

Financial Services Consumer
Panel response to:
Consultation Paper 146
The FSA's Approach to
Regulating Mortgage Sales

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Financial Services Consumer Panel response to Consultation Paper 146: The FSA's Approach to Regulating Mortgage Sales

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Summary

- I. The Financial Services Consumer Panel is concerned about the clarity of information which will be available to consumers through much of the proposed mortgage regime. The detailed points of consultation are taken in the order they are set out in CP146.
- II. The Panel reiterates its previous concerns about the limited scope of the regime. It believes that second charge mortgages, buy-to-let mortgages, small business mortgages and home reversion schemes should all be included within the regime.
- III. The Panel has serious concerns on the FSA's proposed interpretation of what should be counted as regulated advice. It sees potential for widespread confusion among consumers about what will and will not be regulated, as set out in Table 4.1 of CP146.
- IV. Although the FSA is due to issue further consultation on appointed representatives, the Panel highlights here its concerns on the idea that appointed representatives will be able to have different principals for different products. This will lead to confusion for consumers.
- V. The distinction between three types of selling process will also, the Panel believes, lead to confusion for consumers. The Panel has always been in favour of having the option of execution only rather than advised sales for those consumers who wish it. However, in the case of mortgages – unlike investment products – the execution only route inevitably entails a number of filtering questions and we do not think it would be appropriate, or indeed possible, to carve out a meaningful distinction between execution only sales and non-advised sales with filtering questions. The Panel believes that there should be only two selling processes: advised and non-advised execution only sales. The regulatory safeguards that the FSA has proposed for non-advised filtering questions should be applied to execution only sales. In

addition the Panel will press the FSA to re-examine and strengthen the disclosure rules for execution only sales so that consumers are clear that they are not being given advice.

- VI. On financial promotions, the Panel highlights the continuing problem associated with the lack of clarity on FSA policy in this area.
- VII. The Panel agrees with the FSA's wish to encourage greater use of its comparative tables, and suggests there should be a requirement for a reference to the tables on all documents.
- VIII. The Panel believes that independence in the mortgage market should be defined in the same way as an independent giving investment advice, as this will be the simplest for consumers to understand.
- IX. The proposals for initial disclosure on advised sales are suitable. The Panel also believes that initial disclosure in execution-only sales is as important as disclosure in advised sales and urges the FSA to consider the use of the Initial Disclosure Document in this area. The Panel would like the FSA to undertake further research into consumers' understanding of their rights under non-advised execution-only sales.
- X. The Panel agrees that affordability is the key factor in assessing suitability for mortgages in all except debt consolidation, where additional factors will need to be taken into account.
- XI. The Panel sees no justification in the FSA's proposals to do away with the suitability letter currently sent under the mortgage code.
- XII. The Panel welcomes the improvements to the training and competence regime, and also the pre-application product disclosure, with some points of clarification.
- XIII. On the offer-stage disclosure, the Panel believes that changes made between the pre-application and offer should be highlighted to consumers.

- XIV. The Panel suggests further amendments to the requirements to ensure fair treatment of consumers.
- XV. The Panel welcomes the FSA's proposals on consumer education, although suggests some additional points to be taken into account.
- XVI. On lifetime mortgages, the Panel supports the FSA's proposals for a different regulatory approach, although asks to see more from the FSA on proposals for dealing with poor products, as the timescale for rectifying mistakes is likely to be relatively short. It also asks the FSA to be prepared for this to be a growing market in the future.
- XVII. The Panel disagrees with the FSA's interpretation on consumer research on the name "lifetime mortgages" and suggests the FSA should do more work in this area to ensure that this type of product is readily understood.
- XVIII. As the Panel does not agree with the FSA's definition of lower risk mortgages, it does not support a lighter touch regulation here.
- XIX. The Panel suggests training and competence requirements for the selling of business loans.
- XX. The Panel believes that mortgage lending and administration should be included within the Financial Services Compensation Scheme, it is in the interests of consumer confidence that they will be protected, even if the numbers likely to claim will be small.

