

Reforming Polarisation: Removing the Barriers to Choice: Response to CP166

Introduction

These opening comments set the scene to our fuller response below. Our conditions for supporting depolarisation in our response to CP121 were:

- it should deliver increased choice between products and providers for consumers who cannot be catered for by IFAs;
- it should provide some protection to prevent cynical choice by distributors of lists of products which pay the highest commission;
- it should encourage consumers to drive competition by shopping around and making informed choices;
- the better than best rule should be retained.

We said that a key indicator of the success of any relaxation of the polarisation rules would be the extent to which the new regime improves the position of the large number of people who go to banks for packaged products.

Increasing choice:

This will happen by definition if some of those who are tied to a single company at present increase the number of companies and/or products they offer.

Protection:

But there is no particular value in this increase in choice if it is between different versions of bad value products and if it gives the illusion of a process that assures value for money.

We accept that the FSA cannot make all multi ties choose their range(s) on the basis of what is best for consumers or oblige firms to go out of range to sell what is best value. If it did, it would effectively be forcing all firms to become IFAs. However, we think that, where there is a choice between product types and/or between providers, the suitability test must include a value for money element.

If consumers are to protect themselves from the possibility of choosing from a range of poor value for money products, they must be told in clear terms what range a provider is offering

them and how the range has been chosen. They must also be informed, by the distributor, that going to a firm that offers a limited range will mean the product they end up with is not necessarily the best in the market.

We think that the question of firms having different ranges and being able to offer them to different consumers for commercial reasons needs much more thought and will require some rules. In particular thought needs to be given as to what a firm can do when asked questions by an active consumer or when it wants to change an offering. See our answer to Question 1 (under **Ranges**) below.

Consumers driving competition:

To the Panel this is the crucial test of the success of depolarisation. We support any moves which encourage consumers to drive the market. If consumers are to shop around, they must know what kind of outlet they are going into before they go to see an adviser or salesperson. It is too late by the time they are sitting down and seeing the Initial Disclosure Document for the first time. Over time, if not immediately, they should get the message that an independent adviser does the shopping around for them, and tied or multi tied firms require them to do it for themselves. This is the new polarisation. To achieve this, the following regulatory steps will be necessary:

- the FSA should require shop fronts and/or letters sent to confirm appointments to make clear what kind of firm it is and what restrictions there are on products that are sold there: consumers should not have to go inside to find out that it only deals with Prudential or that it only sells pensions;
- the FSA should find names that convey the difference between independent and tied/multi-tied outlets;
- the FSA should not muddy the independent ‘gold’ standard; a firm calling itself ‘independent’ should not do anything other than offer whole of market plus choice of paying by fee;
- the FSA should not permit tied or multi tied retailers to move over to give independent advice in the course of discussion, but require them to tell a consumer if they feel he/she needs advice outside their range or scope;

Because we think that much of the potential success of the depolarisation regime depends on consumers playing an active part in the market, we believe that consumer awareness is crucial to this and the FSA should plan the campaign before depolarisation. (see Consumer Awareness below)

Better than best:

We see no reason to drop this rule. It appears to have little, if any, connection with depolarisation and its abolition could work against consumers’ understanding of the divide between independent firms and tied/multi-tied retailers.

Problems not solved by depolarisation

Our initial reaction to depolarisation was that on balance it would improve matters for some consumers and, with some provisos, would not make matters worse. The current problems are:

- some consumers are sold unsuitable products,
- some products are poor value for money, and
- there is no method of delivering a health check that would identify solutions which are not based on the sale of products .

Depolarisation is unlikely to deliver more unsuitable products to consumers, since the rules on suitability will remain the same. We are generally sceptical about current observance of the suitability requirement and we think that more consideration needs to be given by the FSA to how value for money concerns are related to the suitability requirement. We are also concerned about its policing. However, under depolarisation we cannot see that this problem will be worse.

