulation to their own lives has been brought home by a number of events, including the Equitable Life crisis and the likelihood that many people's endowment policies will not be sufficient to pay off their mortgages. There have been many consumer issues on which the FSA has sought our advice, and many others which we have raised ourselves. As we predicted in our previous report, the Panel's work has broadened to include more scrutiny of prudential regulation, and we are handling more 'live' issues of consumer protection and consumer awareness. It is still necessary to spend much of our time advising on policy development, but the balance has tipped further towards the FSA's practical activity as a regulator.

We could not have dealt with so many different subjects without the assiduous help of our staff. I should like to thank the Panel's secretariat for giving us the support and technical means to argue our case (and to make sure the right people hear it), while always working positively to ensure the Panel's independence from the FSA.

The Panel's first two reports dealt with the calendar years 1999 and 2000, but we have decided now to bring our reporting period into line with the FSA itself, hence the extended period for this report. From next year onwards, the annual reporting period will be April to March.

A handwritten signature in black ink, appearing to read 'Colin Brown', with a long horizontal flourish extending to the right.

Colin Brown

Chairman

Financial Services Consumer Panel

SEE GLOSSARY (APPENDIX 8) FOR DEFINITION OF TERMS HIGHLIGHTED IN COLOUR.

1. The Financial Services Consumer Panel ('the Panel') was set up by the FSA in December 1998, and was placed on a statutory footing by the Financial Services and Markets Act (2000). This is our third report, which covers the fifteen months from January 2001 to March 2002. The reporting period has been extended this year as a transition to future years when the Panel will report on the financial year. Our full terms of reference are at Appendix 1 and a list of Panel members is at Appendix 2.
2. This report reviews some of the work we have carried out from January 2001 to March 2002 to achieve our terms of reference, and provides an assessment by the Panel of the FSA and of events over this period. The report is structured as follows:
 - Chapter 1: The Panel – this chapter explains the Panel in more detail and sets out our budget and expenditure from January 2001 to March 2002.
 - Chapter 2: The context for our work – this chapter reviews the regulatory activities that have shaped the Panel's work and sets out key consumer characteristics we are aware of through the research that informs our views.
 - Chapter 3: Review of the year – in this chapter we report on the Panel's key achievements and our key recommendations to the FSA.
 - Chapter 4: Issues for the coming year – here we look forward to regulatory developments, consumer needs and market developments over the next year that will influence the Panel's work. We also set out our priorities for our work.
3. We submit formal responses to consultation papers from the FSA, government and other organisations such as the Office of Fair Trading or the European Commission. In addition, we communicate informally with the FSA through meetings and letters, raising issues of consumer concern. Appendix 3 lists our publications and press releases. Our website gives an overview of our work and you can access this on www.fs-cp.org.uk.
4. Our work has, in particular, been influenced by three general themes that emerged in various discussions since the beginning of 2001. These themes will be reflected throughout our report. First is the importance of independent and authoritative advice for all consumers. Secondly we have spent some time considering how the FSA deals with crises in the market, such as the Equitable Life affair. Thirdly, the Panel has been drawing attention to the need for clear regulatory boundaries, both in terms of the

distinction between regulated and unregulated activities and in terms of the responsibilities of different regulators.

The Panel's key achievements and recommendations

5. Over the last 15 months, our work has covered a wide variety of subjects, influencing FSA policy and activity, highlighting important issues for the regulators and undertaking our own research. Here we highlight some key achievements and recommendations. Chapter 3 deals with these, and other issues, in more detail.
6. **Equitable Life** – The Equitable Life crisis resulted in major consumer detriment and raised serious questions about the past regulation of the company and of the life insurance industry in general. We asked Equitable Life to write directly to policyholders rather than rely on newspaper adverts, which they did. We also urged the FSA to take a more active interest in the way that Equitable Life was dealing with complaints. Our later research suggested that policyholders did feel that the information from Equitable Life improved over time. We urged the Treasury to launch an investigation of the whole history of the regulation of Equitable Life. We were pleased that the Treasury launched its investigation (as the Penrose Inquiry).

In future, the FSA must ensure that their staff are equipped and empowered to challenge firms which are seeking to hide their problems.

7. **Mortgage endowment mis-selling** – Following our research, we urged the FSA to commission its own research into how firms deal with mortgage endowment complaints. FSA research supported our indicative finding that consumers were dissatisfied with the way complaints were dealt with by firms, and the FSA is now paying closer attention to firms' treatment of mortgage endowment complaints. There is also a wider project on all firms' complaint handling systems (one of the FSA's priorities for 2002/3).
8. **Consumer representation in Europe** – We asked the FSA for briefings on a range of European issues, contributed to the FSA's policy development and submitted our own responses to consultations from Europe. We have also been looking at ways to raise awareness in Europe of the need to consult consumers and take account of their views. Moreover, we have been considering how to improve the co-ordination of consumer representation to make it more effective. This is a difficult task but we have seen some progress in the last year with the FSA and European regulators (e.g. [Committee of European Securities Regulators](#)) recognising the need for more effective consumer input into the European regulatory process. This will continue to be one of our priorities in the coming year.
9. **Financial promotion/advertising** – The financial promotions review has picked up on the main issues we raised last year, in particular the need for balanced presentation of risks and benefits, and how important it is that firms and the public have a clear understanding of the standards that the FSA expects. We also emphasised to the FSA that any recommendations must be founded on consumer research and testing and we are pleased that the FSA has made extensive use of these.

The [Past Performance](#) Task force was set up to tackle the regulation of advertisements that make a major selling point of funds' past returns. We welcomed its recommendations and note that the FSA is already taking them forward, and – in addition to focused monitoring – has published a consultation paper on rule and guidance changes.

10. **Access to advice** – In reforming the [polarisation](#) regime, one of the FSA's main objectives should be to ensure that all consumers will have access to objective, high quality financial advice. The FSA must also ensure that a new regime is easy for consumers to use and to understand. In particular, the FSA should consider how this review can broaden access to advice from the well-off experienced investors to the financially disadvantaged and inexperienced.

The FSA must also promote the use of independent [generic advice](#). We believe that, given that government's policies increasingly place the onus on individuals to provide for their own financial futures, it is essential that general financial planning advice is widely available. We believe the FSA could play an important role in promoting generic advice and encouraging the Treasury to incorporate this into its planning, e.g. the Savings and Assets initiative.

11. **Communication to consumers** – The FSA should improve the way that it communicates with consumers about its activities and about firms' situations, particularly in times of crisis. The FSA should develop a coherent and transparent approach which outlines what information it makes available and in what circumstances, taking account of consumer protection and financial stability considerations. The experience of [Equitable Life](#) (see paragraphs 3.53-3.59) and the '[windfalls](#)' test case (see paragraphs 3.49-3.52) demonstrate how consumers could benefit from early information. The FSA should also consider how the information is made available. Our research on Equitable Life suggests that firms and the FSA could help consumers by giving the media clear and accurate information.

Chapter 1: The Panel

Panel membership 9

Panel activities 9

This report 10

Our budget 10

SEE GLOSSARY (APPENDIX 8) FOR DEFINITION OF TERMS HIGHLIGHTED IN COLOUR.

- 1.1 The Consumer Panel was set up by the FSA in December 1998. It was placed on a statutory footing when the relevant parts of the Financial Services and Markets Act 2000 (the Act) came into force in June 2001.
- 1.2 The Act requires the FSA to maintain effective arrangements for consulting consumers, including the setting up of a panel of people whose role is to represent the consumer interest. We:
 - a) represent the interests of consumers by advising, commenting and making recommendations on existing and developing FSA policy and practices as appropriate;
 - b) speak on behalf of consumers by reviewing, monitoring and reporting to the FSA on the effectiveness of its policies and practices in pursuing its duties; and
 - c) review and influence actual and potential developments in financial services to enable us to fulfil (a) and (b) effectively.
- 1.3 Our full terms of reference are in Appendix 1.

Panel membership

- 1.4 Members are appointed to the Consumer Panel using an open recruitment process based on *Nolan Principles*. The membership brings together a wide range of relevant experience. This includes financial services regulation, working with vulnerable consumers, consumer protection, consumer education, front-line money advice, legal expertise, competition policy, public policy analysis, market research and media. Members are listed in Appendix 2.

Panel activities

- 1.5 We meet once a month to discuss significant policy issues, regulatory events and our work programme. In addition, we have three working groups, which meet once a month to discuss a wider range of issues. The topics covered are determined either by policy developments within the FSA or other bodies, or by us raising a particular concern or asking the FSA to explain how it is dealing with a specific issue.
- 1.6 As well as submitting formal responses to consultation papers, we can improve the consumer information and protection aspects of a consultation paper at the pre-consultation stage, through the working groups or our meetings. We also communicate with the FSA informally through meetings and letters, raising issues of consumer concern, e.g. the need for more historical information on the *FSA Register*. Our website gives an overview of our interactions with the FSA on a range of issues. You can access our website on www.fs-cp.org.uk.

- 1.7 We also constantly review our own knowledge and performance and invite people, such as FSA directors, to brief us on work within their area. We have recently undertaken a skills audit, to identify the skills and experience of our members and gaps that could be addressed in the coming year.

This report

- 1.8 From this year (2002), we are shifting our review period to align it with the FSA's own review period and financial cycle. So, this report covers a fifteen-month period. It summarises the key activities of the Panel and assesses the FSA's effectiveness between 1 January 2001 and 31 March 2002.

Our budget

- 1.9 The FSA's Board agrees a budget for Panel members' fees, expenses and any work we commission. The FSA also gives us staff to support our work. Our budget (including FSA staff costs) for the 15 months ending 31 March 2002 was £758k. Actual expenditure (including FSA staff costs) for this period was £586k (see table 1.1).
- 1.10 The difference between the actual and budgeted expenditure is attributable to an underspend on research. During the period covered by this report we have found ways of making our research more targeted and we have not undertaken our general survey which was previously carried out annually.

	Budget	Actual	Actual
	Jan 2001–Mar 2002	Jan 2001–Mar 2002	Jan 2000–Dec 2000
	(15 months)	(15 months)	(12 months)
	(£000)	(£000)	(£000)
Panel members' fees and expenses	232	226	146
<i>Fees¹</i>	<i>206</i>	<i>190</i>	
<i>Expenses</i>	<i>26</i>	<i>36</i>	
FSA staff ²	203	195	136
Professional fees	296	150	247
<i>Research³</i>	<i>255</i>	<i>71</i>	
<i>Other⁴</i>	<i>41</i>	<i>79</i>	
Sundries ⁵	27	15	10
Total	758	586	539

- Panel members have been paid flat fees as follows: £14k pa to two members whose minimum commitment is 45 days per year; £11k pa to three members whose minimum commitment is 35 days per year; and £8k pa to six members whose minimum commitment is 25 days per year. The Panel Chairman receives £26k pa and the Vice-Chair receives £15.5k pa.
- During the period, the Panel was supported by a dedicated Secretariat of four full-time FSA staff (and, from 11 March 2002, by a part-time Press and Public Relations Officer).
- Including research on endowment mortgages, Equitable Life and basic banking.
- Includes costs associated with the Annual Report, a study on advice and information, publicity and Panel training.
- Includes costs of non-FSA meeting venues and facilities, couriers, catering (FSA and external).

Table 1.1: The Consumer Panel's budget and expenditure for January 1, 2001 – March 31, 2002

Chapter 2: The context for our work

Consumers and products 13

Consumer understanding 14

Shopping around 16

Financial advice 17

FSA awareness 17

SEE GLOSSARY (APPENDIX 8) FOR DEFINITION OF TERMS HIGHLIGHTED IN COLOUR.

- 2.1 To promote activities that will increase consumer protection, awareness and understanding, we need to understand the situation and perspective of consumers. To do this, we commission our own research and use the research of others to understand consumer behaviour and perceptions and identify our own priorities and influence the FSA's. This chapter sets out the context for our work in terms of consumer knowledge, understanding and experience. In Chapter 3 we go on to discuss specific issues we have addressed in the last 15 months.
- 2.2 Our response to the [Sandler Review](#)¹ began by emphasising that consumers are not a homogeneous group. They vary in their knowledge, experience and expectations. Research indicates, unsurprisingly, that wealthy people are generally the most financially literate and confident. But it is not just knowledge that varies according to social group; priorities also differ. The better-off may focus on saving and increasing their wealth, and be prepared to take risks to do so; lower income groups, on the other hand, are more likely to be concerned about safeguarding their existing resources. So, if they do buy financial products, people from lower income groups are less likely to take risks. We, in advising the FSA, must take account of this diversity and consider what types of consumers are likely to be affected by a proposal.
- 2.3 In 2001 we did not conduct a general survey, as we have done previously, because few of the changes are significant year on year. Instead we are relying on other data sources and research we have commissioned² on a limited number of key indicators, so comparisons can be made with earlier reports. In future, we will be carrying out periodic surveys and more targeted research. In the remainder of this chapter we highlight some results of research into consumer knowledge and experience which provides the context for our work. We have discussed some of the research results by social grade³.

The NOP Financial Research Survey provides an indication of how these social grades are represented across the adult population in Great Britain (NOP FRS January-June 2001):

- A 2.4%
- B 15.7%
- C1 28.6%
- C2 21.3%
- D 15.1%
- E 16.9%.

1 HM Treasury's [Sandler Review](#) Team consultation - Review of Medium and Long-term Retail Savings

2 Questions were placed on the BMRB Access omnibus survey and are compared with the Consumer Panel annual survey 2000, which was also carried out by BMRB.

3 Social grades A - E are defined as follows:

A Upper middle class: higher managerial, administrative or professional

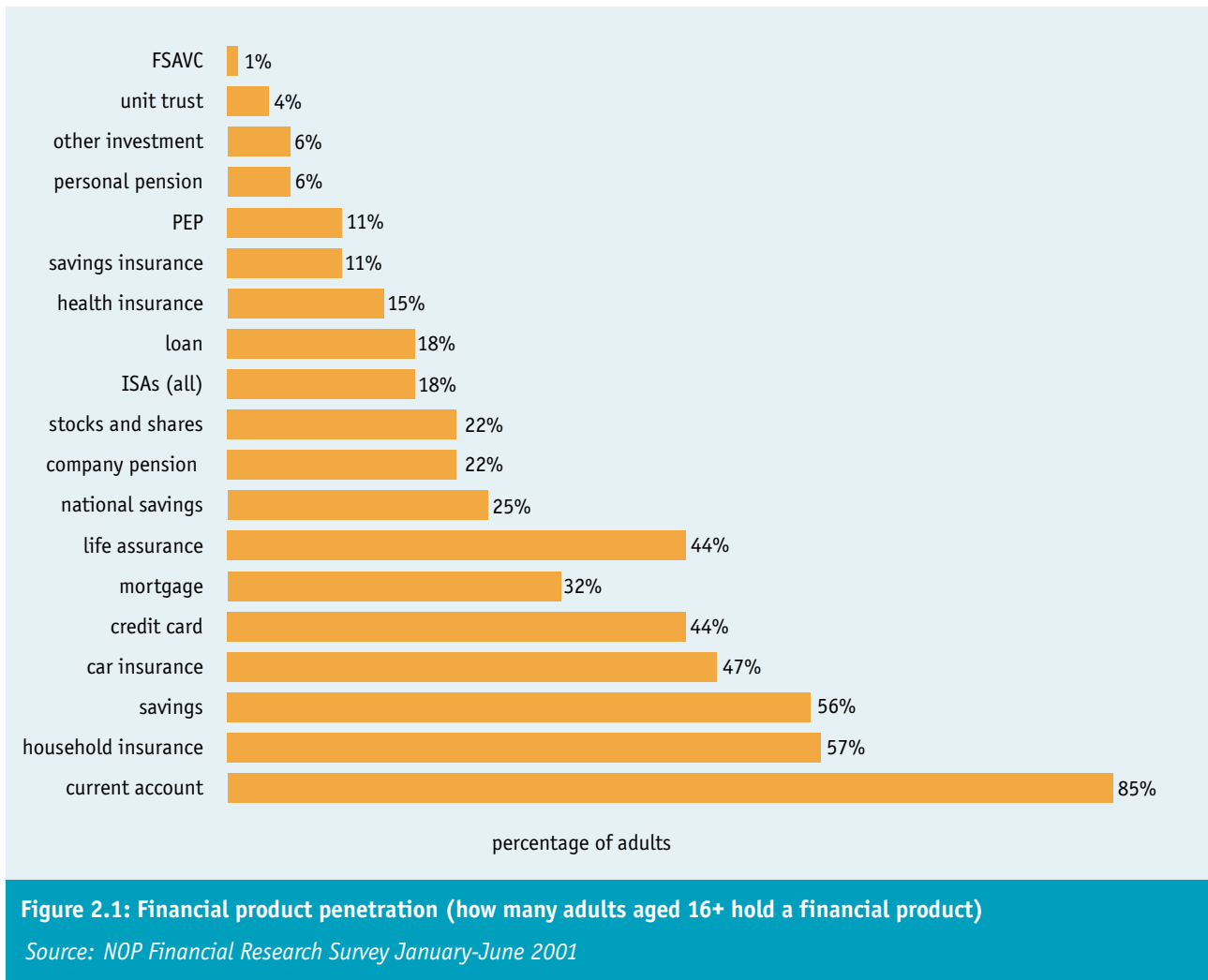
B Middle class: intermediate managerial, administrative or professional

C1 Lower middle class: supervisory or clerical and junior managerial, administrative or professional

C2 Skilled working class: skilled manual workers

D Working class: semi- and unskilled manual workers

E Those at lowest levels of subsistence: state pensioners or widows (no other earner), casual or lowest grade workers.