Panel response to Consultation Paper 146: The FSA's Approach to Regulating Mortgage Sales

Introduction

1. This paper is the response of the Financial Services Consumer Panel ('the Panel') to the Financial Services Authority (FSA) Consultation Paper 146, The FSA's Approach to Regulating Mortgage Sales.
2. Although the Panel welcomes some of the initiatives in the paper, particularly in the area of consumer education and training and competence requirements, the Panel has serious concerns about several of the key proposals. Most significantly the Panel is opposed to the introduction of a third type of sales process (non-advised filtering questions), which it believes would cause confusion amongst consumers and possibly lead to mis-selling without consumer protection. The Panel is also disappointed that there are still important gaps in the scope of the regime: loans secured by way of second charges; buy-to-let mortgages (other than where the tenant is a member of the borrower's immediate family); small business mortgages and home reversion schemes.

Legislative scope of the regime

3. The Panel continues to have serious concerns about the limited scope of the regime. In particular the Panel feels strongly that there will be significant gaps in consumer protection in four specific areas: loans secured by way of second charges; buy-to-let mortgages (other than where the tenant is a member of the borrower's immediate family); small business mortgages and home reversion schemes.
4. Currently second mortgages of up to £25,000 fall within the ambit of the Consumer Credit Act 1974, but second mortgages over that figure will continue to be completely unregulated. It is possible that unscrupulous

brokers/lenders will manipulate this regulatory gap by, say, providing a loan of £1 secured by way of a first charge and the balance of a loan purchase secured by a second charge.

5. So far as buy-to-let mortgages are concerned, some consumers see these as an alternative to investment products such as pensions, yet they will not enjoy any form of regulatory protection. This seems a strange anomaly. The Panel also considers that the definition of “immediate family” should be amended to include stepchildren.
6. In the Panel’s view there is very little difference in terms of the need for consumer protection between business loans to sole traders and business loans to small companies. The Panel believes that loans to small companies should be within the scope of the regulatory regime.
7. The Panel sees no rationale for the exclusion of Home Reversion Schemes from regulation. Given that the paper recognises that “reversion schemes pose comparable risks to lifetime mortgages for consumers”, it seems absurd that consumers will not be offered the same protection as those who have been sold lifetime mortgages. The Panel considers that this disparity could lead to a distortion of the equity release market.

Q1: Do you have any comments on the proposed guidance and are there any areas where it would be useful to expand on it?

8. The Panel sees enormous scope for confusion among consumers as to what will and will not be regulated. There are two principal reasons for this. First, the Panel considers that the definition of advice is far too narrow. The FSA has set out its view of the meaning of the relevant legislation, which is that in order for advice to be regulated advice it must include “a recommendation as to a course of action” in relation to “a particular mortgage”. Of the examples of unregulated advice given in Table 4.1 of the paper, four are currently deemed to be advice under the Mortgage Code (“I recommend that you take out a mortgage with ABC Building Society”; “I recommend that you take out a variable rate

mortgage”; “I recommend that you take out a mortgage” and “I recommend that you don’t take out a mortgage”) and come within the definition of “advice and a recommendation as to which mortgage is most suitable for you.” The Panel sees no justification for reducing the level of protection enjoyed by consumers in this way and believes that consumers are likely to regard such advice as regulated advice on which they would have recourse to the FSA/Financial Ombudsman Service.

9. Although generic advice given in conjunction with filtered questions would become regulated advice (as in paragraph 4.14 of the paper), two pieces of generic advice given in the same meeting might not. Therefore if a consumer is told “I recommend that you take out a mortgage with ABC Building Society” and then later “I recommend that you take out a variable rate mortgage”, this may well be unregulated advice even though the effect of it may be to recommend “a particular mortgage.”
10. The second reason is that the Panel considers that there are serious risks inherent in the use of non-advised filtering questions. Some of these are acknowledged by the FSA in Chapter 13 of the consultative paper and the Panel has commented on these issues elsewhere in this response.
11. The Panel is aware that the Regulated Activities Order effectively excludes from regulation bodies within the voluntary sector, as although they give what would otherwise be regulated advice they are not doing so by way of business. The Panel is not convinced that this issue has been subjected to sufficient detailed examination to determine whether they should continue to be exempt, given the impact that advice from voluntary bodies has on the financial position of their clients. The Panel considers that this issue goes beyond the scope of CP 146 and will consider raising it in a more appropriate forum.
12. Introducers are excluded from the regulated activity of arranging regulated mortgage contracts. The Panel would like the FSA to monitor the number of intermediaries who are currently regulated under the Mortgage Code