Nor is depolarisation itself likely to make the sale of bad value for money products more widespread. We can see that consumers may get the illusion of a competitive market with multi-tied firms, in particular with banks, and for this reason we stress the need for explicit information about the limitation of ranges and why this is significant for consumers. However, unless the illusion causes them to buy when they otherwise would not have, they are not getting worse value for money.

Depolarisation will not deliver a holistic health check for consumers, but polarisation does not either. For us it is disappointing that consumers who are currently not going to IFAs are unlikely, under these proposals, to get advice to buy index linked National Savings products, which for the risk averse may meet their needs better.

Consumer Awareness

We have said above that our assessment of the success of depolarisation will depend on the extent to which consumers increase their shopping around or go to independent advisers. To do this they need to know that there is a difference and why it is important. It is for this reason that we have emphasised the need for consumers to know what kind of firm they are about to deal with before an appointment and for the IDD to be explicit.

We recommend that the FSA starts now to consider consumers' need for general information and awareness to achieve this, and to develop a strategy, properly researched and resourced, and does not just think of it as an add-on after depolarisation has taken place. Much of what we say about the IDD indicates that we see it as a crucial awareness tool and it should be considered as such, and not just as a protection tool. Even if consumers read it only after the event, it may remind them to shop around more the next time. The strategy should include promotion of the comparative tables. The messages should be widely disseminated, including by television and press advertising, and not just made available on the FSA website.

Responses to questions in CP 166

Q1 Do you agree that our proposal to allow firms to have more than one range of products is the most appropriate way of liberalising the arrangements for advice and the sale of packaged products?

Scope

Before answering this question we wish to give our comments on the proposal that firms can operate on more than one scope and can offer a consumer a wider scope than that first offered (but not a narrower one). We see this as a separate question from ranges.

We think the FSA must make some effort to work out a way of distinguishing between the two types that can be understood simply by looking at the name over the shop door or a letter sent confirming an appointment. This should be extended to advertising. Our view on the use of the term 'adviser' (Q2) is relevant to this.

We think that it is necessary to preserve a clear distinction between firms which offer whole of market advice (and which offer the choice of paying by fees or through commission) and firms which are tied, whether to one provider or many. To us, this is the 'new polarisation' and there should be nothing that jeopardises consumers' understanding of it. The choice will be between a firm which, acting as the consumer's agent, will do the shopping around for him/her, and firms which act in their own commercial interest, where in essence consumers will need to shop around themselves and approach several firms. Independent firms that sign and advertise themselves as such should not be allowed to be independent to some customers and less than independent to others, or to change between the two categories. We note that, in this respect, it is proposed to rely on COB rule 5.1.12G requiring firms to ensure that they always portray themselves to customers, both individually and collectively, in a clear unambiguous way. We do not think this is sufficient.

We do not, however, have the same objection to firms that move from tied advice to multi-tied.

Ranges

Allowing firms to have more than one range of products will certainly liberalise the arrangements for advice and sale of packaged products. However, we have some difficulties in envisaging how the new arrangements will work in practice and are unconvinced that this liberalisation - and in particular firms' ability to offer different ranges of products to different customers - will actually work in the interests of consumers. If a consumer is initially offered only a narrow range of products, they may not appreciate that the same firm could offer them a wider range of products (possibly just by moving across from one desk to another in the same branch).

We are particularly concerned that consumers will need to know in advance that a firm might only offer a limited range of products, such as pensions and life insurance only. Consumers should not have to make an appointment and then find that a simple savings plan is not available, when that is what they want. This applies whether or not the firm is independent.

Making sure of this is part of encouraging consumers to make their own choices. Consumers should know about a firm's range of products in advance, as well as its scope.

On a first appointment, consumers should be given the list that shows the range of products and providers that a tied/multi-tied firm is offering them. This can be done on a separate sheet from the Initial Disclosure Document, but it should not have to be asked for. Our comments in response to Q7 are relevant here.