2.4 Figure 2.1 shows what proportion of people hold various financial products. Fifteen per cent of the population still do not own a current account, and while most of these are in the lowest paid occupational groups, 29% are in the C1 and C2 groups⁴. Only a small proportion of the population have investment products, such as unit trusts, most of these being in mid to high income groups. Whilst 18% of respondents have ISAs, only 5% have equity ISAs.

⁴ NOP Financial Research Survey, interviewed 29,848 adults in Great Britain aged 16 and over from January-June 2001.

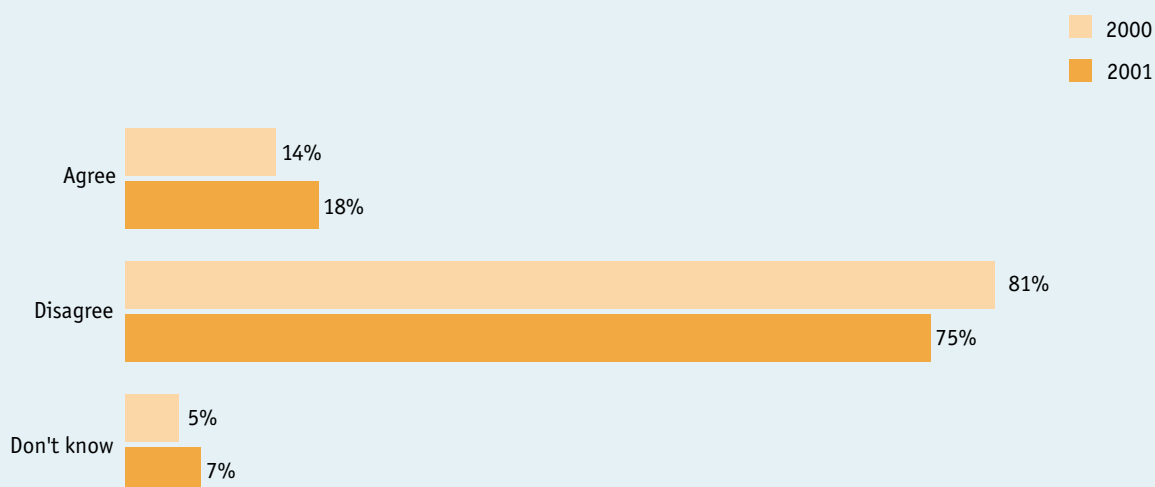


Figure 2.2: Response to the statement: The best time to invest in a pension is in your 40s

Source: BMRB Consumer Panel annual survey 2000, and Access omnibus survey September 2001 (Sample of financial decision-makers aged 21 and over)

- 2.5 Nearly one in five (18%) people agreed with the statement ‘the best time to invest in a pension is in your 40s’. There is a marked difference in the answers to this question depending on the age group: 29% of people 65 + agreed with the statement, compared to only 9% of 21-34 year olds. However, there is a gap between knowledge and action, as many younger people, for various reasons, have no pension provision in place. Groups D and E are over-represented in those who have no pension provision. Of those who do not have any pension provision, 39% are in groups D and E, which comprise only 32% of all adults in Great Britain.
- 2.6 Over the past few years there has been a dramatic increase in the number of people with access to telephone banking and the past three years have seen a significant increase in the number of people with Internet access to their bank. At the same time there has been a fall in the number of local branches.⁵ Currently more men than women bank online but the take-up by women is growing faster.⁶

Consumer understanding

- 2.7 As the government places more onus on consumers to provide for their own futures, the need for consumer understanding becomes increasingly important. We are concerned that consumers should understand some of the fundamental factors of the financial system.

5 British Bankers’ Association.

6 Mori on behalf of Nationwide Building Society (May 2001).

2.8 Our research shows that the majority of people who have bought financial products consider that obtaining the products is straightforward. Cash ISAs and savings accounts were considered straightforward by 75% of purchasers. However, around half said that it was difficult to understand the charges levied and 62% said that it was difficult to compare charges for mortgages.⁷

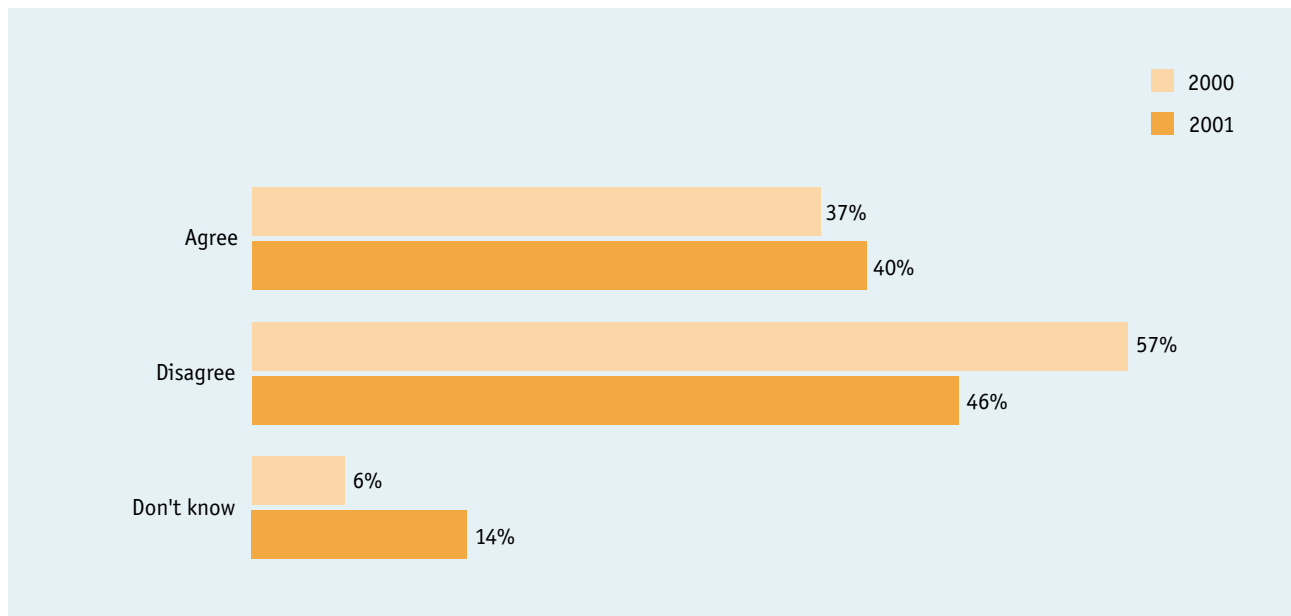


Figure 2.3: Response to the statement: Charges are irrelevant it's the performance of the investment that counts

Source: BMRB Consumer Panel annual survey 2000, and Access omnibus survey September 2001. (Sample of financial decision-makers aged 21 and over)

2.9 One concern is that our research (figure 2.3) suggests that 40% of consumers may not appreciate the impact charges can have, particularly in the early years of a product. The young and the old were more likely than other groups to believe that performance, not charges, is the only thing that counts. But there were no significant differences between different social grades despite product holdings and financial sophistication levels being very different.

2.10 Most advisers supplied their clients with documents explaining the key features of the product they proposed to buy. FSA research suggests that consumers do not pay a great deal of attention to key features documents.⁸ In addition, our research indicates that around half of consumers find it difficult to understand financial documents.⁹

7 Consumers in the financial market, Financial Services Consumer Panel Annual Survey 2000.

8 Informed decisions? How consumers use key features: a synthesis of research on the use of [product information](#) at the point of sale, FSA Consumer Research Report 5, November 2000.

9 Consumers in the financial market, Financial Services Consumer Panel Annual Survey 2000.

Shopping around

- 2.11 Although, in principle, consumers say they recognise the value of shopping around before buying a financial product, in practice they tend not to do so: 38% of consumers said that they got information from only one company before buying a product, although 13% said that their adviser did the shopping around for them.
- 2.12 Barriers to shopping around include not understanding the financial literature, and not believing that shopping around makes a significant difference. Half of those questioned said that they find financial documents difficult to understand and our research, in figure 2.4, suggests that 43% do not recognise that there are wide differences between products and consequently may not see the value in shopping around. The FSA's [polarisation](#) research shows that brand names, personal recommendations, familiarity and convenience are important factors for consumers deciding on a product provider¹⁰. This suggests that consumers will often take advice from a source they trust and that is readily available, rather than shopping around themselves.

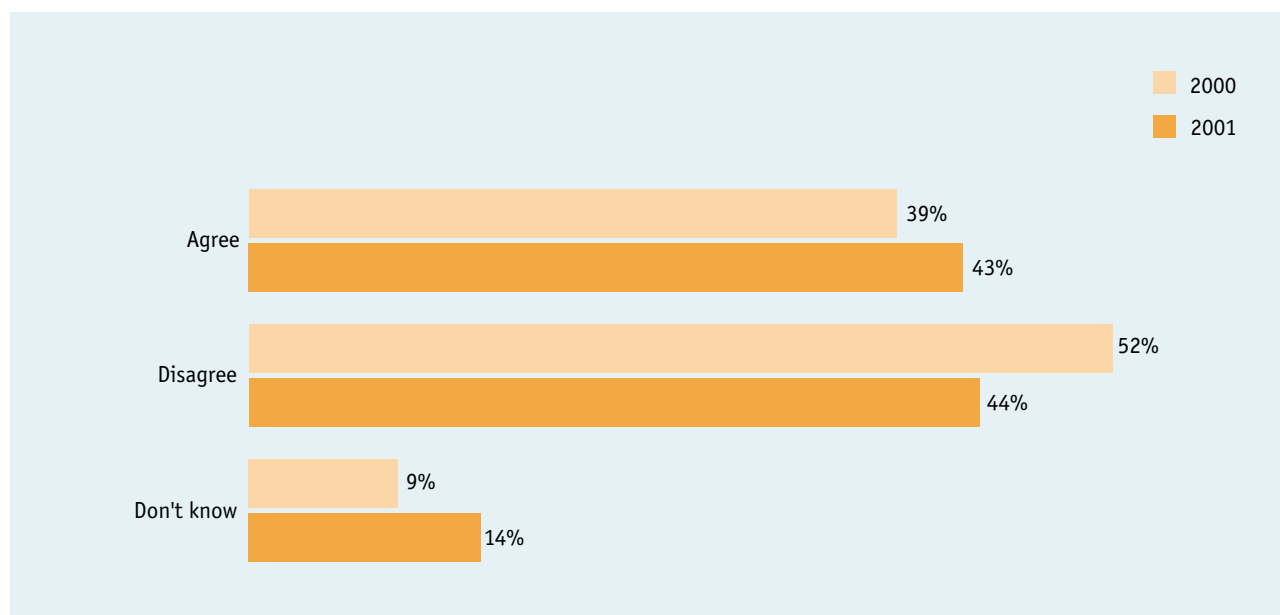


Figure 2.4: Response to the statement: The financial market is so competitive that there is little difference between the costs and charges made by different companies

Source: BMRB Consumer Panel annual survey 2000, and Access omnibus survey, September 2001.
(Sample of financial decision-makers aged 21 and over)

¹⁰ Polarisation: Consumer Research, FSA report of research studies carried out by IFF Research Ltd, ORC International Ltd, NOP Research, January 2002.

Financial advice

- 2.13 Consumers generally have a reasonable understanding of the difference between tied and independent advisers, particularly if they have recently bought a financial product. Consumers are more likely to take advice from a bank than from an independent financial adviser (IFA) and although they would prefer independent advice, they are sceptical that truly independent advice really exists. The main reason given by those that go to a bank for advice was that they know or trust them (62%), whereas those that take advice from IFAs said that they do so because they are independent (49%). Consumers tend not to see that advice is a product for which they might pay, and where the adviser charges commission rather than a fee, they consider the advice to be free.¹¹
- 2.14 Among more active investors, there is increasing use of discount brokers, who will not usually offer advice. For example, in a survey of active investors, 42% said they would purchase an investment fund from a discount broker, with 38% buying direct from the fund manager. 27% of investors buy investment funds through an IFA.¹²

FSA awareness

- 2.15 We have collected information about awareness of the FSA and other financial regulatory bodies over the last few years. We wanted to know if consumers were aware that the FSA is the financial regulator, either with or without prompting. Some respondents were not able to recall the name of the FSA unprompted, but when asked said they had heard of the FSA (figure 2.5).
- 2.16 Forty-seven per cent of respondents recognised the FSA either with or without prompting. This is not a significant change from last year but it follows a large increase in name recognition between 1999 and 2000 and is consistent with results for similar regulatory bodies. Twenty per cent of people were able to mention, unprompted, a financial regulator but the FSA was the organisation of which people were most aware.

11 Polarisation: Consumer Research, FSA report of research studies carried out by IFF Research Ltd, ORC International Ltd, NOP Research, January 2002.

12 Unit Trust Information Service Market Research Survey and Report, AUTIF, March 2001.

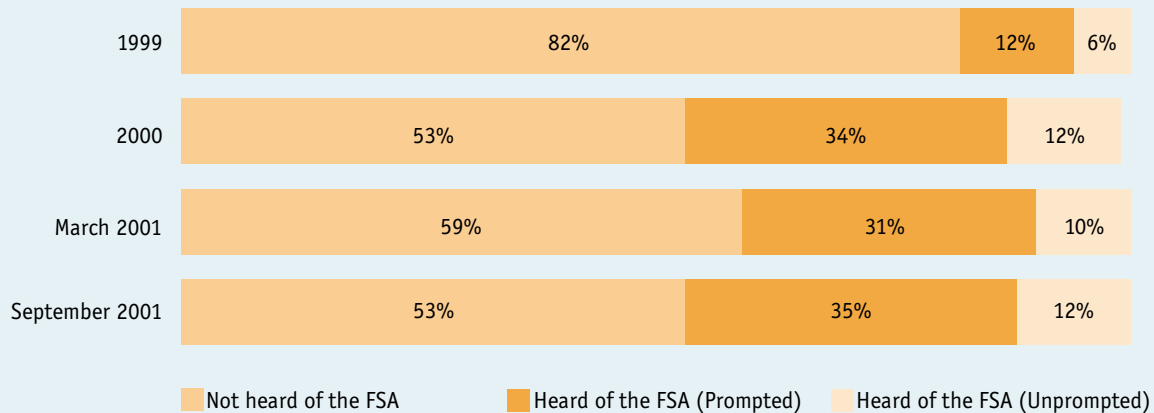


Figure 2.5: Public recognition of the FSA

Source: MORI Financial Services for Consumer Panel annual survey 1999 (carried out in October 1999), BMRB for Consumer Panel annual survey 2000 (carried out in September and October 2000), BMRB Access omnibus survey, September 2001, and National Statistics omnibus survey, March 2001. (Sample of financial decision-makers aged 21 and over)

2.17 Another helpful source of data is the level of contact that consumers have with the FSA via the Helpline (figure 2.6) and via letters and emails. Although there was a fall in the number of calls between 2000 and 2001, this was largely the result of a peak in early 2000 due to a combination of endowment and FSAVC enquiries. Letters and emails have both increased in volume (figure 2.7).