who elect to become introducers under the new regime. The Panel is concerned that some less reputable intermediaries may take the opportunity to 'opt out' of the requirement to be authorised, but still give generic/unregulated advice and earn money from it. Because this will be outside the scope of regulation there will be no monitoring of the level and quality of advice given.

Appointed representatives

13. The FSA has not sought views on this Chapter at this stage, but the Panel has concerns it wishes to raise now.
14. Under the current investment business rules appointed representatives who sell only products provided by their principal(s) are exempt from authorisation by the FSA and the business they undertake is the responsibility of their principal(s). This may change, of course, as a result of the polarisation review. Paragraph 5.8 of the paper raises a number of possibilities for the structure of the appointed representatives regime for mortgage sales and advice. One of these options is that there should be no restriction on the number of principals an appointed representative could have for each product sold. In the case of appointed representatives undertaking a range of regulated activities, this would be any number of principals for each product in each area of their business.
15. The Panel considers that this arrangement could lead to confusion in the minds of consumers. It could be detrimental to their interests in making it difficult for them to find out which firm should deal with any complaints they have about the product(s) they have been sold.
16. The Panel will be covering these points in our response to the Appointed Representatives Consultation Paper.

Territorial scope of the regime

17. The Panel thinks that the scope should include mortgages where borrower and lender are both in the UK, but the property charged is overseas.

Mortgage selling: the context for regulation

Q2: Given the safeguards proposed for each process (see Table 7.4) do you have any comments on our proposal to distinguish between three selling processes (advised sales, non-advised filtering questions sales and non-advised execution-only sales) for regulating mortgage selling?

18. The Panel has always been in favour of consumers shopping around for the best deals. The mortgage market is an area where consumers have recognised the benefits of this and, generally speaking, they have confidence in the process. The Panel does not wish to see a regime imposed which restricts the flexibility of this market or erodes customer confidence.

19. The Panel believes that there is a strong case to be made for non-advised, execution-only sales and advised sales. We also recognise that there is a place within the mortgage market for the use of filtering questions as a medium for assisting consumers, but the Panel has serious concerns about the proposal to distinguish between execution-only sales and non-advised sales with filtering questions. We do not believe it is possible to distinguish in a meaningful way between execution only sales (where filtering questions are part of the process) and non-advised sales with filtering questions. As a result, we believe that the creation of a non-advised filtering questions route would run the risk of leading consumers to believe that if they opted for this process, they would receive regulated advice. The consumer will surely see the answer that comes out of the filtering questions process as a recommendation and yet the proposal is that the firm will have no responsibility for the recommendation's suitability.

20. Moreover the Panel is unsure how the non-advised filtering questions process will work in practice. For example, if a consumer is asked a set of filtering questions s/he would almost certainly seek information or clarification from the interviewer at various points – what is a discount mortgage, what difference would having no redemption penalties make to the interest rate and so on. Where would the distinction between “information” and “advice” lie? Is it realistic to expect interviewers not to respond to questions such as “I don’t understand that, can you help me?” and “what do you think?”. Consumers may be under the impression that they have been given regulated advice, but find they have no recourse to firms asking the questions as they would be operating in a non-advised environment.

21. The Panel believes that there should be only two types of selling practices: non-advised execution-only sales and advised sales. Both will almost certainly involve the use of filtering questions as a tool to help the applicant choose the mortgage they want. Mortgages can be complex products and there are many options and features that will have to be considered by consumers before they make a decision – whether with the benefit of regulated advice or not. The key to the success of such a regime would be the strengthening of the execution-only process with the regulatory safeguards proposed by the FSA for non-advised filtering questions, together with a robust procedure for disclosure. In an execution-only environment, it must be made abundantly clear to consumers that they will not be given any advice on the merits or otherwise of particular mortgages and that responsibility for their decision will be entirely their own (even if a set of filtering questions is used).