While it is possible to imagine how different ranges would work where firms have different offerings in different branches or to different audiences (for example, when presenting to employees), it is very difficult to imagine the circumstances in which a firm could offer one range to a consumer on one occasion and another range on a later occasion or could move between ranges during an appointment.

The FSA should realise that consumers get their information from a variety of informal sources and may well turn up with their own ideas of what they expect. We think much more work needs to be done on this and in particular questions of the following sort need to be answered:

What response is permitted or required if:

- a consumer having been sold a product from a range comes back a month later and asks for the same one, which the firm now decides is not available to that person?
- a consumer comes in asking for a similar product to one a friend has been offered?
- a consumer asks: 'don't you have anything better?' and the firm does but not in the range selected for that consumer?
- a consumer asks 'don't you have anything better?' and the firm does, but not at that branch?
- the firm cannot satisfy the needs of a consumer from its own range or scope and cannot sell to that consumer?

We suggest that the FSA does some scenario testing with people taking the roles of consumers and advisers to come up with a list of the possible questions and problems that may arise from allowing firms total freedom to vary what range is on offer.

Q2 Do you agree that the term 'adviser' should be allowable for any individual giving advice within the meaning of the Regulatory Activities Order?

As explained above, we think that it is important that consumers can distinguish by name between the categories of firms. We think, therefore, that independent firms must have a different regulated title from tied (single or multi). The use of the term adviser is one way of doing this. Independent firms could have the term adviser reserved. Tied/multi-tied retailers should have another term to use. Alternatively, a new term for independent firms and a separate one for tied and multi-tied firms could be specified.

Q3 Do you agree that the proposed rules on suitability will maintain the same comparative standard of advice following liberalisation?

This is the key question for the Panel. Even if the rules are fine, ensuring that firms keep to them is a concern, as evidenced by the 'Unlocking Pensions' issue.

Depolarisation will not be a success if it does not improve the quality of purchases for those who currently rely on the banks for packaged products. There is a danger that where a bank offers a wider range the consumer will be led into thinking these have been chosen on some basis that relates to his/her needs, rather than how much the seller gets in commission. This will be fine if it is in fact the case, but if he/she is merely exchanging the possibility of buying one variety of poor value product for the opportunity of choosing between several poor value products, not much will have been achieved and there is a danger that the illusion of choosing between competing products will cause them to buy where they might otherwise not have done so. For the Panel this is the main area where we think depolarisation could act against the consumer interest.

We accept that to require multi tied firms to choose their ranges on the basis of the consumer interest would be to require them to become, in effect, IFAs. It is all the more important, therefore, if consumers are to protect themselves, that they know on what basis the selection has been made, and this should be included in the IDD. The IDD should alert consumers to the possibility of using the comparative tables to work out the value for money of the range offered them. Firms should not only tell consumers in the IDD the number of firms they deal with (without being asked), but should also give an indication of the number of firms/products in the whole market.

Marketing and advertising which implies the choice is made in the consumers' interest should not be permitted unless it can be demonstrated to be the case. The FSA must increase its activity in this area after depolarisation and check how selections are made and how they are presented to consumers, both in advertising and in the selling process (the latter, if necessary by mystery shopping).

We think suitability rules will need to be extended to include value for money considerations where there are competing types of product, each of which will serve the consumer's purpose and where there are competing products within the same category.

The value for money aspects of suitability should be considered more widely, both in relation to independents and tied/multi-tied firms.

Q4 How can the requirement for holdings in or credit to whole-of-market intermediaries to be at arm's length be relaxed for corporate groups without creating detriment to consumers or an unfair advantage over firms not in groups?