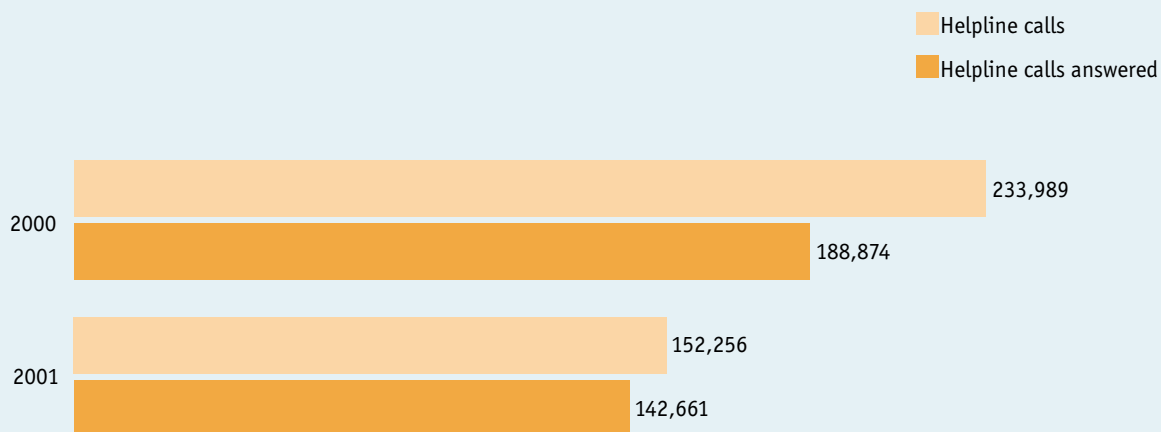


Figure 2.6: Usage of Consumer Helpline

Source: FSA Consumer Intelligence Department

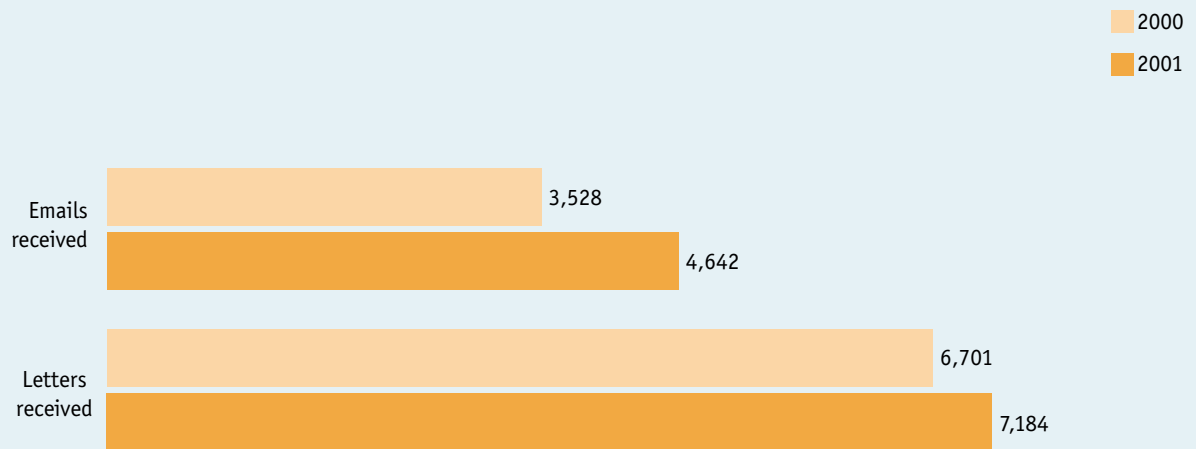


Figure 2.7: Number of consumer queries by e-mail or letter

Source: FSA Consumer Intelligence Department

Chapter 3: Review of the year

<i>The Panel's key achievements and recommendations</i>	22
<i>FSA theme projects and reviews</i>	24
<i>FSA rules and guidance</i>	30
<i>FSA in action</i>	33
<i>Government and European policy</i>	39
<i>Financial Ombudsman Service</i>	42

SEE GLOSSARY (APPENDIX 8) FOR DEFINITION OF TERMS HIGHLIGHTED IN COLOUR.

- 3.1 Over the last 15 months, our work has covered a wide variety of subjects, influencing FSA policy and activity, highlighting important issues for the regulators and undertaking our own research. This chapter covers the events and issues that we think have the most significant consumer impact, long-term implications and those which indicate trends that we have identified in the FSA's work. Appendix 4 gives a complete list of topics on which we commented in the last 15 months¹.
- 3.2 Three general themes emerged in the various discussions since January 2001.
- **The importance of independent and authoritative advice:** This was highlighted by the substantial attention that the FSA has had to devote to mis-selling scandals, and by the review of polarisation, which brought into sharp focus the lack of objective advice, particularly for lower and middle income consumers. It has also been a key factor in our discussions on mortgages and the Treasury's Savings and Assets initiative.
 - **How the FSA deals with regulatory crises:** The **Equitable Life** crisis raised questions about the circumstances in which the regulator should tell consumers about problems in a firm, and the way in which this should be done. We have been keen to improve the information given to consumers – either by the firm itself or by the FSA – in these circumstances.
 - **The need for clear regulatory boundaries:** This has two separate elements. Firstly, there is a need for a clear and well-understood distinction between regulated and unregulated activities. And secondly, there is a need for a clear distinction between the responsibilities of different regulators.
 - Consumers and practitioners need a clear understanding of what is and is not a regulated activity. This is important, firstly to ensure that all firms undertaking regulated activities are authorised by the FSA; and secondly so that consumer advice organisations, which are not authorised, have a clear understanding of the types of advice that they can and cannot give. Lack of clarity about the exact scope of regulated activities can result in firms unwittingly doing regulated activities without FSA supervision. It can also mean that advice bodies are too cautious in their approach and so hold back from giving all the advice to consumers that they could be giving.
 - We were concerned about examples where activities in different regulatory bodies such as FSA, HM Treasury, European Commission, Department for Work and Pensions overlapped. For example, in the past year the **polarisation** review, **Sandler Review** and Savings and Assets for All raised related issues. We are also concerned that all these bodies should improve co-ordination and use a consistent approach.

1 The Panel's responses to all consultations are available on the Panel website www.fs-cp.org.uk or on request from the Consumer Panel secretariat at the FSA.

The Panel's key achievements and recommendations

Equitable Life

- 3.3 The [Equitable Life](#) crisis resulted in major consumer detriment and raised serious questions about the past regulation of the company and of the life insurance industry in general.

We asked Equitable Life to write directly to policyholders rather than rely on newspaper adverts, which they did. We also urged the FSA to take a more active interest in the way that Equitable Life was dealing with complaints. Our later research suggested that policyholders did feel that the information from Equitable Life improved over time. We called for an investigation of the whole history of the regulation of Equitable Life. We were pleased that the Treasury did this, although there was some delay before the investigation was established (as the Penrose Inquiry).

The FSA review of insurance regulation (the Tiner project) must deliver a new regime which will prevent firms from giving misleading information to the regulator and to the public. This must also ensure that FSA staff are equipped and empowered to challenge firms which are seeking to hide their problems.

We discuss Equitable Life in more detail in paragraphs 3.53-3.59.

Mortgage endowment mis-selling

- 3.4 Following our research, we urged the FSA to commission its own research into how firms deal with [endowment mortgage](#) complaints. FSA research supported our indicative finding that consumers were dissatisfied with the way complaints were dealt with by firms, and the FSA is now paying closer attention to firms' treatment of mortgage endowment complaints. There is also a wider project on all firms' complaint handling systems (one of the FSA's priorities for 2002/3).

We discuss endowment mortgages in more detail in paragraphs 3.34-3.36.

Consumer representation in Europe

- 3.5 The influence of Europe over financial regulation in the UK has become increasingly apparent to us and we have been looking for ways to improve consumer representation in Europe. We asked the FSA for briefings on a range of European issues, contributed to the FSA's policy development and submitted our own responses to European consultations. We have also been looking at ways to raise awareness in Europe of the need to consult consumers and take account of their views. Moreover, we have been considering how to improve the co-ordination of consumer representation to make it more effective. This is a difficult task but we have seen some progress in the last year with the FSA and European regulators (e.g. [Committee of European Securities Regulators](#)) recognising the need for more effective consumer input into the European regulatory process. This will continue to be one of our priorities in the coming year.

Financial promotion/advertising

- 3.6 In last year's annual report we criticised the FSA for not reviewing the [financial promotion](#) regime and we were pleased that they set up a review during the last year. The financial promotions review has picked up on the main issues we raised last year, in particular the need for balanced presentation of risks and benefits, and how important it is that firms and the public have a clear understanding of the standards that the FSA expects. We also emphasised to the FSA that any recommendations must be founded on consumer research and testing and we are pleased that the FSA has made extensive use of these.

A significant element of this review was the creation of the [Past Performance](#) Task Force. The task force was set up to tackle the regulation of advertisements that make a major selling point of funds' past returns. So, we welcomed it and its final recommendations. We note that the FSA is already taking forward the recommendations, and – in addition to focused monitoring – has published a consultation paper on rule and guidance changes.

Access to advice

- 3.7 In reforming the [polarisation](#) regime, one of the FSA's main objectives should be to ensure that all consumers will have access to objective, high-quality financial advice. The FSA must also ensure that a new regime is easy for consumers to use and to understand. In particular, the FSA should consider how this review can broaden access to advice, from the well-off experienced investors to the financially disadvantaged and inexperienced.

The FSA must also promote the use of independent [generic advice](#). We believe that, given that government's policies increasingly place the onus on individuals to provide for their own financial futures, it is essential that general financial planning advice is widely available. We believe the FSA could play an important role in promoting generic advice and encouraging the Treasury to incorporate this into its planning, e.g. the Savings and Assets initiative (see paragraphs 3.81-3.84).

We discuss polarisation in more detail in paragraphs 3.9-3.15.

Communication with consumers

- 3.8 The FSA should improve the way that it communicates with consumers about its activities and about firms' situations, particularly in times of crisis. The FSA should develop a coherent and transparent approach which outlines what information it makes available and in what circumstances, taking account of consumer protection and financial stability considerations. The experience of [Equitable Life](#) (see paragraphs 3.53-3.59) and the '[windfalls](#)' test case (see paragraphs 3.49-3.52) demonstrate how consumers could benefit from early information. The FSA should also consider how the information is made available. Our research on Equitable Life suggests that firms and the FSA could help consumers by giving the media clear and accurate information.

FSA theme projects and reviews

In this section we discuss [polarisation](#), FSA Themes, [disclosure](#) of product information, training and competence, the [with-profits review](#) and mortgage endowments.

Polarisation

The Panel does not see the existing polarisation regime as a vital consumer protection mechanism and so we welcome the review. The key indicator of success of depolarisation will be the extent to which the new regime improves the position of the large number of people who go to banks to buy [packaged products](#) and we have a number of concerns about whether the proposals in consultation paper 121 will deliver this. We have also expressed concern that the FSA's proposals focused on a redesign of the distribution system and failed to address the need to ensure that advice on general financial planning is available to low and middle income consumers.

- 3.9 In 2001, the FSA continued its review of [polarisation](#) with consultation paper 80, proposing limited amendments to the polarisation regime. We agreed that, given the compulsory minimum standards for [stakeholder pensions](#) (SHP), product providers who did not offer their own stakeholder pension should be allowed to offer those of another firm. However, we saw no reason to go further and allow firms to offer stakeholder pensions from various firms (including or excluding their own).
- 3.10 We felt that [stakeholder pensions](#) were a special case and we opposed early amendments to the [polarisation](#) regime in relation to other products such as [CAT Standard ISAs](#). We were pleased that the FSA subsequently decided to defer reforms for CAT Standard ISAs until more information would be available, including research into consumers' use of [disclosure](#) documents.
- 3.11 The Panel believe that a priority, in considering the outcome of the review, should be to ensure that good quality, objective strategic advice (i.e. help with general financial planning, covering savings, debt and benefits) is available to low and middle income consumers. Access to such advice is not available at the moment and, as the FSA's own research illustrates, people who do seek advice are not inclined to shop around.
- 3.12 On 8 March 2002, we hosted a half-day seminar entitled 'What's best for consumers?' to discuss the FSA's proposals. Around 50 representatives from consumer bodies, the industry, trade organisations, FSA and HM Treasury joined Panel members at the seminar. Delegates considered the effects of the proposals on consumers in terms of distribution channels, adviser payment systems and provision of advice to people on low incomes. The seminar was successful in engaging those who attended in some lively debate about [polarisation](#) from the consumer perspective and in developing Panel members' understanding of how others were viewing the proposals. At the time of writing, we are preparing our formal response to the consultation.

- 3.13 There are a number of different strands to the proposals in consultation paper 121. We welcome some of the suggestions in the paper – such as the ‘unbundling’ of the costs of advice and the product – and believe that they should be developed further.
- 3.14 We are concerned about the possible effects of the proposals on market structure and that consumers could be confused by the introduction of multi-tied arrangements. It is difficult to envisage how rules will cope with the application of the suitability requirement to firms that adopt others’ products and those that become **distributor firms**. We are concerned about the confusion, particularly in the eyes of consumers, as to the range of products from which distributor firms would be required to choose a suitable one. The effect of not requiring distributor firms to look across the market as a whole needs to be balanced by rules to ensure that consumer interests are safeguarded.
- 3.15 Consumers could also be protected if the FSA were to prevent financial intermediaries from presenting themselves as ‘advisers’ unless they are truly acting as agents of the consumers. Where this is not the case, financial intermediaries should be required to describe themselves as ‘salespeople’.

FSA themes

The FSA’s theme projects of 2001 made useful contributions to future policy making, particularly the ‘Treating customers fairly after the point of sale’ project. We argued that regulation of e-commerce should not place all the responsibility on consumers to protect themselves when buying online.

- 3.16 We took a keen interest in the FSA’s work on **Treating Customers Fairly after the Point of Sale**. We welcomed the FSA’s consideration of the imbalance between consumers and firms in areas such as terms of contracts and the provision of information.

We stressed the importance of consumers’ access to advice – as well as information – after the point of sale. One of the problems, as we see it, is that financial advisers tend to concentrate their efforts on finding new customers, rather than keeping and supporting existing ones. So, we hope that the messages from this theme will be embedded in the new training and competence regime.

We supported the conclusions reached in the discussion paper and look forward to further involvement in the programme of work to tackle the gaps identified.

- 3.17 We responded to the FSA’s discussion paper on their **approach to the regulation of e-commerce**. We agreed with the FSA’s analysis of the international context, but felt that it understated the risks to consumers. Differences in the approach to, and scope of, regulation in different countries, could encourage firms to base their operations in countries where the intensity of regulation is lowest. This would allow them to cut costs to the consumer but with the risk that the consumer has less protection. We agreed that it is essential to have common core standards, but pointed out that international

initiatives were often slow to develop and cumbersome to implement. The FSA should give a high priority to developing a simple system where consumers could find out a firm's country of origin, the level of consumer protection and systems of redress. Our response to the European [E-Commerce Directive](#) reflected this approach and is explained in more detail below (paragraph 3.90).