Q3: Do you have any comments on our proposals to differentiate higher and lower risk products in our rules and on the definitions proposed for lower risk products?

22. The Panel agrees that lifetime and impaired credit mortgages should be classed as higher risk products, but does not accept that mortgages for a

limited term or a limited amount are lower risk products. It is the Panel's understanding that these products are generally sold to vulnerable consumers and that they account for disproportionate numbers of mortgages which fall into arrears and where repossession action is required.

23. The Panel is not convinced that the proposed safeguards will be strong enough to protect vulnerable consumers with impaired credit histories.

Financial promotions

24. The Panel has concerns about the lack of transparency surrounding the FSA's current policy and practice of dealing with advertisements which it suspects might not comply with the relevant regulations. The Panel is opposed to the adoption of this practice for qualifying credit promotions. The Panel considers that it is in the interest of consumers to make known advertisements which may have misled consumers, both in relation to specific firms/products and more generally in identifying areas where consumers should exercise particular caution. The Panel considers that the Advertising Standards Authority, which deals with misleading headline claims in mortgage advertisements, operates a transparent system which acts as both a powerful deterrent to companies who might be tempted to overstep the bounds of what is acceptable and a valuable tool for consumer protection.

25. The Panel supports the use of effective risk statements in advertisements and sees no justification for the proposed exemption for cinemas and most broadcast advertising.

Q4: Do you agree with our proposal that a statement of the APR should be required as part of disclosure for secured overdrafts?

26. The Panel agrees that the APR should be stated as part of disclosure for secured overdrafts.

27. Although the FSA has not sought comments on this particular issue, the Panel has a number of concerns about the proposals relating to impaired credit advertising. There are no disclosure requirements relating to any arrangement fee, which in the Panel's experience is a major factor in impaired credit applications. The Panel does not think that including the APR in these advertisements will be sufficient to warn consumers that there may be cheaper loans available to them. This should be set out in plain terms. In addition the Panel believes that the FSA should prescribe an additional risk warning depending on the product, which should be consumer tested.

Q5: Do you agree that the simplified approach we propose in relation to qualifying credit promotions is equally appropriate for the new controlled activities of 'advising on' and 'arranging' mortgages?

28. The Panel agrees that the approach proposed is appropriate for advising on and arranging mortgages.

Comparative tables

29. The Panel believes that there should be a requirement for reference to be made to the comparative tables on all marketing literature about mortgages. This is the only way that awareness of the tables will become more widespread.

Independence in the mortgage market

Q6: Given this analysis of potential advantages and disadvantages of restricting the use of the term independent, do respondents prefer option 1 or option 2? Are there any other possible advantages and disadvantages that we need to consider?

30. The Panel has very serious concerns about proposals which effectively provide a different meaning to the term "independent" in the context of mortgage advice than in relation to investment advice. There is enormous

scope for confusion in the mind of the consumer, particularly where investments are being purchased at the same time as a mortgage. If panels are to be used there should be some control over the definition of a 'panel' which should fairly represent the best mortgage deals in the market place at any one time. The Panel supports option 1 of the two offered.

Q7: Might it be justifiable to have different requirements for independent mortgage firms compared to the requirements that are proposed for independent investment business firms? (For example, could the term be restricted to 'whole of market' for mortgages even if it were extended to include other requirements for investments?)

31. The Panel does not think that it would be justifiable to have different requirements for independent mortgage firms compared to the requirements proposed for investment firms. The use of identical terms with different meanings would create scope for consumer confusion on a large scale.

Q8: Can you provide any information on the likely costs to the industry and the benefits to consumers of either option 1 or option 2?

32. The benefits to consumers of option 1 are set out above.

Q9: What are your views on extending the definition of independence to non-advised sales? Do you see any major difficulties/costs with this approach?

33. The Panel considers that the definition of independence should be extended to non-advised sales.

Q10 In principle, do you think that firms should be able to have a different status in relation to different regulated products or different consumers, providing this is made clear in the initial disclosure document?