We have consistently opposed abolition of the 'better-than-best' rule, which we believe to be the most effective medium for avoiding conflicts of interest arising for IFA firms where they are connected with a product provider. We do not think that abolition of the rule is an integral part of the depolarisation proposals. We think it contradicts the ideal of making consumers aware that the choice is between an IFA who acts in their interests and a tied or multi-tied firm which acts in its own interests. We do not feel that the safeguards proposed in

paragraph 5.13 of CP166 will be as effective as the 'better-than-best rule' in providing effective safeguards for consumers. However, if the 'better-than-best' rule is definitely going to be abolished, we have some strong views about what needs to be disclosed to consumers. In particular, we are concerned that consumers will not appreciate why they are being given information about financial links and connected providers. This will need to be very frank, to alert the consumer to the question of bias. Consumers need to understand why they are being given this information if they are to factor this in to their considerations. We make some specific proposals as to what needs to be included in the Initial Disclosure Document in our answer to question 7 below.

Consumers themselves will not be in a position to tell whether a particular provider's products are being 'pushed'. FSA supervisors will need to monitor the selling process closely to ensure that the proposed safeguards are not being flouted.

As to the question on how the 'arm's length' requirement can be relaxed for corporate groups without creating detriment to consumers or an unfair advantage over firms not in groups, the industry will be best placed to respond on this.

Q5 Do you agree that our proposal to allow appointed representatives to have a different range of products from their principal is the most effective way of liberalising arrangements for advice and the sale of packaged products by appointed representatives?

Allowing appointed representatives to have a different range of products from their principal will liberalise arrangements for advice and sale of packaged products, but this will not necessarily be in the interests of consumers. We understand that principals will be responsible for the actions of their appointed representatives, but question the intensity of their supervision. How much of an incentive will principals have to ensure that their appointed representatives are compliant? The recent fine on Lincoln for failings of its appointed representative City Financial Partners Ltd shows a case where the principal acted only after hostile press comment and regulatory action - and that after considerable delay. Will principals have the resources and the expertise to check the files of their appointed representative, especially where the range of products offered by the representative is wider than their own? As we said in our response to CP159, reliance on disclosure by the representatives and the "best endeavours" of the principals does not seem sufficiently robust.

We think that an Appointed Representative's scope should be set by its principal and should not change. An AR should not be allowed to go outside the range of its principal, on the grounds that exercising and monitoring control is difficult to achieve. If an AR wants to be able to go wider it should seek authorisation in its own right. Selling less than the principal's range could be permitted.

We think that, in any event, principals should be required to provide the FSA with specific returns/statements that they have ensured compliance by all their representatives (who should be listed) either directly or through another named principal.

Q6 Do respondents agree with our approach to apply the IMD disclosure requirements to non-life packaged products in a similar manner to life packaged products?

Yes. It seems sensible to have a single disclosure regime for packaged products.

Q7 Does the proposed initial disclosure document meet the key information needs of consumers?

We strongly support the idea of the key facts logo and think that it should be a matter of principle that nothing the company does with this document should mislead consumers into underestimating its importance. It should be given out very early in the process and firms should not be allowed to hand it over 'as a matter of formality'. One way of ensuring that consumers are aware of choices before they meet an adviser/salesperson would be to require firms to issue the IDD before an initial meeting.

We are concerned that after depolarisation a consumer is going to need advice to work out which of the many options he/she needs. This will be the case particularly if the same adviser can be both tied, multi tied and independent for different customers - a position we do not accept. We are assuming that when a firm offers many possibilities to someone who just drops in from the street, it will have to offer a 'free' discussion about what the options are for that person before the form is handed over. For this reason, whenever there is any choice offered by a firm, we do not support the idea that the boxes could be pre-ticked. We mentioned above, in our response to question 1, that consumers get their information from a number of informal sources, including friends and relations. Accordingly, if a consumer goes into a firm expecting to get the same service that was offered to a friend and, for some reason, this is not going to be the case, the document that reveals this to the consumer will have to be very explicit indeed.