On the question of online security, we pointed out that there was a limit to the amount of personal security information that an individual could be expected to remember. We argued that the challenge of fraud prevention should not be met by expecting consumers to remember increasingly complex information. We told the FSA that the onus for developing user-friendly security should be on the industry. Some credit card companies are already investigating 'no-fraud guarantee' systems for their Internet sites and we recommended that the FSA explore this approach with the industry. We also said that the industry should do more to raise consumer awareness of the importance of security information such as the padlock and the need for regularly updated anti-virus software.

- 3.18 We were consulted on the FSA's choice of [theme projects](#) for 2001-02 and expressed strongest support for the **Ageing Population** theme. We were particularly keen for the FSA to examine the effects of demographic change on different categories of consumer and to include issues such as healthcare, vulnerable and excluded consumers and ethnicity. We look forward to the outcomes of this work. The **Harnessing Market Forces** theme also shows signs of identifying some important consumer protection issues. In particular we look forward to discussing the impact of [disclosure](#) of regulatory information by the FSA, particularly where there are problems and – in the interests of protection – where consumers might reasonably expect the FSA to warn them of the risks they face. However, we were disappointed that the FSA did not proceed with a project on the financially disadvantaged.

[Disclosure of product information](#)

We welcomed the review of product [disclosure](#) and argued for a radical re-think, including finding ways to make consumers appreciate the importance of the disclosure process. We were pleased that the Panel's suggestion regarding the use of document design specialists resulted in user-friendly documents and that the proposed documents were consumer tested. We made strong representations about product information disclosure in relation to various other projects, e.g. mortgages.

- 3.19 Many requirements of the new regulatory regime depend on effective [disclosure](#) of product information. So, we are committed to ensuring consumers get clear, comprehensive and accessible information. At the beginning of 2001, we responded to the FSA discussion paper *Informing Consumers: a review of product information at the point of sale*. We also responded to various consultations where disclosure was a significant feature, such as the mortgage sourcebook, review of [single pricing](#) of [collective investment schemes](#), [trading endowments](#) and buying a [pension annuity](#).

- 3.20 In our response to the review of product information we recommended a radical change to the content and form of [disclosure](#) documents, and asked the FSA to do rigorous consumer testing to find out what works for consumers. We also argued that the review should aim to make consumers more aware that the information they receive from providers is important. However, the FSA should also be realistic about what disclosure can achieve. We asked the FSA, as part of the review, to set measures that will allow them to judge the success of the new disclosure regime at a later date.
- 3.21 We welcome the progress made in the review and believe that the documents prepared, with the advice of document design specialists, go a long way towards meeting the FSA's objectives. We encouraged the FSA to promote the use of this format by firms and argued that the benefits to consumers would far outweigh the costs to firms. We welcomed the consumer testing so far, which endorses our view, but further testing is needed.
- 3.22 We had several informal discussions, as well as responding to both of the FSA's consultations on the new mortgage regime. We made many detailed comments about the [disclosure](#) requirements within the mortgage sourcebook, particularly the [pre-application illustration](#).² We expect that these points will be taken on board as the revised regime develops. In the context of mortgage documents and investment products, we have urged the FSA to provide links to its [Comparative Tables](#), so that consumers can have access to all relevant information when reviewing the product disclosure documents.
- 3.23 In contrast, we were disappointed with the discussion paper on the review of [single pricing](#) of [collective investment schemes](#). This seemed to suggest that the complexity of these products made [disclosure](#) inevitably ineffective, and suggested an approach that, in our opinion, would make it more confusing for consumers. We argued in favour of an approach which distinguishes charges from other costs and recommended that it be supported by an effective disclosure regime. The FSA have now published a consultation paper on this topic, proposing that industry have the choice of introducing this new less transparent system or keeping the current pricing system. We believe that this will be even more confusing for consumers.
- 3.24 We believe that the lessons learned about content and design of product [disclosure](#) documents for investment products can be applied to the development of standards for mortgage disclosure documents, [single pricing](#) for collective investment schemes and other products. We also pointed out that in the context of mortgages and investment products, it is important to consider oral information as well as written information. However, the disclosure requirement in the FSA's regulatory regime is only part of the picture. The FSA should be prepared to use its powers under the [Unfair Terms in Consumer Contracts Regulations](#) to improve the quality of products and the way consumers are told about them.

2 See the Panel's responses to CP70.

Training and competence

We welcomed the review but felt that it should also look at the governance of the examination trainers and providers. The FSA's risk assessment framework should identify the risks to consumers that the training and competence regime needs to address.

- 3.25 Training and competence is central to the effective working of the financial system and to the protection of consumers. As a key regulatory tool, training and competence should be given priority within the FSA. In our last annual report we urged the FSA to review the examination system sooner rather than later. So, we welcomed the publication of a discussion paper, although we noted that it has had a long gestation period. We also welcomed the opportunity to make early comments on the draft discussion paper.
- 3.26 We strongly supported the overall objectives of the review. We urged the FSA to guard against affecting the structure of the advice market to the detriment of lower-income consumers. This would include designing minimum standards around the needs of higher-income consumers and ignoring debt repayment. We made the point that the regime needed to be designed so that it could be monitored. We warned against the same body undertaking both training and examinations. Finally, we argued that the review should consider how to fill gaps where qualifications are 'grandfathered' from the previous regimes into the new, and should explore how firms will maintain, as well as establish, competence.
- 3.27 We believe the FSA should consider a larger role for themselves in setting and monitoring standards as well as the actual examinations. The FSA should explore how its role interacts with the role of other standards setting bodies, including those on the other side of the regulatory perimeter. It should also consult on changing the current structure of examining and training bodies.

With-profits review

We responded to several consultations within the review and argued that clear information was essential and that there should be an objective eye to protect consumer interests.

- 3.28 We were consulted on the FSA's proposed approach to the with-profits review and have been briefed on progress. Several members attended the FSA's Open Meeting on the subject and our Chairman addressed the meeting on consumer problems caused by with-profits products. A Panel member was appointed Chairman of the 'standing panel' that was set up by the FSA to advise the review project. We responded to the various Issues Papers that were published, discussed below.
- 3.29 On the process for dealing with the attribution of inherited estates, we favoured the creation of a separate person or entity to act as policyholder negotiator by proxy. We said that the costs of this should be borne by the shareholders.

- 3.30 On **governance and the future role of the appointed actuary**, we argued that the appointed [actuary](#) should not play such a key role in deciding whether a distribution can be made from the [long-term fund](#), including the [inherited estate](#) within that fund. We were particularly worried that the company was able to take action or make a decision that would affect the level of funds available for distribution, before the formal process for dealing with [attribution](#) had started. In response to the paper on [regulatory reporting](#), we favoured introducing a new form of summary financial information to help users better understand an insurer's ability to meet full discretionary benefits.
- 3.31 On **disclosure** to consumers, we supported the development of standardised, and simpler, terminology and explanations of with-profits features for use across the industry. We stressed the importance of striking a balance between giving consumers enough information for them to understand products and overloading them with too much detail. We suggested that there should be testing to identify three or four pieces of key information. We also expressed the view that there should be a requirement for advisers – given the influence they have – to help consumers understand documents.
- 3.32 In its response to the paper on **Discretion and fairness**, we raised issues of fairness relating to the design of with-profits products and their suitability for those who actually bought them. The high incidence of early surrender of a product designed to be held to maturity, for example, is evidence of substantive unfairness that cannot be cured merely by making the use of discretion more transparent. We also pointed to the fact that the smoothing features on the basis of which with-profits products are often sold are not unique to them. Similarly, we expressed concern about the mixture of investment risk and business risk to which policyholders were exposed in some funds. We suggested that policyholders should receive all of the profits from with-profits funds, with shareholders profiting from the running of the fund through a separately identifiable management charge.
- 3.33 We look forward to further discussions with the FSA as it draws together the responses to the various Issues Papers and considers the outcome of the review as a whole.

Endowment mortgages

We welcomed the renewed initiative to encourage consumers to take action if they had been mis-sold a mortgage. But we were concerned that our research suggested that complaints were not being dealt with properly by firms. We encouraged the FSA to do some further research of its own, which they did; we look forward to further work being done by the FSA in the light of that research.

- 3.34 We received regular updates on the resolution of [endowment mortgage](#) complaints. We also welcomed the FSA's July launch of a renewed initiative to encourage consumers who had been mis-sold an endowment mortgage to take appropriate action. We found the FSA's revised factsheet very helpful and supported the suggestion that the [ABI](#) should be asked to encourage their members to send out the factsheets with the updated reprojected letters.

- 3.35 In last year's report we explained the steps we had taken, through influencing the FSA and through our own research, to ensure that holders of [endowment mortgages](#) were well informed about their situation and compensated if they were mis-sold a mortgage. We commissioned a further round of research on mortgage endowments, following up on that conducted in 2000. A worrying indication from the research was that most of the 13% of policyholders that complained to their mortgage endowment provider were dissatisfied with the outcome. A further 13% of policyholders thought about complaining but did not do so, mainly because they did not believe they would get redress. These observations led us to question whether firms were in fact dealing with complaints properly. The results of the research were drawn to the FSA's attention and we asked the regulators to take steps to ensure that firms dealt with complaints properly.
- 3.36 Other research by the FSA itself showed that there were not widespread procedural inadequacies. However, it did show that consumers were meeting obstacles particularly where they could not provide all the documentary evidence to back up their grievance. So, claims were sometimes being rejected at an early stage without full consideration of the merits of the case. We suggested that there needed to be a facility to review complaints that may have been wrongly rejected. We also noted that this example indicated the importance of a complete review of firms' complaints handling systems. The FSA will be keeping an eye on these problems in relation to mortgage endowment complaints and the results of this exercise will be fed into a wider review of complaints handling procedures.

[FSA rules and guidance](#)

In this section we discuss mortgages, credit unions and [windfalls](#).

[Mortgages](#)

We welcomed the Treasury's decision to regulate mortgage advice; we, and other consumer bodies had argued for this for several years. Our main concerns for any new mortgage regime are that [disclosure](#) should be clear and comprehensive, that there should be a high standard of professional competence and that consumers in arrears have appropriate protections.

- 3.37 We warmly welcomed HM Treasury's decision in December 2001 to give the FSA responsibility for regulating mortgage advice and general insurance broking. We had argued that the Treasury's earlier insistence on leaving mortgage advice outside FSA scope had been a grave error. Although the Treasury's recent decision will delay the introduction of the new regime, it will allow the FSA to develop a comprehensive and simpler system, which will offer better consumer protection. The FSA will now need to rethink much of its previous work on mortgage regulation, but we expect that many of the policy points that we made will continue to be relevant in the consideration of the proposals. The key points we made were as follows.

- 3.38 We agreed that the rules should take account of the extortionate credit bargains provisions of the [Consumer Credit Act](#) and welcomed the [OFT's](#) plan to rewrite the Act's requirements in plain language. We suggested that there should be a thorough review of the [APR](#) so this too may be defined in plain language.
- 3.39 We supported the proposals for oral and written [disclosure](#) and suggested that the disclosure documents and [pre-application illustrations](#) should be tested to ensure that consumers would be able to understand them. We also suggested that the early disclosure documents should be flexible enough to allow consumers to shop around and should not hinder firms making formal mortgage offers.
- 3.40 We supported the proposed [approved persons](#) regime, but we argued that [arrears managers](#) should also be 'approved persons'. There is a significant chance of consumer detriment during the arrears handling process and as a result we believed that there should be clear regulatory controls on the process.
- 3.41 We disagreed with the contention that mortgage providers (as opposed to advisers) would not need specific training. We argued that there should be specific mortgage training and competence requirements. We also said that similar regulatory standards should apply whether administration of mortgages is outsourced or kept in-house.
- 3.42 We thought that the proposals dealing with arrears gave inadequate protection to consumers. Clearly, firms must be allowed to take action where borrowers fail to meet payments, but the FSA should ensure that this is done in a fair and reasonable way. Lenders should not take steps against defaulters that worsen their situation, should try to reach a reasonable negotiated settlement and should only repossess properties where all other options have failed.

[Credit unions](#)

The Panel urged the FSA to nurture the credit union movement, recognising its role in combating financial exclusion. We argued that the new regulatory regime must take account of the credit unions' unique characteristics, such as their dependence on a volunteer workforce and the local importance of some credit unions. We are pleased that the FSA has shown sensitivity to these issues and worked hard to tailor the regime to suit these circumstances.

- 3.43 In 2001, the FSA published three consultations on credit unions in preparation for the new regulatory regime, which will come into force in July 2002. These consultations set out the FSA's approach to regulating credit unions, its proposals for compensation and complaints, and draft rules.
- 3.44 We see credit unions as an important resource, particularly for those who may be financially disadvantaged, and believe that it is critical that the FSA regulates in a way which nurtures the credit union movement. We had several discussions with the FSA about credit unions as well as responding to consultation paper 77³ and consultation paper 94⁴. In these, we urged the FSA to

3 Regulation of Credit Unions, FSA consultation paper 77.

4 Credit Unions: Consumer Compensation and Consumer Complaints, FSA consultation paper 94.

develop a regime for credit unions, which is flexible, proportionate and recognises their unique characteristics.

- 3.45 We said that the new regime must take account of the fact that credit unions vary significantly in size and resources. We also emphasised that, as they are run largely by volunteers, it would be unrealistic to expect them to have the professional expertise of other types of financial institution. Putting onerous requirements on credit unions or their staff would result in a loss of volunteers and credit unions closing down. We said that the FSA must work with trade associations and other relevant bodies to help credit unions meet their new responsibilities.
- 3.46 We recognised that the new solvency requirements would protect credit union members and noted that it was important that credit unions strengthen their financial position before the new regime takes effect. Given the local importance of many credit unions, the FSA should aim to strengthen smaller credit unions, e.g. by carefully structured mergers which continue to recognise local interests and sensitivities, rather than making closures.
- 3.47 We believe that the FSA has successfully developed a rulebook that sets out the requirements on credit unions in a flexible and comprehensible way, although it may remain too long and complex for some users. We welcomed the fact that the FSA have garnered support from the credit union movement for its approach and engaged a significant proportion in the consultation process. This will be useful groundwork for the introduction of the regime in July 2002. We noted that the FSA has given significant resources to the introduction of the credit union regime and made particular efforts to inform and support credit unions adjusting to the new regime.
- 3.48 We welcomed the fact that the FSA recognised that under the new risk framework, some credit unions, though small in proportion to other regulated firms, may merit closer attention. This is because of the vulnerability of the consumers and the potential local impact of a failure. We suggested that, in the future, the FSA should develop guidance for credit unions on lending policy and should promote regular and effective communication between credit unions and their members. However, the work by the FSA must be backed up by support from other bodies.

Windfalls

We welcomed the outcome of the test case, which established that compensation payments for mis-selling should not be reduced because of subsequent windfall payments. But we were disappointed that the FSA had not informed consumers about the case – and the implications of it – in advance of the judgment.

- 3.49 We were briefed before the test case on 'Windfall' benefits that was brought under the PIA Ombudsman Bureau's test case procedure. The case dealt with the question of whether windfall payments should be taken into account when assessing damages for breach of duty.

- 3.50 We noted the implications for Pension/[FSAVC](#) review cases and for the treatment of mortgage endowment complaints. We advised the FSA to alert consumers to the existence of the test case. This was because it could have affected whether investors, who had received a [windfall](#), chose to accept an offer they had already received (or one they received before the outcome of the test case was known).
- 3.51 We were disappointed that this suggestion was not taken up. We understood that one of the main reasons for this was the complexity of the messages to be conveyed and the fact that consumers might have found them difficult to use as a basis for decision-making. Nevertheless, we felt that, as a general principle, the FSA should be ensuring that consumers were as well informed as firms.
- 3.52 We were pleased at the Court's decision that [windfalls](#) are not required to be taken into account in the assessment of damages for breach of duty. However, we informed the FSA that we regarded the decision not to apply the judgment retrospectively in the case of pensions as unfair.

