

Financial Services Consumer  
Panel response to: DSS  
Stakeholder Consultation  
Brief 5 – *Governance*

## Stakeholder Pensions

Financial Services Consumer Panel response to:  
DSS Stakeholder Consultation Brief 5 - Governance

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## DSS Stakeholder Consultation Brief 5 – Governance

1. The Financial Services Consumer Panel (the Panel) has the following comments on the DSS proposals for stakeholder pensions governance. All paragraph numbers refer to those contained in the consultation brief.
2. The Financial Services Authority (FSA) established the Panel to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives.

### Overall comment

3. The Panel agrees that a trustee based governance structure is preferable to any alternative structure, including the secure stakeholder management model, and strongly endorses the Government's view of the role of stakeholder trustees expressed in paragraph 13. If trustees are not free to act they cannot do the job properly.
4. The Panel also considers the arguments against trustee based schemes as expressed by some providers in their responses to the Green Paper (paragraph 19) to be flawed.

### Paragraph 9

5. Whilst the sentiments expressed in this paragraph are laudable, it gives no clue as to how "consistent, effective pressure to improve the terms of the scheme" will be achieved. The Panel considers that to make this pressure a reality, a requirement for the proactive and random monitoring of stakeholder schemes by Opra should be included within the legislation (also see paragraph 32.12).

### Paragraph 25

6. The Panel feels that contract periods should be limited but also recognises that providers will have to have some degree of "security of tenure" in order to justify commercially the set-up cost of schemes in the first place. The Panel considers that a maximum initial period of perhaps five years strikes the correct balance between trustee freedom of action and provider security. This initial period should also apply to the issue of the composition and appointment of the trustees themselves. Schemes may initially have to appoint trustees who are less "independent" than might otherwise be desirable. The legislation should ensure that they are easy to replace.

## Paragraph 29

7. Measures to limit the individual liability of trustees are crucial in order that individuals are encouraged to participate. The Panel welcomes the proposals that the contractual arrangements be drawn up so that the provider (or sponsoring organisation) bears the main financial risks associated with the scheme rather than the trustees and recommends that this be adopted as the standard arrangement.

## Paragraphs 32.2 and 32.3

8. The Panel considers it vital that a majority of the trustees are independent and that professional appointees are essential if outside expertise is not hired. Our inclination is for both some professional skills among the trustees and for expertise to be hired.

## Paragraph 32.6

9. The Panel considers that member representation should be a requirement of all trustee based stakeholder schemes. It is recognised that there may be some problems selecting member trustees, e.g. where one provider offers a single scheme to a spread of small firms and at the commencement of schemes. However, the Panel feels that these problems can be overcome and that all schemes should be required to have membership representation after a reasonable time limit, e.g. no later than the second year of the scheme's operation. The general rule for the composition of stakeholder trustee boards should be to bring them as close as possible to best practice in regard to occupational schemes.

## Paragraph 32.10

10. The Panel is concerned about the "all or nothing" approach to compliance with the minimum standards which it regards as too much of a "blunt instrument". The automatic winding-up of schemes that fail to meet the standards could be counter-productive as it is in everyone's interests to ensure that stakeholder schemes are successful. Particularly in the early years of the schemes, there may be occasions where short-term transgressions can be allowed as long as they can be rectified in that period.

## Paragraph 32.11

11. Whatever arrangements are stipulated for winding-up the over-riding aim must be to protect the interests of the scheme members. The proposal for members' rights to be transferred to an alternative stakeholder scheme is reasonable.

## Paragraph 32.12

12. The legislation needs to be specific about whether Opra or the FSA is responsible for scheme compliance with the minimum standards. Unless this is made clear there is potential for duplication or omission. In so far as this role should fall to Opra the Panel considers that a relatively small number of random, proactive visits/checks should have an inhibitory effect upon all schemes.

## Paragraph 32.13

13. The Panel agrees that membership of all stakeholder schemes should be open to anyone who wishes to join. It has some concerns that unless this is made a requirement it could lead to “cherry-picking” and perhaps increased costs for the employer. An example of potential increased costs:

- A small employer has designated a trade union affinity scheme for its workforce, as they are all members of that union. If this scheme was restricted to union members only and a new employee joined that wasn't a member of the union the employer would have to facilitate access to another scheme for this one employee.

