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Mr K Dignan  
Savings and Investments Products Team  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

17 October 2003

Our ref: PR8

Dear Mr Dignan

### **Implementation of the Distance Marketing of Consumer Financial Services Directive**

The Panel welcomes the intention of the directive but believes that the complicated structure of implementation will not encourage cross-border purchasing by EC consumers. Consumers need to be confident that they have effective protection before they will consider purchasing financial services from another Member State. The Panel believes that this could be addressed by information documents clearly stating the responsible regulatory authority, and by providing a 'clearing-house' for referring complaints to the appropriate agency.

#### **Scope**

The Panel notes the statement in paragraph 21 that the Treasury regards the DMD as a country of origin directive, and would like to ask whether other Member States share this interpretation. A common interpretation will be important in order to ensure a coherent approach. Would the DMD apply, for example, in the case of a non-EEA firm based in Luxembourg targeting UK consumers?

The Panel would also like to query the assumption, on page 43, that home reversion plans fall outside the scope of the DMD.

#### **The approach to implementation**

*1. The Government's Approach to implementation – do you agree with the Treasury's approach as set out in the above paragraphs? If not please indicate why an alternative approach may be preferable. (Page 19)*

*2. The Government's Approach to implementation views are invited on this approach, especially from professional firms and bodies. (Page 20)*

The Panel agrees that option 2 is the most practical way forward. The Panel strongly supports and agrees with the allocation of new DMD responsibilities to existing regulators. However the Panel is concerned that the different enforcement and supervision styles of the Office of Fair Trading (OFT) and the Financial Services Authority (FSA) will result in two classes of supervision and enforcement. The policies and principles of enforcement used by both regulators should be consistent.

The Panel hopes that the OFT will adopt a more proactive approach to enforcement and supervision of credit legislation than has been evidenced in the past.

It is important that the areas covered by the agencies should be clearly established. However a referral system and a memorandum of understanding should also be put into place to prevent consumers from falling outside the system.

### **Additional requirements**

*3. Additional requirements (Article 4) – respondents are invited to express views on the desirability of using the provisions of Article 4(2) to impose additional information requirements beyond core requirements required of Article 3. It would be helpful also to have details of what these additional requirements should be and what the costs and benefits might be. (Page 23)*

The Panel believes that the list is sensible. However, in the context distance selling, the most important piece of information needed by consumers is that listed at clause 20 of schedule 1, i.e. the requirement to provide information on whether or not there is an out-of court complaint and redress mechanism for the consumers and the method of access. This information will have to be clearly stated in order to reassure consumers. Experience has shown that clear and concise information is more valuable to consumers, than swamping them with details.

### **Rights of withdrawal**

*4. Rights of withdrawal (Article 6) – respondents' views would be welcomed on whether these additional requirements should be introduced, and other reasons why (page 25)*

The Panel has already expressed to the FSA its concern over the removal of the right of withdrawal from financial services linked to the stock market. The current cancellation rules do not protect investors against movements in the market, but they do mean that someone who cancels does not have to bear the cost of any initial charges.

The Panel believes that cancellation rights should be extended to second charge mortgages and equity release schemes. The markets for first and second charge mortgages are very different, and consumers in the second-charge market face considerable pressures, particularly those seeking second mortgages for the purposes of debt consolidation. An opportunity to cancel after the conclusion of the agreement would provide a valuable safeguard against poor selling practices in the second-charge market. Rights of withdrawal for equity-release mortgages would also provide protection for a very vulnerable group of consumers, who might otherwise be stuck with a poor-value or unsuitable mortgage for life.

*5. Rights of withdrawal (Article 6) views are invited as to whether respondents concur with this view. (Page 26)*

The Panel disagrees with the Treasury's initial view that for general insurance it would be reasonable to allow insurers to charge for the services (including cover) already provided. The provider should not be able to deduct the cost of arranging a policy as this would effectively be a penalty undermining the right of withdrawal.

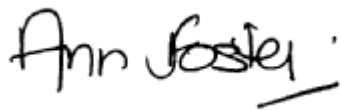
## Burden of proof

6. *Burden of proof - views are invited from respondents on this approach (Page 31)*

The Panel believes that the increase in consumer protection provided by the DMD is modest. In most cases, it will make very little difference and in some cases (for example withdrawal rights for stock market –linked products) it actually removes protection currently available to consumers.

In the light of this, the Panel disagrees with the proposal not to put the burden of proof on the supplier. The protections offered by the Directive fall mainly in the provision of information, yet the consumer is not in a good position to show (for example) that information has not been sent. Putting the burden of proof on consumers in these circumstances would effectively require them to prove a negative.

Yours sincerely,



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FS Consumer Panel

cc. The Consumer Panel  
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