[FSA in action](#)

In this section we discuss [Equitable Life](#), consumer education and information, openness and [transparency](#), FSA organisation and internal processes, and its powers regarding Unfair Contract Terms.

[Equitable Life](#)

The Panel has taken an active interest in the Equitable Life crisis and taken steps to improve information to policyholders on the impact of events on them. We have also noted important lessons for the regulator in relation to its internal processes and its communication with consumers and we have been pushing the FSA to learn those lessons.

- 3.53 A considerable amount of our time during the period covered by this report was devoted to the [Equitable Life](#) crisis. Following the announcement in December 2000 of the FSA's internal review of its regulation of the company (from 1 January 1999 to 8 December 2000), we wrote to the Treasury Committee noting certain concerns. We argued that the lack of an inquiry into the role of the [prudential](#) insurance regulators before 1999 was 'a serious gap in the scrutiny of the events that led up to Equitable Life's closure to new business'. So, we were very pleased when, in August, the Economic Secretary to the Treasury announced that a further inquiry by Lord Penrose would include coverage of the earlier period, but disappointed at the needless delay. We also had early discussions with Ronnie Baird, who led the internal review, highlighting our priorities for the review.
- 3.54 During early 2001 we received regular briefings from the FSA on the work being done to reach a compromise arrangement acceptable to policyholders, and the steps that would need to be taken before an agreement could be reached. We noted that Equitable's policyholders had received very little information about their own position. We drew this to the attention of the FSA, and we met with the Chairman and Chief Executive of [Equitable Life](#) to discuss the company's information strategy. We encouraged Equitable Life to communicate directly with its policyholders (rather than by open letters in

the press, as it had tended to do up to that point). Equitable Life responded by conducting research among policyholders and, in the light of the results, began to communicate more directly with policyholders by letter.

- 3.55 We then conducted our own research to test policyholders' awareness of events surrounding the company's closure, and their understanding of the impact on their policies. The research showed that policyholders were generally well aware of events, but were less sure what the implications were for themselves. The survey revealed that policyholders had gathered much of their information from the media, particularly about the consequences of events. The results of the research confirmed our view that open letters were ineffective but showed that information from [Equitable Life](#) had improved over time. They also indicated that other possible sources of advice, such as IFAs, were reluctant to give advice because they did not want to get it wrong.
- 3.56 Following publication of Equitable's compromise proposals, we questioned the FSA about their contingency planning in the event that the compromise scheme was rejected. We were assured that supervisors were planning for this eventuality.
- 3.57 When the Penrose Inquiry was announced on 31 August, we believed it imperative that HM Treasury did not delay publication of the FSA's internal report (the [Baird Report](#)), until the Inquiry was complete. We wrote to the Economic Secretary to the Treasury, encouraging her to publish the Baird Report in its entirety as soon as she was in a position to do so and were pleased that the report was published in mid-October. We praised its frankness and thoroughness. Our press release said 'The report points out mistakes and omissions by the FSA which must not be allowed to happen again. It also points to changes needed in the regulations to ensure the financial stability of insurance companies. These gaps in consumer protection must be closed as soon as possible.'
- 3.58 We responded to the [Baird Report's](#) findings and pointed to a number of areas (style of regulation, cultural change, resources, consumer information) that we expected to be covered in the FSA's response. Most of these points were later addressed in the *Report on the Future Regulation of Insurance*, submitted by the FSA to the Economic Secretary to the Treasury on 20 November. The Baird Report concluded that there was nothing FSA could have done 'which would have mitigated, in any material way, the impact of the outcome of the Court case as far as existing policyholders were concerned.'⁵ However, the report points to serious errors and management shortcomings in the FSA during 1999 and 2000. The FSA should ensure that in future staff would be more sceptical about the information they received from firms, be prepared to 'think the unthinkable', and prepare better for different eventualities.
- 3.59 One issue not covered in the response to the [Baird Report](#), that we have since discussed with the FSA, is the need for the FSA to give consumers more information about potential problems in a firm. This is dealt with in more detail in paragraph 3.69.

5 Para. 6.2.4., *The Regulation of Equitable Life from 1 January 1999 to 8 December 2000*, by Ronnie Baird.

Consumer education and information

The Panel welcomed the publication of the [Comparative Tables](#) and the [FSA Register](#) but have pressed the FSA for improvements in both to increase consumer information and protection. The Panel welcomed the range of consumer education measures taken but argued that a more FSA-wide strategic approach is needed to meet the public awareness objective. The Panel asked to be more involved in the consumer education work in the future.

- 3.60 We have a strong interest in how the FSA fulfils its statutory objective of raising public awareness and have commented on several projects that promote this objective by improving consumer access to information.
- 3.61 We expressed concern early in 2001 about the way the Consumer Helpline, part of which is contracted out by the FSA, was working. We visited the in-house part of the Helpline and had extensive discussions with the management team in overall charge. We were extremely worried that two mystery shopping exercises showed incorrect answers had been given to reporters posing as consumers and asked for an explanation of why this had happened and what was being done to rectify it. We also investigated the outsourced Helpline and commented that there should be additional resources, improved management control over the contracted firm and better management information. The appointment of a new Helpline manager and a subsequent review of the Helpline's structure have resulted in much better monitoring and management control facilities over calls.
- 3.62 We took an active interest in the development of the [Comparative Tables](#), as they are potentially a valuable tool for consumers as long as they are user-friendly. We urged the FSA to consumer test the Tables thoroughly and advised them to include a clear explanation that the Tables do not provide any guarantee that a product will be suitable for an individual consumer or offer any consumer protection. We welcome the fact that the FSA acted on our recommendations. We were very disappointed that the FSA did not pursue its original intention to make the Tables available in paper form through the Helpline which would have increased their accessibility to a wider range of consumers. While we supported the FSA in not carrying out a major publicity campaign at the launch of the Tables, we now believe that resources should be given to an extensive campaign to improve consumer take-up. We are pleased that, in response to our representations, the FSA have committed in the Plan and Budget 2002/3 to add some information on individual firms' financial strength to the Comparative Tables. This information is important for consumers to make an informed judgement about the risks of a particular investment. We would also like the FSA to carry out some research into the use of the Tables, to check that consumers, as well as providers of financial products, use them.
- 3.63 We welcomed the introduction of the [FSA Register](#), but argued that more information should have been provided. In particular, we believe that information on [approved persons](#) and on firms' and individuals' disciplinary history should be included as quickly as possible. We commented that the project to add this information to the Register seemed to lack a firm project plan and timetable, and were pleased to note that, following our comments, the project is now progressing and is properly resourced.

- 3.64 Since the beginning of 2001, the FSA published a useful body of consumer information material including leaflets and a CD-ROM. They also undertook a significant programme to introduce financial education into schools. This material gives valuable information and advice to consumers in clear language on a range of issues, which can contribute to addressing financial exclusion. We particularly welcomed the production of a Financial Planning CD-ROM.
- 3.65 However, these services provided directly by the FSA cannot on their own meet the public awareness objective – they are only one part of the regulatory toolbox. The FSA’s public awareness work would benefit from an organisation-wide strategic approach which would begin by setting out what consumers should be expected to understand. We welcome the fact that the FSA is now reviewing its public awareness strategy.

Openness and transparency

The FSA has been keen to consult on a wide range of regulatory issues. However, we believe that the FSA needs to be more open to consumers about its supervisory and enforcement activities. There is also still a need for improvements in the way that the consultation papers are presented to the public.

- 3.66 The growing number of consultation papers and discussion papers published over the past 15 months reflects the FSA public commitment to act in an open and transparent way. We welcome the fact that the FSA has kept an open approach to consulting with us, frequently giving us early opportunities to comment on developing projects. The FSA has taken account of our comments on various consultations, such as credit unions and mortgages, to ensure that the proposals were workable and responsive to consumer needs. The FSA has been willing to address a number of problems we raised, such as financial advertisements, the FSA Helpline, and the treatment of mortgage endowment complaints.
- 3.67 In last year’s annual report, we suggested that consultation papers could be made more accessible to the public, by identifying those areas which are of specific interest to them. The FSA’s annual report said that they would take steps to identify relevant consumer issues and flag them clearly at the start of each publication. The FSA’s response to this has been patchy but there have been examples of good practice. For example, *The FSA’s approach to the regulation of E-Commerce* highlighted the questions that were particularly relevant to consumers and *Polarisation: Making the market work for consumers* provided explanations of key terms. These are useful models that should be applied in other cases. We are disappointed that we have had to raise this issue for the third year running.
- 3.68 In the last Annual Report we also commented that the FSA published many different types of documents (consultation papers, discussion papers, response papers, feedback papers, etc.) and the distinctions between them can be confusing. Although the labelling has become more consistent it was still not clear what the distinctions are between these labels and we are concerned at the emergence of a new document type – the Issues Paper. It would be helpful if the FSA would make the logic behind these labels clear to the public.

3.69 We believe that there is scope for the FSA to be more open with consumers about issues that may affect the products they own or propose to buy. This ranges from circumstances where information is in the public domain, such as the test case on the treatment of [windfalls](#) (see paragraphs 3.49-3.52), to cases where the FSA has its own information about a firm which may be relevant to consumers' choices. We argued that the FSA should explore what information should be given to consumers and in what circumstances. We recognised that in some cases it could be damaging to the firm and to consumers to make certain information public. It would be necessary to avoid overwhelming consumers with information, or there may be legal constraints, but we argued that the presumption should be to inform consumers unless there is a good reason not to, when the onus should be on the FSA to make a positive case (internally, but according to agreed criteria) for information not being made public. An additional approach would be making information routinely available about firms' risk status, e.g. its financial strength, through the [Comparative Tables](#).

FSA organisation and internal processes

The FSA's reorganisation and introduction of a risk-based regime has the potential to improve consumer protection. We look forward to seeing how it develops in its first full year of operation. The FSA still has some work to do to achieve the cultural change, particularly to incorporate the consumer protection and awareness objectives into the work of all parts of the organisation.

- 3.70 We have seen significant organisational change within the FSA over the past year and in some areas this appears to have been reflected in a change of approach. However there is still some way to go. The FSA must complete the process of organisational and cultural change begun last year by ensuring that all areas adopt a 'joined up' approach to regulation, as advocated in the [Baird Report](#). In addition, the FSA must ensure that the whole organisation takes account of the consumer protection and consumer awareness objectives.
- 3.71 We welcome the steps that the FSA has taken to develop a structured, objective and rational approach to prioritising the use of its resources. As anticipated in last year's report, the [Consumer and Industry-wide Risk Framework](#) fell behind the [Firm Risk Framework](#) but both are now in place, and we look forward to seeing how these are put into effect in the first full year of the new regulator.
- 3.72 We welcome the fact that the FSA has focused on the achievement of the statutory objectives and so on consumer protection and awareness. However, we believe that although the consumer protection objective is a significant driver in the FSA's policy and specific campaigns work, a recognition of consumers' needs has not routinely informed frontline day to day supervision. Communication with consumers needs to be understandable and effective. We noted a case drawn to our attention of important new information communicated by a firm in the small print at the end of a document. We believed supervisors should have urged the firm to make this more prominent and user-friendly. We recognise that this problem is, in part, due to the fact that until the major internal restructuring in July,

supervisors continued to work as part of the self-regulatory organisation (SRO) regime. We expect the restructuring to result in supervisors paying greater attention to consumer protection and information needs. We also brought to the FSA's attention that some of the internal processes such as the performance measurement project did not have the same consumer focus as the regulatory initiatives and we welcome the changes the FSA made in response.

- 3.73 The [Baird Report](#) demonstrated how dependent [prudential](#) and [conduct of business](#) regulation are on each other. We hope that this is a lesson that the FSA is taking to heart, by converting organisational change into cultural change. The early signs are positive. The Baird Report bore out our concern last year that the FSA had been slow to take action when a problem was identified. However, the FSA's responses to more recent crises, including the events of 11 September, suggest that new working practices have enabled the FSA to respond more quickly and in a holistic way.
- 3.74 Our response to the [Baird Report](#) also noted that being proactive means being prepared to consider all scenarios, however unpalatable. The risk framework will be an important tool to identify areas worthy of more attention but the FSA must also be able to think beyond the processes and routine tasks. To do this people will need the autonomy and the resources to explore possibilities, even where they come to nothing. We believe that the lessons from the Baird Report must be learnt across the FSA, not only in the insurance regulation area.
- 3.75 We commend the work in the consumer education field, which has resulted in some useful and clear guidance to consumers. However, we noted that there has been less of a tendency to consult us in this area than in relation to some of the regulatory work. Steps have now been taken to remedy this and we look forward to more regular interaction with the consumer information and education sectors of the FSA in the next year.
- 3.76 We were also concerned in some cases that we, and the public, have received late notice and short consultations on policy developments, in most cases as a result of delays in HM Treasury or in the European Commission. We hope that in future account will be taken of time required for the FSA to follow its own procedures, so that it fulfils its commitment to be open and transparent. This, of course, will require the co-operation of other bodies.

[Unfair contract terms](#)

We welcomed the fact that the FSA has powers under the [Unfair Terms in Consumer Contracts Regulations 1999](#) and hope that it will use them proactively to improve consumer protection.

- 3.77 We were pleased to learn about the FSA's new powers under the [Unfair Terms in Consumer Contracts Regulations 1999](#). However, we felt that the FSA's initial proposals to make use of them were somewhat tentative and we expressed our disappointment that a much more proactive approach was not being taken from the outset. We regard the new powers as an important tool in the protection of consumers and are anxious to ensure that adequate resources are provided to support their full and proactive use.

Government and European policy

In this section we discuss the [Sandler Review](#), Savings and Assets, [CAT Standards](#) and European issues.

Sandler Review of medium and long-term retail savings

The Panel responded to the consultation paper questioning two key assumptions, the first that investment products are suitable for all consumers, and the second that competition necessarily promotes consumer benefit and consumer protection. We also argued that consumers are diverse and act for diverse reasons. Good quality financial advice and appropriate consumer protection measures are essential.

- 3.78 We took an active interest in the ‘[Sandler Review](#)’, set up by HM Treasury to look at the future of medium and long-term savings. In a detailed response to the Review Team’s consultation we questioned some of the assumptions of the review. For example, we did not agree that people should always be encouraged to buy investment products. Consumers are a diverse group with different knowledge and needs. For people with little disposable wealth, a wrong investment decision could have serious consequences and so investing in a medium to long-term investment may not be the best thing to do.
- 3.79 We also questioned the assumption that competition is always good for consumers. Clearly, fair competition often benefits consumers by driving improvements in standards and promoting good value for money. However, these benefits do not follow automatically in all markets, especially when competition between providers results in a culture of ‘hard sell’. We also argued that competition cannot be equated with consumer protection. Furthermore, relying on competition alone to improve consumer protection places the onus on consumers to make well-informed choices. We argued that there needs to be a balance between consumer responsibility and consumer protection. Competition and consumer awareness are important, but should not replace effective consumer protection measures.
- 3.80 We also argued that the emphasis in the paper on the effective allocation of capital was wrongly placed. The focus of the review should be on the consumer and the way that products are sold. It should also recognise that many factors, in addition to profitability, drive consumers’ choice of investment, e.g. convenience, branding and trust in the provider. We suggested that the review should aim to ensure that individual consumers could choose an investment that represents, for them, an efficient risk-return trade-off at the lowest possible cost. If that should lead to an efficient allocation of capital for the economy, then it would be an added benefit.

Savings and Assets for All

The Panel supported the government’s proposals to encourage saving by the financially excluded but argued that the proposals needed to pay greater attention to consumer protection, particularly given the vulnerability of the consumers involved.