14. Who would monitor the degree to which schemes restrict membership - Opra or FSA? This should be explicitly stated.

## Paragraphs 40-52

15. The Panel has an overwhelming preference for trustee based governance, but recognises that some scope must be left for non-trustee arrangements. Examples would be when schemes are first opened by providers (which then move to a trustee arrangement) or where very small or isolated firms wish to be self-sufficient for some reason.

16. The stakeholder pension manager must be responsible for performance (as are trustees) which is not mentioned in their duties listed in paragraph 45.

17. The Panel considers the proposal for an advisory committee to be lacking teeth, and that if there is to be any member oversight of the manager it must be by an independent supervisory committee with specified powers. Such powers might include the ability to penalise the manager for non-performance of his duties and the right to replace the manager in extreme circumstances.

## About the Financial Services Consumer Panel

The Financial Services Consumer Panel was established by the Financial Services Authority (FSA) to advise the FSA Board on the interests and concerns of consumers and to report on the FSA's effectiveness in meeting its consumer protection and public awareness statutory objectives. There are eleven members of the Panel representing a broad range of consumer interests. The Panel is independent of the FSA – it can raise its own concerns, initiate its own research and publish its own reports.

### Who is on the Panel?

#### Barbara Saunders (Chairman)

Barbara is a public interest member of the PIA Board. She is an independent consumer consultant and past Chairman of the Council of the Insurance Ombudsman Bureau. Among other public and professional appointments she is a Non-Executive Director of the St Albans and Hemel Hempstead NHS Trust and a member of the Architects Registration Board.

#### Colin Brown (Vice Chairman)

Colin is an independent consultant specialising in consumer affairs. Previously Deputy Director of Research at Consumers' Association and Senior Fellow at the Policy Studies Institute, he has over 20 years' experience of social and consumer research.

#### Jean Gaffin

Jean is Chairman of the Advisory Committee on Telecommunications for Disabled and Elderly People that provides advice to the telecommunications regulator, OFTEL, and a Non-Executive Director of Harrow & Hillingdon Healthcare NHS Trust. She has extensive experience of working on behalf of vulnerable consumers. Previous positions include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care.

#### Yvonne Gallacher

Yvonne is Chief Executive of Money Advice Scotland, which was set up by the Scottish Consumer Council. She has over 10 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 is Co-Director and Secretary of the Government funded Lead Body for Advice, Guidance, Counselling & Psychotherapy (CAMPAG). Yvonne is a member of the Scottish Consumer Council.

### **Joan Harbison**

Joan is Chief Commissioner of the Equality Commission for Northern Ireland. She has been Chair of the Commission for Racial Equality for Northern Ireland since its inception in 1997 and is a former Chairman and member of the Executive Committee of the Northern Ireland Association of Citizens' Advice Bureaux. She has held a number of public appointments including being Vice Chairman of the Eastern Health and Social Services Board and the Northern Ireland Standing Advisory Commission on Human Rights and former member of the Human Fertilisation and Embryology Authority.

### **Noel Hunter**

Noel is County Trading Standards Officer for Warwickshire. A National Council member of the National Consumer Council, he also chairs the Management Board of the Institute of Trading Standards Administration and is an adviser to the Local Government Association.

### **Gerald Lanchin**

Gerry is a Vice President of the National Federation of Consumer Groups. He is a former Under Secretary of the Consumer Affairs Division of the Department of Trade and Industry and author of "Government and the Consumer". His involvement in consumer protection includes being a former Council Member of Consumers' Association and of Consumer Congress Committee. He was the first chairman of the Direct Mail Services Standards Board and a member of the Data Protection Tribunal for 10 years.

### **Nick Pearson**

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

### **Richard Smethurst**

Richard is Provost of Worcester College, Oxford University; he chairs the Training Standards Panel of IMRO, of which he is a non-executive Director. He has served as an economic adviser in Whitehall, and the Monopolies and Mergers Commission, where he was Deputy Chairman. Richard lectures widely on financial and economic topics to businessmen and adult education groups. He is President of the National Institute of Adult Continuing Education.

## **Jane Vass**

Jane is an independent consumer researcher specialising in financial services. She was previously Head of the Financial and Economic Research Group at Consumers' Association and is still author and editor of a number of Consumers' Association publications in addition to other research, including work for the National Consumer Council. Her current committee memberships include: Council of the Ombudsman for Estate Agents, the Inland Revenue Tax Law Rewrite Project Consultative Committee, the PIA Training Advisory Group 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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