34. Although again the Panel considers that there is some scope for confusion, we have no objection to this proposal provided that the position is made absolutely clear to consumers.

Initial disclosure

Q11: Do you agree with our approach to initial disclosure and the proposed content of our initial disclosure document?

35. The FSA's proposals apply only to advised sales and non-advised filtering questions. The Panel is opposed to the establishment of a non-advised filtering questions process, for the reasons set out earlier in this paper. For advised sales the Panel believes that both the approach and the document are suitable (aside from section 1). The Panel also believes that initial disclosure in execution only sales is as important as disclosure in advised sales and urges the FSA to consider the use of the Initial Disclosure Document in this area.

36. The Panel would like the FSA to undertake further research into consumers' understanding of their rights under non-advised execution-only sales.

37. The Panel strongly supports the use of prescribed wording in the disclosure document and recommends that the FSA logo is also used. The Panel also believes that a single initial disclosure document should be used for multiple products, such as a mortgage and linked investment.

Suitable advice requirements

38. The Panel agrees that, with the exception of debt consolidation, affordability is a key factor in assessing suitability for mortgages, although there are others such as portability. Given the information that advisers must obtain from the consumer in order to deal with this question, the Panel recommends that advisers should encourage applicants to complete a standard income and expenditure sheet for every client, with the adviser building into it the cost of the mortgage and associated expenditure. Pro forma like these are already in use in the banking and investment advice sectors and its use in the mortgage sector would have the added

advantage of creating uniformity across the whole of the personal finance industry.

39. In addition the Panel thinks that the adviser should be obliged to mention the limited State assistance provided to borrowers in financial difficulties and the availability of Payment Protection Insurance. If the mortgage adviser is unable to deal with PPI, the consumer should be referred to someone who can.

40. The Panel agrees that affordability is not the only issue for consumers seeking a mortgage for debt consolidation purposes. The Panel supports the FSA's suggestions in paragraph 12.8 for additional factors to be taken into account in these circumstances. In addition we recommend that advisers should be obliged to point out to consumers the difference between the rate of interest offered on the mortgage and the average variable rate of the top ten mortgage lenders. In addition they should advise consumers at the outset that default on an unsecured loan can lead to a County Court Judgement whereas default on a mortgage can lead to the loss of their home.

Q12: Do you have any comments on our approach to suitability, including views on the two options proposed? What are your views on the two options proposed for the third stage of the process?

41. The Panel finds it difficult to see much distinction between the two options and does not consider them to be mutually exclusive. On balance the Panel favours option 1, but with the 'default clause' set out in option 2.

42. As a final point on this Chapter, the Panel can see no justification for doing away with suitability letters. None of the other disclosure documents say why a particular product was recommended and this document is of particular importance to both firms and consumers. The FSA should address the present variable quality of these letters and how to improve them. This may mean introducing standardised wording.

Requirements on filtering questions

Q13: Do you agree with our preferred option for dealing with filtering questioning used in non-advised sales (ie option 1 in paragraph 13.6)?

43. Although the Panel is not in favour of establishing a non-advised filtering questions sales process, it recognises that there is a role for filtering questions in both the non-advised execution-only and advised sales processes. The Panel does not believe that treating filtering questions as financial promotions and relying on the clear, fair and not misleading rule provides sufficient protection for consumers.

Q14: Do you agree with our proposal that filtering questions should be scripted and that staff administering the questions should be supervised to prevent them from inadvertently offering advice? or do you see merit in an examination requirement as an alternative to requiring questions to be scripted for sales using filtered questions?

44. The Panel strongly supports scripted questions and the close supervision of staff administering the questions in an execution-only transaction.

Training and competence

Q15: Do you agree with our overall approach to training and competence and, in particular, with the conclusion that an examination is not generally required for non-advised sales apart from lifetime mortgages?