- 3.81 We welcomed the production of the HM Treasury consultation *Savings and Assets for All*. This proposed the introduction of [Children's Trust Funds](#) and the [Savings Gateway](#) as an initiative to encourage saving and financial awareness amongst the financially excluded. We also responded to the subsequent consultation *Delivering Savings and Assets* which built on the proposals in the first consultation.
- 3.82 We supported the proposals in principle and agreed with the general objective, but we argued that the Treasury needs to be clear about what they want each proposal to achieve. For example, the [Children's Trust Fund](#) could provide young adults with a lump sum to support their development, could be a consumer education tool or could promote savings, but it would not necessarily achieve all three. We argued that the Government must take particular care to target the products at the financially excluded, even if other consumers are able to take advantage of them.
- 3.83 Our response suggested that it might be difficult to get firms to market the Trust funds, unless it can be made worthwhile for firms to sell them, and noted that if there were limited profits there would also be a higher risk of mis-selling to the most vulnerable consumers. We expressed concern that a secondary market might develop in [Children's Trust Funds](#) and in [Savings Gateways](#), with people borrowing against their future assets. We also noted that some individuals may have financial planning needs ahead of savings, such as paying off debts or protection needs, and argued that to avoid risks to consumer protection, the proposals must be backed up by a strategy to increase access to advice. We urged the Treasury to keep the proposals as simple as possible and to avoid practical difficulties such as completing a tax return, or providing complex investment options where consumers may not understand the risks.
- 3.84 Our response to the second consultation paper focused particularly on the need for consumer protection measures. We set out several tests that any detailed proposals should meet and argued that the protections should be suitable for 'entry-level consumers' who have no experience of financial products. We suggested that compulsory minimum standards should be applied to these products and that consumers need access to free independent advice.

[CAT Standards](#)

The Panel recognised the potential benefits of CAT Standards but argued that they need to be simple and consistent and of a decent standard if they are to help consumers. The Panel also argued that they could only apply to certain simpler products. They also need to be better publicised.

- 3.85 The Treasury consulted on its proposals to introduce [CAT Standards](#) for financial products in *Standards for Retail Financial Products*. While we recognised that CAT Standards could enhance consumer protection, we had some reservations and argued for compulsory minimum standards rather than a voluntary scheme. However, given that the Treasury had opted for the CAT Standard approach, we argued that they needed to make clear what the CAT Standard means, that it differs for each type of product and that it does not guarantee suitability. We felt that these might be complex messages to

communicate to consumers. We also argued that CAT Standards would not be appropriate for all types of products, particularly those in heavily segmented markets.

- 3.86 We argued that [CAT Standards](#) should not lead automatically to lighter touch regulation, as the FSA would still need to ensure that providers are offering products that are suitable for the individual consumer. We recommended that the Treasury consider how CAT Standards might work with other regulatory tools, e.g. [Comparative Tables](#), to improve consumer understanding. We said that the standards must be clear and robust, otherwise they could increase confusion and mis-selling. We opposed the proposed CAT Standard for [long-term care insurance](#) because the proposed standard was set at too low a level. We supported the Treasury's intention to consider how to provide consumers with good quality [generic advice](#), and suggested that the Treasury consider research available from consumer groups on this topic.
- 3.87 We have been disappointed that since the introduction of [CAT Standards](#), there is limited public awareness of what they are. This is a lost opportunity because we believe that CAT Standards could make a valuable contribution in appropriate areas, but their profile will need to be raised if firms are to adopt the standards and consumers to use them.

[European issues](#)

We considered how to increase and co-ordinate consumer representation in Europe and responded to several consultations. Our main concern is to ensure that consumers receive equivalent protections across the EU. We responded to consultations on [e-commerce](#) and [e-money](#) and emphasised the need for consumers to be aware how e-business could affect their rights and protections.

- 3.88 We have taken a keen interest in European developments during 2001-2 and expressed increasing concern at the lack of proper arrangements for consulting consumers on a European level. Consumer interests need to be represented at an early stage in European policy development, and we are not convinced that the present arrangements have allowed this. We have identified a need for financial services consumer groups to co-ordinate their activities if they are to be more effective at influencing European developments and to take a pan-European view. Moreover, in other European countries there does not seem to be any widespread appreciation of the value of consultation with consumers on financial regulation.
- 3.89 The FSA, in response to our requests, has involved us to an increasing degree in its deliberations and consultations on European matters. Following a briefing from FSA staff, we responded directly to [FESCO's](#) second round of consultation on Stabilisation and Allotment, supporting the proposals for greater [disclosure](#). We were also briefed by the FSA on the later consultation initiated by [CESR](#) (FESCO's successor body) on the harmonisation of [conduct of business](#) rules. We had for some time been concerned that the internal market had been developing at two speeds. Home state, or country of

origin, regulation had been introduced under the [E-Commerce Directive](#) and proposed in the [Distance Marketing of Financial Services Directive](#); but core standards for conduct of business rules had not yet been established. We viewed the CESR consultation as a welcome start. However, we noted that there had been little consumer response to the first round of consultation on this issue, and submitted a number of detailed comments on the proposed rules.

- 3.90 We were consulted by the FSA on its proposals for implementation of the [E-Commerce Directive](#). We expressed unease about the 'country of origin' approach to the regulation of firms operating on a cross-border basis. This is because we believe that there are serious gaps in consumer understanding of this area. So, we recommended that the FSA be proactive in giving consumers a straightforward warning. If people want to deal with foreign institutions over the Internet, they needed to do so with their eyes open to the fact that the system of consumer protection in the country of origin would apply and that this might be different from (and inferior to) that in the UK. If people could also be directed to an information source that allowed them to compare and contrast the regulatory standards and levels of protection available in different jurisdictions, then so much the better.
- 3.91 We also responded to the Treasury's consultation on proposals for implementation of the [E-Money Directive](#). Our concerns here focused on the potential for unscrupulous or incompetent providers to avoid the need for authorisation. They could do this by limiting the amount that can be stored on their electronic storage devices to €150 and getting a waiver (providing that they also meet one of the other criteria). The underlying reason for our concern was a belief that a large potential market for [e-money](#) exists amongst financially excluded consumers and children (people who were unlikely to have bank accounts). For this group of consumers, we felt that €150 could represent a significant amount of money. If, having collected consumers' money, these issuers were to go out of business for any reason, the out-of-pocket consumers would be those who could least afford losses. We questioned whether the proposed criteria would be enough to prevent less worthy or less reputable companies setting themselves up as electronic money issuers. For similar reasons, we advocated application of the Financial Ombudsman and Compensation Schemes to e-money.

[**Financial Ombudsman Service \(FOS\)**](#)

The Ombudsman consulted the Panel on a number of issues. We alerted FOS to delays in its communications with consumers. We also argued that the distinction between the roles of FSA and FOS should be clarified.

- 3.92 The availability of an effective Ombudsman service is an essential component of consumer protection. We have taken great interest in the development of the regime and how it works in practice. The FOS has consulted the Panel on a number of important issues, including its detailed handling of mortgage endowment complaints and its approach to other specific categories of complaints such as poor information on interest rate changes.

- 3.93 We were concerned to hear anecdotal evidence of some long delays in FOS responses to consumers. We pursued this with the FOS and received assurances from them that since the problems were brought to their attention, systems have been put in place to speed up the process.
- 3.94 We raised two issues with the FSA concerning the division of responsibilities between the FOS and the FSA. First we asked for clarification about which body should take the lead in setting policy for the conditions and level of redress in large-scale programmes to rectify mis-selling. During the development of the compensation arrangements for mis-sold mortgage endowments, there appeared to have been some confusion over this point. In response to our question, the FSA assured us that it should take the lead in setting policy and issuing guidance in such cases.
- 3.95 The second issue also arose from the arrangements for mortgage endowment compensation. People who had been mis-sold endowments and who were facing a shortfall were advised to complain to whoever sold them the policy and, if they were dissatisfied with the result, to take the case on to the Ombudsman. As a result, the Ombudsman has been dealing with a very large number of similar cases. Our question to the FSA was whether it is appropriate for the Ombudsman, whose main role is resolving individual disputes, to take on the bulk resolution of systemic failures. The FSA agreed to look into the issue, and we look forward to its response. In recent years systemic redress has been handled in a variety of ways (personal pensions phases I and II, [FSAVCs](#), endowments) and we think there would be value in examining the evidence of how the different models have worked in practice.

Chapter 4: Issues for the coming year

New regulatory developments 45

Consumer needs and market developments 46

Priorities for the Consumer Panel 46

SEE GLOSSARY (APPENDIX 8) FOR DEFINITION OF TERMS HIGHLIGHTED IN COLOUR.

4.1 The FSA is now open for business as the UK's single financial regulator – it received its full legal powers at the end of 2001. Shortly after, it published a forecast of the financial risks that it will need to address, alongside its regulatory plan for 2002/3¹. Those documents map out a large agenda for the FSA, including consolidation of the new risk-based approach to regulation, a substantial programme of specific regulatory reforms, continuing oversight of compensation arrangements for past market failures, and anticipation of new market developments against a background of rapid social change. The Panel's work in the coming year will reflect the breadth of that agenda, and we shall also be proactive, injecting our own suggestions for change.

New regulatory developments

4.2 The following FSA major projects and programmes will demand the Panel's special attention:

- Further development of the risk-based approach to regulation, especially in relation to consumer and industry-wide risks.
- The review and overhaul of insurance regulation.
- Reform of the **polarisation** rules.
- The review of **with-profits** business.
- Bringing the sale of mortgages and general insurance within the scope of FSA regulation.
- Development of the training and competence regime, especially the examinations review.
- Use of FSA powers to challenge unfair contract terms.
- Changes in the regulation of **financial promotion** and advertising.
- Continuing development of initiatives on consumer information and awareness.
- Continued development of the regime for complaints handling by firms.
- Development of the European single market and UK implementation of European directives.

Several developments elsewhere will also be important to the Panel:

- The **Sandler Review** of medium and long-term retail savings.

1 Financial Risk Outlook, FSA Plan & Budget 2002/3.

- Lord Penrose’s inquiry into the causes of the [Equitable Life](#) crisis.
- Government proposals for pension and [annuity](#) reform.

Consumer needs and market developments

4.3 The Panel will also need to consider a number of developments in the financial market place and in society, including the following:

- The effects of the downturn in equity prices and market volatility, not only on the financial returns to investors but also on consumer attitudes to financial services.
- New developments in retail financial products, especially the ‘trickle down’ of products previously considered exotic or suitable only for experienced and knowledgeable investors.
- New retail distribution structures that will result from changes to the polarisation rules, and from the new regimes for mortgages and general insurance.
- The continuing (and probably widening) diversity of needs and levels of understanding among consumers, and especially the problems faced by people on low incomes and with little or no experience of financial services.
- The growing pressure for individuals, rather than the state and employers, to take on financial risk, particularly in respect of retirement income.
- The persistent unmet need for independent advice for the mass market of financial consumers.

Priorities for the Consumer Panel

4.4 In the coming year, much of the Panel’s work will necessarily be reactive: we shall respond to proposals by the FSA and other relevant regulators, and discuss with the FSA significant regulatory events as they arise. In giving advice and commenting on those issues and events, the Panel will have particular regard to the following:

- Consumers’ need for clear and complete information about products before, during and after the point of sale
- Consumers’ need for competent and independent financial advice
- Diversity among consumers. People vary in their financial needs and have widely differing levels of knowledge and experience of financial services
- The needs of consumers who are particularly inexperienced, and those who are at present financially excluded.

4.5 In addition, the Panel will pursue a number of thematic objectives in organising its work.

Objective 1: To improve the way in which we gather information about consumer experience and knowledge.

Objective 2: To be proactive in identifying and addressing products and activities, which we believe, can result in consumer detriment.

Objective 3: To develop a systematic approach to reviewing FSA operations, in particular its supervisory and enforcement activities and the way in which it prioritises.

Objective 4: To enhance the consumer involvement in European regulation and improve co-ordination between consumer bodies.

Appendix 1: Terms of reference of the Financial Services Consumer Panel

Before the Financial Services and Markets Act 2000 came into force, our draft terms of reference were reviewed. The FSA Board agreed the following revised terms of reference for the Consumer Panel on 15 March 2001.

1. The Financial Services Consumer Panel ('the Panel') is established by the Financial Services Authority (FSA) under the Financial Services and Markets Act to represent the interests of consumers. The Panel is independent of the FSA and can speak out publicly on issues where it considers this appropriate.
2. Panel members are appointed by the FSA, in accordance with Nolan principles in order to represent consumers, with HM Treasury's approval in the case of the Chairman. The FSA Board approves the Panel's annual budget and provides a dedicated secretariat to support the Panel.

Scope

3. The main purpose of the Panel is to provide advice to the FSA. As such it does not carry out responsibilities on behalf of the FSA. For example, the Panel does not undertake consumer education, nor does the Panel take up individual consumer complaints.
4. The emphasis of the Panel's work is on activities that are regulated by the FSA, although it may also look at the impact on consumers of activities outside but related to the FSA's remit.
5. The Panel will have regard to the interests of all groups of consumers including those who are particularly disadvantaged in the context of financial services, including consumers who have little or no access to financial services.

Purpose

6. The Panel will:
 - a) represent the interests of consumers by advising, commenting and making recommendations on existing and developing FSA policy and practices as appropriate;
 - b) speak on behalf of consumers by reviewing, monitoring and reporting to the FSA on the effectiveness of FSA's policies and practices in pursuing its duties;
 - c) keep under review and influence actual and potential developments in financial services to enable it to fulfil (a) and (b) effectively.

7. In addition, it can advise the Government on the scope of financial services regulation.
8. The Panel can consider other matters that assist it in carrying out its primary functions.

Accountability

9. The Panel shall publish an Annual Report on its work and expenditure.
10. The Panel can speak out publicly when it wishes to draw attention to matters in the public interest and when it disagrees with the FSA.

Appendix 2: Who is on the Panel?

Colin Brown (Chairman)

Colin is a consultant specialising in consumer affairs, working with consumer organisations throughout the EU and in Central and Eastern Europe. Previously Deputy Director of Research at the Consumers' Association and Senior Fellow at the Policy Studies Institute, he has over 25 years' experience of research and development in social and consumer policy. He was appointed to the Panel in December 1998 and appointed Chairman in January 2001.

Ann Foster (Vice-Chairman)

Ann is an independent consumer affairs consultant and former Director of the Scottish Consumer Council. She is a member of Postwatch, the Consumer Council for Postal Services, and a member of the Health Professions Council. She was appointed Vice-Chairman of the Panel in January 2001.

Jean Gaffin, OBE

Jean chaired OFTEL's Advisory Committee on Telecommunications for Disabled and Elderly People until 31 December 1999 and is currently Chair of Brent Primary Care NHS Trust. She has extensive experience of working on behalf of vulnerable customers. Previous positions include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care. She was appointed to the Panel in December 1998 and re-appointed in January 2002.

Yvonne Gallacher, OBE

Yvonne is Chief Executive of Money Advice Scotland, set up in 1989 by the Scottish Consumer Council. She has over 13 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. She was appointed to the Panel in December 1998 and re-appointed in January 2002.

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 has 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. She was appointed to the Panel in January 2001.

Dianne Hayter

Dianne is on the board of both the National Consumer Council and of the newly established National Patient Safety Agency. She was formerly the Chief Executive of the Pelican Centre (a cancer charity). Before that she had periods as the Director of Corporate Affairs of the Wellcome Trust, Chief Executive of the European Parliamentary Labour Party, Director of Alcohol Concern, General Secretary of the Fabian Society, a journalist and trade union research officer. She is a member of the Labour Party and on their National Executive Committee. She is currently also a research student at Queen Mary College, London. She was appointed to the Panel in January 2001.

John Howard

John is a solicitor with extensive experience of consumer issues as a 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 programmes. He is a member of the Mortgage Code Compliance Board. He was appointed to the Panel in October 2000.

Vinod Kumar

Vinod is a social scientist with market research skills and extensive voluntary and public sector experience of policy analysis and research. Until recently, he was Head of Policy and Research at the Royal National Institute for Deaf People, and he has previously worked for the Commission for Racial Equality. Now retired, Vinod is currently a Non-Executive Director of the Barnet Primary Care Trust, and a member of the Consumer Liaison Group of the Medical Research Council. He was appointed to the Panel in October 2000.

