

FSA Annual Open Meeting – 24th June 2010

Adam Phillips – Chair Financial Services Consumer Panel

Thank you chairman.

We certainly live in interesting times. Because of the Chancellor's announcements last week, I am going to take this opportunity to highlight what the Consumer Panel would like to see emerging from the proposed restructuring and the opportunities we hope it presents. But first I will reflect on the work of the FSA over the past year as seen from the Panel's perspective.

We believe the last eighteen months have witnessed a step change in the FSA's approach to dealing with consumer protection. Hector Sants' speech in March last year, committing the FSA to an outcomes focused approach to regulation and a tougher approach to enforcement, signalled that the FSA had finally – and not before time - accepted the need for more intervention from the regulator at the interface between a firm and its customers. Publishing a set of principles and rules, without supervising their detailed implementation in the organisation and without checking the outcome for the customer, is clearly not sufficient to ensure that all firms will treat their customers fairly. The creation of the Conduct Risk division and the introduction by the FSA of a proper methodology to ensure that firms conform to the conduct of business principles and rules have given the FSA the necessary tools to regulate outcomes. This new division has not yet fully evolved but I hope that before the FSA is abolished it will have demonstrated the effectiveness of supervising conduct of business in improving consumer protection and rebuilding consumer confidence.

One of the aspects of this industry which creates significant consumer detriment is the lack of effective competition, thereby encouraging the spread of poor products and practices. In the financial services industry, more than any other, it seems that bad practice drives out good, possibly because design weaknesses in products and services are not immediately apparent. In fact design weaknesses often take years to emerge, by which time the product or practice has become widespread and the financial health of large numbers of people has been put at risk. Regulation in other sectors has been much more effective in, for example, ensuring the quality of food or the safety of public transport. The development of conduct of business supervision is aimed at intervening early enough in the development process to prevent activities and products which have the potential to create consumer detriment from spreading through the industry. Once poor practice or a bad or dangerous product becomes widespread, not only is the detriment to customers large, but the cost to the industry in clearing up the mess and providing the necessary redress is huge. This is why it is better in most cases to use supervision to detect problems at an early stage, rather than waiting until there is widespread evidence of consumer detriment appearing in complaints to the ombudsman.

Of course detecting problems is not enough, there has to be widespread belief that the rules will be enforced if regulation is going to be effective in ensuring good practice. The Panel has therefore encouraged the FSA's more active approach to enforcement in the last year. Although much of this has been directed at insider dealing, we were pleased to see effective action being taken against mortgage brokers who were failing to follow the rules on dealing with customers in arrears. But we are still waiting for enforcement against any individuals in the large banks who were responsible for

systematic mis-selling of payment protection insurance. We were also pleased that the FSA published clearer and tougher guidance on its approach to setting penalties, with the aim of ensuring that organisations and individuals who break the rules will face sanctions which are sufficiently large to act as real deterrents to bad behaviour, rather than simply being discounted as part of the necessary cost of doing business.

The Panel continues to support the FSA's excellent work on the Retail Distribution Review and its more pragmatic approach to the Mortgage Market Review. I believe that the changes which the RDR will introduce to raise professional standards for advisers, to ensure that customers are clear about the independence of the adviser and clear about the cost of the advice, are in the interests of both the industry and its customers. Of course there are still significant issues to resolve; in particular how to ensure that the middle market continues to get access to suitable advice and the impact of the changes on platforms. But I trust that the decision to abolish the FSA will not provide an excuse to defer its implementation or water down the proposals.

The Panel continues to be unhappy about the slow rate of progress on resolving the problems created by the mis-selling of Payment Protection Insurance. This has dragged on now for five years and, after a positive statement last November about its plans to resolve the issue, the FSA and the industry have once again got bogged down while trying to agree the scale and cost of redress. This is unacceptable. It is vital for the FSA and its successors that supervision of conduct of business ensures that a similar problem of this scale cannot emerge again.

In my speech last year I said that the Panel believed that increased transparency would help consumers exercise more informed judgement about companies and therefore help retail financial markets operate more efficiently. The steps that have been taken in the last year to increase transparency through the publication of complaints data and the clause in the Financial Services Bill which will allow publication of decision notices revealing the identity of companies subject to enforcement action earlier on in the process are therefore welcome. However, the panel was disappointed that its amendment to the Financial Services Bill to enable the FSA to publish information about companies when relevant to its consumer protection objective, did not get through the wash-up process at the end of the last Parliament. The Panel believes that this industry is far too concerned about the reputational damage which may be caused by the provision of specific information. If a regulator is to have the confidence of the general public in a world of 24 hour rolling news it has to demonstrate that it is working. This requires it to be able to publish and inform the public where it has taken action to protect them.

Any regulator which is to be fully effective also needs to help the public understand how to protect themselves. In this respect the launch of the Consumer Financial Education Board is a hugely positive initiative. The FSA has done excellent work in establishing a financial capability arm and the Moneymadeclear brand, but this now needs to grow into a full-scale service directed by its own board and independent of the limitations imposed on the FSA by the Financial Services and Markets Act. We hope that there will be no delay in establishing this service and that in due course it will encourage good behaviours, in savings, protection and the use of credit,. We also look forward to increased engagement with the financial services industry by sections of the population which might otherwise become disenfranchised and prone to purchasing inappropriate products. In this respect

the rapid shift towards defined contribution pension schemes is creating both a huge risk for society and a big opportunity for the industry. An effective financial education body has a major role to play in helping to establish better long term savings practice in the population.

Let me now concentrate on the future and focus on what the Panel would like to see from the planned restructuring of regulation. Last week we published a ten point plan highlighting our priorities for the future of financial services. One of these was intelligent regulation. You will have gathered that the Panel believes that a failure by the FSA to focus on outcomes rather than process and on credible deterrence until recently contributed to its failure to fulfil its consumer protection objective. However, of late we've been much more optimistic about the FSA's direction of travel. We ask that the learnings of the last eighteen months are not lost in the impending reorganisation. In particular we think that micro-supervision of conduct risk and effective product scrutiny will be needed if the CPMA is not to be confronted with the same problems of large scale detriment, hugely costly redress and industry resistance that the FSA and the OFT have both had to deal with. Without an effective compliance mechanism, supervision cannot be effective. Credible deterrence needs to include both enforcement, where necessary, but also publicity. Regulatory transparency is vital to ensure compliance, but it is also key to informing and educating consumers and for maintaining public confidence in the effectiveness of the regulator.

What's more, we believe that consumer credit, deposit taking and mortgages should be regulated by the same organisation, which is a significant legislative challenge given the structure of current UK and EU law relating to these areas. We believe that it is vital that steps are taken to encourage more and better saving for later life. The Retail Distribution Review will help, as will the effective implementation of CFEB, but there needs to be a major initiative to develop policy, low cost products and sources of advice, to stimulate the middle market to save. Finally, it is important that the new regulatory structures take effective and visible steps to protect consumers and ensure redress where appropriate, in a way which has not been apparent until relatively recently. This will be in the long term interests of both the industry and its customers.

I would like to close by thanking my colleagues on the Panel and the staff in our secretariat for their commitment and support in what has been a very busy year. I had also intended to take this opportunity to thank Hector Sants for the work he has done to transform the FSA. I am very glad that he has opted to stay. I hope that he and his staff will be able to keep the impact of the disruption that the proposed changes will undoubtedly cause to a minimum. I also hope that in its remaining time the FSA will be able to apply what it has learned from its experiences over the last ten years and that it will maintain its recent momentum to provide effective consumer protection. Change creates opportunities – let's hope these are to the benefit of consumers.

Thank you.