45. The Panel welcomes the improvements the FSA has made to its earlier proposals, particularly in the area of high-risk mortgages. Nevertheless the Panel has serious concerns about the training and competence requirements for so-called lower risk products. The experience of the advice sector is that these 'lower risk' products account for a significant number of repossessions – for example, secured business overdrafts. The potential for consumer detriment is huge: an individual could lose their home because of a £2k secured credit card debt. The Panel's view

is that advised sales of lower risk mortgages should be subject to the same training and competence requirements as for higher risk mortgages.

Q16: Do you have any views on proposed transitional arrangements for training and competence requirements?

46. The Panel supports the FSA's decision to recognise the work already done by those in the industry as part of the new training and competence regime. However the FSA should be specific about the arrangements and the timetable for the introduction of the new training and competence requirements.

Product disclosure – pre-sale and offer stage

Q17: Do you have any comments on the template and the proposed content of the PAI?

47. The Panel believes that the Pre Application Illustration is a great improvement on earlier versions. The Panel would prefer the question "what happens if you do not want this mortgage any more" to be expressed as "what if I want to repay this mortgage early". As we do not believe that consumers will understand the concept of non-advised sales with filtering questions, we also consider section 2 to be inappropriate. We think that the prescribed text is clear and helpful and we support its use in the PAI.

Q18: What are your views on whether firms should be required to unbundle the costs of advice/distribution from the cost of the product in the mortgage market?

48. The Panel supports the unbundling of costs of advice and distribution from cost of the product.

Q19: What are your views on whether commission/remuneration should be disclosed when mortgages are sold through intermediaries or by lenders directly?

49. The Panel strongly supports the disclosure of commission/remuneration. It is perfectly reasonable for consumers to be told the price they are paying for the product and the service provided.

Q20: What are your views on our proposals for a PAI for mortgages without a regular payment plan and mortgages requiring a minimum repayment that does not cover all the interest that has accrued?

50. The Panel believes that the additions proposed are useful, but that there should be a prominent, clearly worded warning at the top of the form about the key differences between the product being purchased and conventional mortgages. The PAI should also set out the circumstances in which the consumer would be in default and what the penalties for that would be. The Panel considers this to be particularly important as these flexible products are relatively new and not always understood by consumers.

Q21: Do respondents have any comments on our proposals regarding when a pre-application illustration should be provided to a customer?

51. The Panel agrees that the PAI should be produced before the consumer submits an application. It should be posted quite separately from any other information or literature.

Q22: Do you have any comments on our proposals for offer stage disclosure?

52. Consumers will need to be aware of any differences between the information contained in the offer document and the information contained in the PAI. The Panel believes that these should be highlighted and does not agree that this task would impose too great a burden on lenders.

Requirements to ensure fair treatment of consumers

Q23: Do you agree with our approach to addressing excessive fees and the non-refund of fees?

53. The Panel understands that the largest group of complaints received by the MCCB concerns the refund of fees if loans do not go through. The Panel does not think that the FSA's proposals are an effective alternative to existing rules. The maximum fee has not caused advisers any difficulty until now and there seems to be no reason to dispense with a capped fee, although the Panel accepts that the figure of £5 should be increased.

Q24: Do you agree that the package of measures proposed (the existing financial promotions rule, the principles for business and consumer education) to address high-pressure sales provide consumers with the protection they need?

54. The Panel believes that a cooling off period should be imposed for debt consolidation loans. The Panel thinks that this would be a valuable safeguard for borrowers and that it would not present any real obstacle to the completion of the mortgage.

Q25: Do you have any views about our approach to inducements?

55. The Panel supports the FSA's proposals – in particular the disclosure of commission and the banning of volume overrides.

Q26: What are your views on retaining a responsible lending provision for mortgage sales other than advised sales?

56. The Panel's view is that the responsible lending provision should be retained for all sales.

Consumer education

57. The Panel welcomes the FSA's proposals, especially the focus on providing more help for vulnerable consumers. However, consumer education is not simply about assisting the consumer to understand the product, important though that is. It should also cover suitability elements, such as the type of mortgage and level of repayment suitable for individual consumers. Such work should also explain the value of advice in ensuring

suitability as well as in understanding the products and choices between providers. Education should not be seen as a substitute for advice, nor for requirements on providers to ensure clarity of information and fairness of the product.