Nick Pearson

Nick is the National Money Advice Co-ordinator for the Federation of Information and Advice Centres. With 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. He was appointed to the Panel in December 1998 and re-appointed in January 2002.

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. He was appointed to the Panel in October 2000.

Richard Smethurst

Richard is Provost of Worcester College, Oxford University; previously a non-executive Director of IMRO, he chaired their Training Standards Panel. He has served as an economic adviser in Whitehall, and on the Monopolies and Mergers Commission, where he was Deputy Chairman. He was appointed to the Panel in December 1998 and re-appointed in January 2001.

Jane Vass

Jane is an independent consumer researcher specialising in financial services. She is a former Head of the Financial and Economic Research Group at the Consumers' Association. Her current committee memberships include Council of the Ombudsman for Estate Agents and the FSA Training Advisory Panel. She was appointed to the Panel in December 1998 and re-appointed in January 2002.

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 the Consumers' Association. He was also a policyholder representative on the Insurance Brokers Registration Council for nine years. He was appointed to the Panel in December 1998 and re-appointed in January 2001.

Appendix 3: Publications and press releases

Public responses/public statements

Mortgage Regulation: The FSA's high level approach

Response to consultation paper 70

January 2001

Informing Consumers: a review of product information at the point of sale

Response to FSA discussion paper

February 2001

Equitable Life

Panel submission to the Treasury Select Committee

February 2001

Reforming Polarisation: First steps

Response to FSA consultation paper 80

February 2001

FOS Plan and Budget 2001/02

Response to FOS

March 2001

Regulation of Credit Unions

Response to FSA consultation paper 77

March 2001

Long term care insurance

Response to HMT consultation

March 2001

Mortgage Underfunding

Response to FOS

April 2001

Standards in retail financial products

Response to HMT consultation

May 2001

Consumer Codes of Practice

Response to OFT

May 2001

Savings and assets for all

Response to HMT discussion document

July 2001

Credit unions: consumer compensation and consumer complaints

Response to FSA consultation paper 94

July 2001

The Draft Mortgage Sourcebook

Response to FSA consultation paper 98, including policy statement on consultation paper 70

September 2001

Whistleblowing, the FSA and the financial services industry

Response to FSA consultation paper 101

October 2001

The FSA's approach to the regulation of e-commerce

Response to the FSA discussion paper

October 2001

Review of medium and long-term retail savings

Response to HMT Sandler Review Team consultation

November 2001

Implementation of the Electronic Money Directive

Response to HMT consultation document

December 2001

With-profits Review: Issues Paper 1**Process for dealing with attribution of inherited estates**

Response to FSA issues paper

December 2001

Single pricing of collective investment schemes: a review

Response to FSA discussion paper

December 2001

With-profits Review: Issues Paper 2

Regulatory reporting

Response to FSA issues paper

January 2002

Green Paper on EU Consumer Protection

Response to European Commission Green Paper

February 2002

The Regulation of Electronic Money Issuers

Response to FSA consultation paper 117

February 2002

Implementation of the E-commerce Directive in Financial Services

Response to HMT consultation

February 2002

Delivering Savings and Assets: The Modernisation of Britain's Tax and Benefits Systems (No.9)

Response to HMT consultation

February 2002

Examination Review

Response to FSA discussion paper

February 2002

With-profits Review: Issues Paper 3

Disclosure to consumers

Response to FSA issues paper

March 2002

With-profits Review: Issues Paper 4

Discretion and fairness in with-profits policies

Response to FSA issues paper

March 2002

Press releases

Consumer Panel welcomes FSA mortgage proposals but calls for better protection for consumers paying off arrears

12 January 2001

Consumer Panel calls for radical changes to information given about financial products

2 February 2001

Consumer Panel supports opening up consumer access to stakeholder pensions, but warns against jumping the gun on wider changes to polarisation

19 February 2001

FSA making progress despite flawed Treasury timetable, but Consumer Panel says watchdog must act faster over financial scandals

5 March 2001

The Panel calls for FSA regulation to nurture credit unions

20 March 2001

The Panel welcomes proposal for full regulation of long-term care insurance, but warns that CAT standards may do more harm than good

5 April 2001

The Panel says CAT standards won't provide a short cut to consumer protection

2 May 2001

The Panel finds that action is needed to banish the 'money myths' among inexperienced customers

5 June 2001

The Panel welcomes FSA stand on mortgage information

14 June 2001

The Panel gets its legal teeth

18 June 2001

Equitable inquiry's remit to 'look back as far as necessary' is good for consumers of financial services

31 August 2001

The Panel supports drive for improvement in regulatory regime on use of past performance data

26 September 2001

The Panel welcomes Baird Report on Equitable Life and calls for quick action to close gaps in consumer protection

17 October 2001

Panel welcomes extension of FSA regulation to mortgage advice and insurance brokers

12 December 2001

Appendix 4: Topics discussed by the Panel

This Appendix gives a short summary of the topics that we have discussed over the past year, including those which are discussed in more detail in Chapter 3.

Matters on which the FSA has sought the Panel's advice

Authorisation manual

The Authorisation manual sets out the FSA's procedure by which firms are authorised to conduct regulated business.

Client Money Distribution Rules

We were consulted by the FSA on the research they conducted on the application of the Client Money Distribution Rules in the case of a Third Party Default. Our members were briefed on the results of that research and accepted the FSA's decision not to proceed with a minor change to the distribution rules in the event of a third party default ahead of a broader client money review.

The Draft Mortgage Sourcebook

The Treasury published a consultation on the scope of the mortgage regime. The FSA published two consultation papers consultation paper 70 and consultation paper 98 on the mortgage sourcebook. We responded to these consultations as well as holding various informal discussions with the relevant policy staff. See Chapter 3.

Credit Unions

We have commented this year on consultation paper 77 which set out proposals for the new credit union regime and consultation paper 94 on compensation and complaints. See Chapter 3.

E-Commerce Directive

HM Treasury consulted on implementation of the E-Commerce Directive. We discussed the implications of the Directive with the FSA. See Chapter 3.

Electronic money issuers

We commented on consultation paper 117, which set out the proposals for the regulation of electronic money issuers. See Chapter 3.

Equitable Life

See Chapter 3.

FSA financial promotions review

See Chapter 3.

FSAVC Review

The FSA reported to us on the progress made on the FSAVC Review. We noted that, since publishing the original list of 67 schemes identified as offering matched or other subsidised benefits, the FSA had identified a significant number of further schemes offering the same benefits. We supported the FSA's proposal to amend the list of scheme and employer names for review to include the further schemes identified.

Long-term care

HM Treasury consulted on proposals for the FSA to regulate long-term care insurance. See Chapter 3.

Money laundering

The FSA ran a themed project to consider how it will address money laundering, as part of the statutory objective of reducing financial crime. Our concern was that anti-money laundering measures could reduce consumer access and competition. For example, the identification requirements could be a barrier for consumers wishing to open or switch accounts, particularly among the financially excluded.

Past performance

See Chapter 3.

Pensions projection review

We discussed the preparation of the Consultation Paper amending the projection rules for packaged products. We expressed the view that the FSA's proposals were an encouraging step forward in trying to ensure that consumers are not confused by pension projections when statutory money purchase projections are introduced in 2003. Separately, however, we suggested to the Department for Work and Pensions that the expression of pensions in *real* value terms should be subjected to consumer testing; we are concerned about the effect that this change might have on consumer behaviour and savings patterns.

Regulation of funeral plan contracts

The new regime gives the FSA formal responsibility for regulating pre-paid funeral plans. In practice, the exemptions within the Regulated Activities Order makes it unlikely that the FSA will need to regulate this type of business. The FSA briefed us on what measures it has taken to determine the scope of its responsibility and to promote good practice within the sector. We welcomed the FSA's involvement despite the complicated regulatory structure.

Single pricing review

The FSA published a discussion paper setting out various options to revise the way in which unit trusts are priced. See Chapter 3.

Split Capital Closed End Funds

The FSA published a discussion paper that described their remit over Split Capital Closed End Funds (SCCEFs) and invited comments on whether changes could be made to improve standards, either by the industry or to the FSA's regime. We questioned why this area is relatively unregulated and suggested that the FSA should discuss the problem with other regulatory bodies to address potential consumer detriment. We also encouraged the FSA to consider the mis-selling of these funds.

Stakeholder pensions

The FSA pre-consulted us on its initial proposals for the collection and analysis of 'persistence' data on stakeholder pensions. We expressed our support for a breakdown of the data collected, distinguishing for example between advised and non-advised sales and, in the context of the latter, stakeholder pensions bought through the use of decision trees. We supported the amendments proposed by the FSA in the light of the comments they had received.

Statutory status disclosure

The FSA has considered over the past year, how firms should tell consumers about their regulatory status. The FSA noted that there may be two stages of disclosure. First for the general public and second for a customer proposing to buy a product who will need to be aware of complaints and compensation procedures etc. We supported the two-stage approach and commented on the proposals for both types of disclosure.

Training and competence examination review

See Chapter 3.

Treating customers fairly after the point of sale - FSA theme project

One of the FSA's theme projects of 2001 was considering how to give effect to the consumer protection objective after the point of sale. See Chapter 3.

Waivers

As part of the development of the new regime, the FSA has reviewed its procedure for deciding on and giving waivers, to align it with the new statutory requirements and objectives. We were informed about these developments.

Whistleblowing

We were consulted about the proposed guidance and arrangements for whistleblowing. We supported the approach and suggested that there needs to be co-ordination within the FSA to ensure that whistleblowers who contact the FSA through any of the contact points (including the Consumer Helpline) are directed to the appropriate section of the FSA.

With-profits review

See Chapter 3.

Other topics discussed by the Panel

ABI's Raising Standards initiative

We have met with the ABI on a few occasions to provide input into the Raising Standards initiative and to promote a consistent approach.

CAT Standards for basic bank accounts

Following HM Treasury's consultation on standards for retail products which proposed the development of a universal CAT (Charges, Access and Terms) Standard, the Treasury has explored the viability of a CAT Standard for basic bank accounts. We commented on what we considered to be the most important features of a CAT Standard, focusing particularly on charges. We also looked into the accessibility and take up of basic bank accounts.

DTI consultation paper - Modernising the Consumer Credit Act 1974

The DTI, as the first stage in their review of the Consumer Credit Act, published a consultation outlining the key features of the review and inviting comment. We responded to this consultation, setting out our main concerns about the existing regime and urging a comprehensive review.

Electronic Money

We commented on the FSA's consultation paper 117 on the regulation of electronic money issuers. See Chapter 3.

Endowment mortgages

See Chapter 3.

FESCO/CESR consultations

CESR – the Committee of European Securities Regulators (formerly FESCO – the Forum of European Securities Commissions) has consulted on proposals to harmonise conduct of business rules across the EU. We supported the principle of harmonisation and many of the detailed proposals but expressed concern that there was not appropriate differentiation between execution-only and 'advised' customers.

Financial Ombudsman Service

See Chapter 3.

HM Treasury consultation paper on 'standards for retail financial products'

HM Treasury published a consultation paper proposing the introduction of a generic standard for financial products which would be easily recognisable by firms. See Chapter 3.

Mortgage underfunding – response to FOS consultation

The Financial Ombudsman Service consulted on a possible common approach to be taken to mortgage underfunding by the Building Societies Ombudsman Scheme and the Banking Ombudsman Scheme in advance of N2. We agreed with the proposal that ordinarily lenders should write off the shortfall where the lender had quoted an erroneous low figure for repayment. We suggested that lenders should have to

give adequate notice to borrowers of the increased payments and that borrowers should be given the right to withdraw from the mortgage without any penalty.

Office of Fair Trading consultation on a review of codes of practice

The OFT consulted on a review of its approach to codes of practice. Our response supported the review and emphasised the importance of enforceability of codes, the information to consumers and the complaints mechanisms.

Reforming annuities

We discussed the joint consultative document from the Department for Work and Pensions and the Inland Revenue. We expressed the view that it was essential for consumers to have access to advice about the conversion of pension savings into pension income.

Savings and assets for all – HM Treasury consultation

See Chapter 3.

The Sandler Review of Medium and Long-term Retail Savings

See Chapter 3.

Appendix 5: Panel members serving as consumer representatives on other bodies

Appointment Panel for Chairman of the FSA Regulatory Decisions Committee	Colin Brown
Appointment Panel for the FSA Independent Complaints Commissioner	Colin Brown
FSA Comparative Information Tables Monitoring and Review Group	Ann Foster
FSA Consumer Education Forum	Jane Vass Yvonne Gallacher
FSA E-Commerce Business Advisory Group	Harriet Hall
FSA Training Advisory Panel	Jane Vass
FSA Standing Committee on With Profits Policies	Paul Salvidge
FSA Working Group on Past Performance and Advertising (Disbanded in September 2001)	Dave Watts
HM Treasury Money Laundering Advisory Committee	Yvonne Gallacher

Appendix 6: Meetings with external bodies

Advisory Committee on Telecoms Services

Association of British Insurers

Association of Independent Financial Advisers

Banking Code Review team

British Bankers' Association

Building Societies Association

Bureau Européen des Unions de Consommateurs

Centre for the Study of Financial Innovation

Council of Mortgage Lenders

Consumer Councils Forum

Consumers' Association

Department of Trade and Industry

Department for Work and Pensions (Alan Pickering, Review of pensions regulation)

Economic Secretary to the Treasury

Equitable Life

Financial Ombudsman Service

Financial Services Compensation Scheme

FSA Small Business Practitioner Forum

Financial Services Practitioner Forum

General Insurance Standards Council

Her Majesty's Treasury

Hong Kong LegCo Panel

Institute of Actuaries

Life Insurance Association

London Stock Exchange Public Information Office

Mortgage Code Compliance Board

National Association of Citizens Advice Bureaux

National Association of Pensions Funds

National Consumer Council

OFTEL Advisory Committees

Office of Fair Trading

Parliamentary Under Secretary for Competition, Consumers and Markets

Pensions Protection Investments Accreditation Board

Sandler Review Team

Treasury Select Committee

Appendix 7: Comments on FSA response to Consumer Panel Annual Report 2000

The table sets out the key points made by the Consumer Panel in last year's annual report and the FSA's response in its Annual Report 2000/1. The third column gives some feedback from us on the progress made in these areas during the last review period.

<i>Panel said</i>	<i>FSA responded</i>	<i>Progress from January 2001-March 2002</i>
FSA consumer information		
<p>Consumers have experienced difficulty in getting through to the FSA Consumer Helpline. Users of the FSA's information services are likely to be more sophisticated consumers. The services need to be promoted to a wider audience.</p>	<p>We outsourced the Helpline to give us the flexibility to deal with times of heavy use. Calls that our supplier cannot deal with are diverted to our in-house team.</p> <p>We recognise the need to develop the materials that meet the particular needs of inexperienced and vulnerable consumers. Our booklet, 'You and your money' is designed to promote the FSA's consumer services to less experienced consumers. We are evaluating a trial distribution of it through Post Offices as a means of reaching this group of consumers. We are also testing advertising campaigns on local radio and in newspapers. We are developing a simple leaflet on bank accounts aimed at the financially excluded.</p> <p>Some of our literature has focused on some more complex issues of greater interest to more sophisticated consumers. This is because of the associated risk of detriment to consumers and the need to take action in certain instances, for example on mortgage endowments.</p>	<p>We expressed concern about the operation of the Helpline in 2001 and asked for changes to be made. In addition, we were worried by the two mystery shopping exercises in which reporters posing as consumers had been given the wrong advice.</p> <p>We are pleased to see that action has been taken to improve monitoring and management controls.</p> <p>See paragraphs 3.60-3.61.</p>

Progress on pensions, FSAVCs and mortgage endowments

The FSA needs to make faster progress on the review of pensions, FSAVCs and work on mortgage endowments.

Pensions review – The FSA will report quarterly on firms' progress on Phase 2 of the pensions review and use reports to make public statements about specific areas and to encourage progress.

