

Julian Watts  
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Our ref: WG A CP 148

Dear Julian

**Response to CP 148: The FSA's Approach to the use of its Powers under the Unfair Terms in Consumer Contracts Regulations 1999**

The Panel believes that the success of the FSA as a Qualifying Body under The Unfair Terms in Consumer Contracts Regulations 1999 ('the Regulations') – and the level of protection they provide to consumers - will be dependent upon consumers being made aware of the scope and importance of the Regulations and of the need to complain to the FSA when they think they have been disadvantaged. Consumers will also need further direction from the FSA as to what an unfair contract term might be.

Paragraph 6.9 of the consultation paper makes reference to a focused publicity campaign aimed at consumer bodies and advice intermediaries and to an updated fact-sheet aimed at consumers, which has already been issued.

The Panel urges the FSA to undertake further work to ensure that consumers get the message about the Regulations. Future consumer-focussed publicity should include precise, easy to understand examples of terms that may be unfair, the role of the FSA as a Qualifying Body and how consumers can get redress.

In addition we have the following comments on the questions contained in the consultation paper:-

**Q1: What are your views on the content, clarity and presentation of the draft guidance set out below at Annex B?**

The Panel is generally satisfied on these points with the exception of paragraph 20.3.1.(3). The Panel found this confusing and suggests that the paragraph be clarified.

**Q2: What are your views on our intention to consider under the Regulations contract terms of certain services which are currently not regulated activities?**

The Panel supports this proposal.

**Q3: What are your views on our intention to ask the OFT to take forward any necessary enforcement action under the Regulations in respect of unauthorised firms?**

The Panel agrees with this proposal.

**Q4: What are your views on the potential inter-relationships between the Regulations and the FSA's conduct of business rules and prudential standards?**

In general the Panel welcomes the flexibility that this approach will bring. However, as I have made clear in the opening paragraph of this letter, the Panel believes that publicity about the FSA's work in this area will play a major part in ensuring that consumers are aware of their rights and of the protection to which they are entitled. The Panel supports the intention to include FSA case reports in OFT publications and the proposal to post case summaries and commentary on the FSA web-site. The Panel has been told, in another context, that the FSA feels constrained in what it can publish or make available to consumers when dealing with information obtained/action taken under the FSMA regime. This means, for example, that the FSA feels that it cannot advise complainants of the outcome or progress of their complaints. The Panel does not wish consumers to be disadvantaged in terms of publicly available information as a result of the FSA exercising its discretion to deal with unfair contract term issues using its FSMA powers, rather than by acting in its capacity as a Qualifying Body under the Regulations.

**Q5: What are your views on our proposals for pro-active thematic contract reviews?**

The Panel strongly welcomes this proposal.

**Q6: What are your views on our intention to issue specific guidance from time to time?**

The Panel supports this proposal.

**Q7: Do you have views on which contract types or products should be targeted and prioritised for pro-active thematic reviews?**

The Panel agrees that the issues of discretion and transparency in contracts and contracts used by independent financial advisers should be a priority. In addition the Panel recommends a review of the following: guaranteed and capital protected products; exotic products such as precipice bonds and securitised derivatives; early

loan repayment penalties; permanent health insurance; payment protection insurance; pre-paid funeral plans; pet insurance and motor vehicle insurance.

Yours sincerely,



**Colin Brown**  
Chairman  
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