58. Chapter 17 concentrates on FSA work in this area. The Panel believes that consideration should be given to the responsibility of providers in undertaking generic consumer education – which is not the same as their promotional work.

Lifetime mortgages

59. The Panel welcomes the FSA's decision to propose a different regulatory approach to so-called "lifetime mortgages", given their identification as higher risk products. However, these products are also aimed (in general) at a more vulnerable group of consumers, so particular care is needed to ensure the protection of this group. The potential detriment to any one of them from a mistake is higher than for almost any other product, as they are unlikely to have time to rectify any such mistake. The Panel would like to see the FSA's proposals for dealing with poor lifetime mortgages. Compensation after the event is inadequate for these consumers, given their particular circumstances. The FSA should have a process in place to review new products of this type so that problems can be anticipated and dealt with swiftly and at an early stage.

60. As noted earlier in this response, the Panel is particularly disappointed that H M Treasury has decided that Home Reversion Schemes will not be regulated.

61. Regarding the term "lifetime mortgages", the Panel does not concur with the FSA's judgement that their consumer-testing showed this term "best conveyed" the product. Paragraph 4.7 of the Consumer Research 14 paper (sample size only 36) states that "within the sample, there was a mixed level of understanding of a lifetime mortgage. Those who did not

understand generally assumed that the lender took ownership of the home in some way, in return for a sum of money ... Those who partially understood inferred that they would be borrowing against their house ... However, they did not infer what happened at the end of the term of 15 years, how the money was paid back, or that the house would be sold.” Furthermore paragraph 4.29 of the same document stated that “the word lifetime was taken to imply that the product is intended to last until the person dies, but this appeared puzzling when a term was set that the borrower might outlive.”

62. For most people the term “mortgage” relates to the buying of a home and the related loan for this purpose. This is not the purpose of a “lifetime mortgage” which is really a form of “forward selling”. Of the options tested, 4 of the 6 suggested included the word “mortgage”. The results in paragraph 5.54 of the Consumer Research showed that “consumers understood a mortgage to be a one-off loan to buy a house, and the definition of a mortgage as being any loan secured on property was rarely given. It is therefore hard to justify the continuing use of the word in the current context. The Panel urges the FSA to re-test, on a broader basis, consumer views about the term and its meaning, and other alternatives.

63. The Panel agrees with the list of risks from lifetime mortgages in paragraph 18.6, to which we would add potential restrictions on the consumer’s freedom to move home; any risks arising from changes in personal circumstances, such as a divorce; and the possibility of the interest rate charged on the mortgage rising more quickly than the return on the matching investment, as happened in the 1980s. On this last point the Panel feels that the FSA should ban plans where the rate charged on a mortgage can rise more quickly than the return on a matching investment. The Panel is also concerned about the risk of buying a poor value product as it is difficult for consumers to compare these products and virtually impossible to switch later.

Q27: What are your views on our proposals for assessing suitability for lifetime mortgages?

64. The Panel considers the proposals acceptable and particularly welcomes the requirement for means-tested benefits and tax issues to be taken into account in determining the suitability of such a product.

65. It is noted in paragraph 18.23 of the paper that the market for lifetime mortgages/home reversion schemes is currently small. However, the Panel foresees the market growing significantly in future years, with increased life expectancy and a growing need to finance home and social care. The regime should therefore anticipate growing demand for this type of product.

66. Paragraph 18.27 allows non-FSA designed “filtering questions” to be used for non-advised sales. The Panel has commented elsewhere in this response on the use of non-advised filtering questions. The Panel is also concerned about any ‘multi-tied’ approach in the area of lifetime mortgages. There are currently very few providers and there is a fear that they would simply advise customers to buy from large, well-known firms without properly considering smaller providers whose terms may be better.

Q28: Do you agree that additional training and competence requirements are appropriate for lifetime mortgages?

67. The Panel agrees that the additional Training and Competence requirements proposed are needed for lifetime mortgages.

Q29: Do you have any comments on the template and the proposed content of the PAI for lifetime mortgages?

68. There is too much jargon used in the PAI, such as “release equity” and “drawdown mortgage”. The Panel also thinks that the question “What happens if you do not want this mortgage any more” would be clearer as “What if I want to repay this mortgage early?”