FSAVCs – Guidance issued in May 2000 made clear that inactivity or apparently unjustifiable delay would be subject to enquiry by the regulators. We have now developed our database for tracking firms' progress.

Mortgage endowments – The Panel has rightly identified mortgage endowments as a priority area.

We welcomed the public reporting of firms' progress on the pensions review.

We supported the FSA in identifying further schemes to be included in the proactive FSAVC review.

We have been encouraged by the FSA's work to ensure that mortgage endowment complaints are dealt with properly by firms.

Polarisation

In developing policy on polarisation, the FSA should consider consumer rights as well as competition and undertake further research instead of seeing abolition as inevitable.

We are grateful to the Panel for its advice, which contributed to our decision to adopt a two-stage approach to any changes to polarisation and to exclude CAT-marked ISAs from the first stage.

As we write this report, the FSA is engaged in a major consultation on its depolarisation proposals.

See paragraphs 3.9-3.15.

Regulation of professional firms

We expressed reservation about the FSA's proposal for regulating professional firms.

The Sourcebook now explains how far the FSA Handbook applies to non-mainstream activities of professional firms. We will be keeping under review the effectiveness of the Designated Professional Bodies' investor protection arrangements. We will consider carrying out a detailed review of DPBs' complaints and redress arrangements after N2. DPBs' rules will ensure that exempt professional firms disclose to clients that they are not authorised by the FSA.

We welcomed the progress made with introducing the professional firms' regime. We now look forward to seeing how the regime, particularly the handling of complaints, will work in practice.

Panel said

FSA responded

Progress from January 2001-March 2002

Financial promotion

We believe a review of financial promotion is needed and that the FSA should do more to clarify the standards required by the financial promotion rules. This should include transparency about the criteria used to assess advertisements.

The FSA's discussions with the Panel explored the criteria and methods we use to evaluate advertising. Sections 179 and 180 of the Financial Services Act and FISMA place legal constraints on the extent to which the FSA is able to disclose to the Panel the information on individual cases or publicly report on cases reviewed as part of its monitoring work. The FSA publishes extensive guidance for firms on financial promotion. In addition, we have discussed anonymised cases with the Panel and we expect to take forward these discussions with them over the coming year.

The FSA is carrying out an internal review of issues relating to financial promotion. We also set up a task force comprising industry, consumer and marketing experts to review the use of past performance data in advertisements.

We were pleased that the FSA established a Review of the Financial Promotion Regime in 2001.

See paragraph 3.6.

Training and competence

The FSA needs to be specific about what it is looking for when monitoring firms' training and competence regimes. We feel the FSA has not explained how it will monitor existing advisers selling stakeholder pensions.

The FSA was slow to start its review of minimum qualifications and the timescale is unacceptably long.

We have developed proposals to specify what supervisors will require from firms when evaluating their training and competence regimes. Since the stakeholder product has become available before N2, the current advisers will be covered by the existing SRO rules on continuing professional development.

We currently oversee around 2000 examinations. Starting the review of minimum qualifications earlier was not considered to be practical. Our priority has been to develop the rules that had to be in place before N2. We believe this remains the right decision. The review began in January 2001 as scheduled.

We welcomed the publication of the discussion paper on the examination review, although we noted it had had a long gestation period. We supported the overall objectives of the review.

See paragraphs 3.25-3.27.

FSA consultation with consumers

In the consultation process, more could be done to make the consumer issues clearer and to encourage responses from consumer representatives.

We are considering how consultation with consumers can be more effective. We have agreed that those responsible for a consultation should make a positive effort to identify relevant consumer issues.

We will consult proactively with consumer bodies on critical issues for retail consumers. We will also consider how we can keep consumer groups informed and enable them to take part in developing regulations that affect consumers.

We have also agreed a new Memorandum of Understanding with the Consumer Panel. This will help identification of key consumer issues requiring consultation and support clear communication with the Panel on an ongoing basis.

We are disappointed that this issue has had to be raised for the third year running. While there are some examples of good practice the response from the FSA has been patchy on this issue.

See paragraph 3.66-3.68.

Panel said

FSA responded

Progress from January 2001-March 2002

E-commerce

The work on the e-commerce theme has been too slow. Sourcebooks are being finalised before the e-commerce work has produced results.

The e-commerce theme report will be published as a discussion paper later this spring. Rules and processes may, in time, be revised in the light of these findings but the Handbook has already been drafted to take e-commerce into account. For example, the Conduct of Business Sourcebook contains guidance on the use of the Internet and other electronic media for communicating financial promotions. The e-commerce theme project has been able to contribute towards work going on elsewhere in the FSA but was never intended to replace that work. There has been ongoing monitoring of e-commerce issues affecting consumers alongside the theme.

We responded to the FSA's discussion paper on e-commerce. While we agreed with the FSA's analysis of the international context we felt that the risks to consumers were understated.

We are concerned at the emphasis placed on consumers in protecting their security information. So, we told the FSA that the onus should be placed on the industry to develop user-friendly security measures.

Chapter 8: Glossary of terms and abbreviations

ABI

Association of British Insurers.

Actuary

an actuary is an expert on pension scheme assets and liabilities, life expectancy and probabilities for insurance purposes (the likelihood of things happening). An actuary works out whether enough money is being paid into a pension scheme to pay the pensions when they are due. An actuary is a Fellow of the Institute of Actuaries or the Faculty of Actuaries.

Approved persons

people who work for firms and who are approved by the FSA or applying for FSA approval and are subject to certain regulatory requirements. In certain circumstances approved persons may be corporate bodies. Approved persons are defined in the Financial Services and Markets Act 2000 as persons exerting significant influence on the conduct of a firm's affairs in relation to activities that are regulated by the FSA; individuals dealing directly with customers; and individuals dealing with the property of customers.

Annuity

an amount paid out every year to someone. The money usually comes from an insurance policy. It can be split up into smaller amounts and paid out more frequently, such as monthly. It is usually paid for the rest of the beneficiary's life.

APR

stands for annual percentage rate. It is intended to give people a more accurate idea of how much they are being charged when they borrow money. Firms must calculate the APR in accordance with requirements made under the Consumer Credit Act.

Arrears managers

within a lender, the person responsible for overseeing contact with borrowers in payment difficulties.

Attribution

an attribution of the inherited estate defines the interest that policyholders and shareholders would have in any future distribution of that inherited estate. An attribution does not imply a distribution.

Baird Report

report of an independent internal audit undertaken by Ronnie Baird in the light of the Equitable Life crisis, assessing the FSA's regulation of Equitable Life from 1 January 1999 to 8 December 2000.

CAT Standard ISA

an ISA conforming to the CAT Standard.

CAT Standards

The Government has created a system to show which **ISAs** meet stated standards for charges, access and terms. The **ISAs** which meet these will have reached the **CAT Standard**.

CESR

Committee of European Securities Regulators. The CESR has replaced FESCO and it is the committee that feeds into the Commission on issues concerning the EU regulatory environment for securities.

Children's Trust Fund

a proposal by HM Treasury to set up Trust Funds for children. These would be set up at birth and the government would make contributions. Family could also make contributions if required. The money would then be available to the child when they reach maturity.

Collective Investment Schemes

independently managed, pooled investment products enabling people taking part to participate in the profits from holding shares in the scheme.

Comparative Tables

an FSA initiative intended to help consumers compare the costs and other features of various financial products, e.g. pensions. The Tables are available from the FSA website.

Conduct of business

some activities regulated by the FSA, such as the sale of life insurance and unit trusts to the public, are subject to the conduct of business rules governing, for example, how salespeople and advisers contact prospective customers, and the information they must provide.

Consumer and Industry-wide Risk Framework

a Framework established by the FSA to assess the relative risks of certain events or issues to consumers and the financial sector as a whole. The Framework is intended to help the FSA prioritise its work.

Consumer Credit Act

existing UK legislation for the regulation of both secured and unsecured lending to consumers. This will be changed when the FSA takes up responsibility for mortgages – expected to happen in mid-2004.

Disclosure (related terms: product information disclosure, status disclosure, and disclosure review)

the term disclosure is used in various contexts by the FSA and in this document:

product information disclosure – the requirement on firms to provide consumers with certain important information about a product that they propose to buy or have bought.

status disclosure – the requirement on firms to tell consumers who they are regulated by e.g. the FSA, the Law Society.

disclosure review – an FSA review of the way that product information is given to consumers, to identify ways to improve the clarity and use of the information.

Distance Marketing of Financial Services Directive

a draft directive intended to rationalise pre- contractual information requirements for EU financial services supplied by telephone, fax and the internet as well as ‘cancellation rights’ (14 day right to cancel the contract after purchase).

Distributor firms

a concept put forward for discussion in CP121 which refers to an authorised firm that takes responsibility for its advice and would be a selling channel for a varying number of providers. The distributor firm would be under a normal suitability obligation to recommend the best product from the range available to it.

E-commerce

business conducted over the Internet.

E-Commerce Directive

A European Directive to establish an EU standard for business conduct on the internet and determine which regulator is responsible when business is conducted across borders.

E-money

monetary value which is:

- (i) issued on receipt of funds;
- (ii) stored on an electronic device; and
- (iii) accepted as a means of payment.

Endowment mortgage

a type of mortgage where the mortgage holder, instead of regularly paying off a portion of their mortgage, pays money into a particular type of investment, i.e. an endowment. At the end of the life of the mortgage, the endowment should have grown enough so that the mortgage holder would have enough money to repay the total sum of the mortgage. A problem arose with endowment mortgages because in the event some people’s endowments were not likely to increase in value enough to pay off the mortgage. Some consumers were mis-sold an endowment mortgage because they were told that the endowment was guaranteed to pay off their mortgage and were not warned of the risk that a change in the economic climate could mean that the endowment would not earn enough to pay off their mortgage.

Equitable Life

Equitable Life is a mutual life assurance society. A judgement by the House of Lords in July 2000, stated that the way in which Equitable Life had been allocating terminal bonuses amongst policyholders was unlawful. The result of the judgement was to place the company into a financial crisis that resulted in Equitable Life closing to new business, although it was not insolvent. This decision resulted in policyholders facing significant reductions in the value of their policies and raised questions about the way that Equitable Life had been regulated.

FESCO

Forum of European Securities Commissions, now replaced by CESR, see above.

Financial promotion

material produced by firms to encourage consumers to buy products. This may take the form of adverts, flyers, flashes on websites, etc.

Firm Risk Framework

a Framework established by the FSA to assess the relative risks of the firms that it regulates in order to prioritise the way it uses its resources.

FSA Register

the Financial Services and Markets Act 2000 requires the FSA to maintain a public record containing details of all authorised firms including a description of the regulated activities that they are permitted to undertake. This will be known as the FSA Register. The FSA intends to make this available on the internet so that consumers can check whether a firm they are intending to use is authorised.

FSAVC

free standing additional voluntary contributions.

Generic advice

advice which is not about a product from a specific provider. It could be about types of products such as different types of pensions. Generic advice about investment products is not subject to FSA regulation.

Grandfathering/grandfathered

the process of granting automatic authorisation under the Financial Services and Markets Act 2000 to a firm which was already authorised under the previous regulatory regime.

Handbook

the FSA rulebook.

Inherited estate

the excess of assets maintained within the long-term fund over and above the amount required to meet liabilities (including liabilities which arise from the regulatory duty to treat customers fairly in making and setting discretionary benefits).

ISA

an individual savings account. The interest earned from an ISA is free of tax.

Lamfalussy

the report of the Committee of Wise Men on the regulation of European securities market.

Long-term care insurance

insurance which provides benefits to meet, in whole or in part, the continuing cost of care of those unable to cater for themselves. It provides a planned way of paying for the cost of any long-term care a person may need immediately, or in the future.

Long-term fund

a pool of assets owned by an insurer out of which it meets claims under long-term insurance business as and when they arise. Also known as the life fund.

N2

date on which the FSA got its full powers under the Financial Services and Markets Act 2000. (Midnight on 30 November, 2001).

Nolan principles

the Nolan Committee, chaired by Lord Nolan, published its first report in May 1995 called 'Standards in Public Life'. It details a code of practice for public appointments procedures and sets out the principles by which Ministerial appointments should be made to the boards of public bodies. It stated that all public appointments should be governed by the overriding principle of selection based on merit and that scrutiny via an independent panel (one member being an independent assessor) should be the main element of the appointment process.

OFT

Office of Fair Trading.

Packaged products

a term used to refer to the following products: a life policy, a regulated collective investment scheme, an interest in an investment trust savings plan and a stakeholder pension scheme.

Past performance

a record of how products firms sell have performed in previous years.

Pension annuity

product bought with pension savings accumulated during working life. The annuity then provides a regular income for the retiree.

Perimeter (or regulatory perimeter)

in the context of financial regulation, the perimeter is the scope of the FSA's responsibilities. Various activities are either 'inside the perimeter', i.e. the FSA regulates those activities or 'outside the perimeter' the FSA does not regulate those activities.

PIA

Personal Investment Authority, one of the FSA's predecessor regulators.

Polarisation

rules that control the way that some savings and investments can be sold. The requirement is for those who advise on life assurance, personal pensions and unit trusts to either be independent or a representative of a particular product provider which means they are an agent for that company and can only sell products in its range.

Pre-application illustration

an illustration provided by a product provider, which explains to a consumer what a product is likely to cost them. Because the illustration is provided before application, it is indicative only.

Prudential (or prudential regulation)

the way in which financial firms arrange their finances to retain solvency, and manage their risk and exposure.

Regulatory reporting

the requirement on firms to provide information about their activities periodically to the FSA.

Sandler Review

a Review initiated by HM Treasury, into the future of medium- and long-term retail savings.

Savings Gateway

an HM Treasury initiative to encourage the financially excluded to begin saving.

Single pricing (or the single pricing review)

the way in which prices are fixed for collective investment schemes. The Single Pricing Review considered whether the current system, which incorporates some of the costs to the scheme of trading, into the cost of the unit should be changed.

Split capital closed end funds (SCCEFs)

an SCCEF is a closed end fund with more than one class of share, which is governed by a board of directors. It is a listed company, which provides investors with exposure to a portfolio of investments.

SRO

self-regulating organisation. The generic term for several of the predecessor regulators of the FSA.

Stakeholder pensions

a type of personal pension introduced by the Government in April 2001, with a rebate, which will reduce the employee's national insurance contributions. Aimed at low to middle income earners with no existing pensions provision.

Theme Projects (or theme)

FSA projects, focusing on broad strategic issues which may affect various areas of the FSA. Theme projects produce higher level proposals and conclusions, which are incorporated into the FSA's policy and supervision priorities and strategies.

Trading endowments

a life policy or endowment which is to be or assigned for value by the policyholder to another person.

Transparency

in the context of its work, the FSA has committed itself to be 'transparent', i.e. it will inform firms and the public about how it goes about its activities and will consult before taking action.

In the context of firms and products, consumers need firms' activities and products to be 'transparent' so that they can be understood and so that consumers can make informed choices.

Unfair Contract Terms Act

UK legislation covering terms that attempt to exclude liability and impose penalties.

Unfair terms in Consumer Contracts Regulations 1999

regulations that implement the EU directive on unfair terms in consumer contracts covering terms in standard contracts which create a significant imbalance in the rights and obligations between parties and a requirement for these to be written in plain and intelligible language.

'Windfalls' test case (also windfall)

windfalls are one-off payments which members of a mutual society may receive if the society decides to de-mutualise. The test case addressed the situation where a consumer was mis-sold a product by a mutual society, which subsequently de-mutualised and the consumer received a windfall payment. At a later date the firm agrees to compensate the consumer for being mis-sold the product and is calculating the appropriate compensation. The question raised in the court was whether the windfall that the consumer received should be deducted from the compensation to which they are entitled. The Court concluded that the windfall payment should be disregarded when the firm decides on the appropriate compensation.

With-profits review

an FSA review of the way in which with-profits business is operated, managed and described to consumers, to identify ways in which these processes could be improved.

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