In our comments below we respond on the basis that the key facts document should not just give information but should explain why it is being given. If consumers are to be left to protect themselves by acting on information given, the significance of the information needs to be clear and unambiguous. Some time ago the Law Society published a leaflet that told consumers what to expect when they first went to see a solicitor. We think that the FSA should develop a list of questions that consumers should ask themselves before they go to see an advisor, so that they can think about some of these matters before they have to make a decision on them. This should be widely distributed, not just on the website.

The purpose of the Initial Disclosure Document is to replace the certainty consumers have under a polarised regime that the firm is either independent or tied and that the better-than-best rule prevents bias where providers own more than 10% of an IFA. We think the document would be better designed if it concentrated on these matters only. The less consumers have to read and understand on this document, the more likely it is to serve its purpose. We do not think it necessary to mention how to complain or the compensation scheme at this point. Details of who to complain to are better placed in a document after the consumer has decided to purchase, e.g. in the terms of business letter. We note that in paragraph 8.49 firms are given the option of putting these in their terms of business letter. We think it should be required to be there, and not here. Similarly, the compensation scheme information is relevant where a consumer is investing more than £48,000 to alert them to the desirability of spreading investments, but again this is not really relevant to this first communication.

We are inclined to think that information about a firm's "permitted business" is also more relevant to a later communication, but if it remains here, it could quite usefully be combined with point 1.

We stated in our reply to question 4 that we continue to oppose the removal of the better than best rule. However, if this rule is removed, it will be especially important for consumers to notice the details of loans and ownership and understand why this information is being given. For this reason we think it should come earlier in the document, probably as point 3. It should be made clear why this is an important piece of information, for example ' the FSA requires us to make this information available because these interests and/or loans could bias the product recommendation or because x (the parent firm) may benefit from the recommendation we give.'

We have these comments on section 2 of the Initial Disclosure Document

Option 1: consumers should be told that 'we will select the best product from the whole market.'

Option 2 should be ' we can select/deal with products from only a limited number of companies. What we recommend will be the best for you from this range, but not necessarily the best in the market'. We think consumers should be told here the number of companies a firm selects from or deals with. If the number of firms is only two or three it must be a matter of interest and it should not require a consumer to ask for the information. Any limitation on the type of product available should also be mentioned. It should not be possible for a consumer to go further and find that the range does not include, for example, simple savings products. We also think there should be a brief explanation of the reasons for choosing the firms from which the range is selected, and the scale of the market from which the choice is made; as mentioned above, consumers should be alerted to the availability of the comparative tables.

Option 3 should say ' we can only select/deal with products from []. What we recommend may not be the best in the market.'

Under the current section 3, we think that the first statement should read something along the lines: 'We will advise you and make recommendations. We are required by the FSA to satisfy ourselves that a product we sell you is suitable for your circumstances. You can take action against us if that is not the case.' The second statement should say something like: ' You will not receive advice or recommendations on what is suitable for you. We may ask questions to narrow down the selection of products we offer you. You will then need to make your own choice about how to proceed. If a purchase you make turns out not to be suitable for your circumstances, you will not be able to take action against us.'

We think that the menu card should be renamed the charges card, or something that makes it clear that it concerns fees. We also think it should be made available at the same time as the Initial Disclosure Document.

Q8 Do you agree that the proposed rules regarding the referral of complaints implement the intention for complaints to be dealt with as efficiently as possible by facilitating a single point of entry to the process?

We agree that this is a sensible approach, subject to a requirement for the firm which first receives the complaint and the firm it is sent on to informing the consumer that this has been done. Further thought may be needed on the time limits for complaints to be dealt with. The

ombudsman will have to develop rules on 'deadlock' letters as we expect that firms might argue among themselves as to who is responsible, without the consumer knowing what is happening.

Q9 Should the guidance on 'reasonable' indirect benefits be extended to include other items such as computer facilities or IT support?

No. While training on a firm's products, which is not available in the open market, is acceptable, there seems to be no reason why IT support and computer facilities, which are readily available from independent sources, should be allowed. The only reason for giving and receiving such benefits appears to be to avoid rules on giving cash.