Q30: Do you have any comments on our proposals for offer stage disclosure for lifetime mortgages?

69. The Panel has no comments on these proposals.

Lower risk mortgages

70. The Panel does not think that the proposed form of warning regarding credit cards in paragraph 19.8n) is satisfactory. It should spell out the statutory rights which the consumer is about to relinquish.

Q31: Do you agree with the proposals to vary our approach to regulation for lower risk mortgages?

71. Given that the Panel does not agree with the FSA's definition of lower risk mortgages, the Panel does not support the FSA's proposed "lighter touch". The Panel's view is that it would not be appropriate to vary the use of the suitable advice requirement, training and competence and product disclosure tools in these circumstances.

Business loans

Q32: This chapter describes the ways in which we propose to adapt our general business approach to reflect the differences that exist between business loans and standard mortgages. Do you support the approach we propose – and do you have any views on the practicality or proportionality (either in the use of individual tools or in the overall package)?

72. The Panel concurs with the view that the potential detriment for small business consumers may be the same as that facing residential customers, and thus that most mortgage sales should be subject to the same level of regulation. Nevertheless the Panel thinks that there should perhaps be a training and competence requirement for selling business loans. Those in this part of the industry should have their level of

knowledge recognised as part of the FSA's proposed training and competence regime.

Variations to contracts

Q33: What are your views on these proposals for addressing post-sale contract variations?

73. The Panel has no objection to these proposals.

Redress for consumers: complaints and compensation

74. The Panel is surprised that the FSA proposes to exclude mortgage lending and administration from the scope of the Financial Services Compensation Scheme and sees no good reason to do so, although we recognise that there are only a small number of consumers who might be affected. Nevertheless in the interest of consumer confidence these consumers should be protected. The Panel does not expect the cost to the industry to be high.

Q34: Do you agree with this analysis of the possible detriment? Can you provide any evidence of how widespread claims of these types are, or of the typical amount of loss, or of other loss scenarios?

75. The Panel agrees with the FSA's analysis, but is unable to provide anything by way of empirical data. The Panel's understanding, however, is that the type of detriment suffered by consumers would be most likely to fall within examples 22.14 c) and d).

Q35: Taking cost factors and the likelihood of claims occurring into account, do you think that the provision of mortgage advice and arranging should be covered by the Scheme?

76. The FSA's case is well made and the Panel supports it.

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 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.

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.

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 consumers. Previous posts include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care.

Yvonne Gallacher, OBE

Yvonne is Chief Executive of Money Advice Scotland, set up in 1989 by Scottish Consumer Council. She has over thirteen years' experience of consumer credit/money advice issues and of working with vulnerable consumers in a variety of roles, including debt counsellor, trainer and manager. She has also lectured and co-authored a Guide to Money Advice in Scotland. Yvonne is presently a member of the FSA Consumer Education Forum and Credit Union Consultation Panel. Yvonne is a member of the Scottish Consumer Council.

Harriet Hall

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

Dianne Hayter

Dianne is 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 for 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..

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 television programmes. He is a member of the Mortgage Code Compliance Board.

Vinod Kumar

Vinod is a social scientist with market research skills and extensive voluntary and public sector experience of policy analysis and research. 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 Non-Executive Director of Barnet Primary Care Trust and a member of the Consumer Liaison Group of the Medical Research Council.

Nick Pearson

Nick is the National Money Advice Co-ordinator for the Federation of Information and Advice Centres. 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.

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. From November 2002 until March 2003 Paul will not be participating in Panel business as he has taken up the position of acting Legal Services Ombudsman.

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..

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 Consumers' Association. Her current committee memberships include the Council of the Ombudsman for Estate Agents and the FSA Training Advisory Panel.

Dave Watts

Dave is a partner in a media business, which is involved in publishing, editing and journalism - personal finance plays a large part in this. He is a former editor of Which? and Money Which? and former Assistant Director of Consumers' Association. He was also a policyholder representative on the Insurance Brokers Registration Council for nine years.

How to contact the Panel

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