

<i>Foreword by the Chairman</i>	3
<i>Chapter 1: Review of the year</i>	5
<i>Chapter 2: Responses made by the Panel</i>	17
<i>Chapter 3: The Financial Services Consumer Panel</i>	38
<i>Appendix 1: Comments on the FSA's response to our last Annual Report</i>	41
<i>Appendix 2: Terms of reference of the Financial Services Consumer Panel</i>	49
<i>Appendix 3: Who is on the Panel?</i>	51
<i>Appendix 4: Publications and press releases</i>	54
<i>Appendix 5: Panel members serving as consumer representatives on other FSA bodies</i>	57
<i>Appendix 6: Meetings with external bodies</i>	58
<i>Appendix 7: Glossary of terms and abbreviations</i>	60



Foreword by the Chairman

The financial services sector is complex and confusing for all but the most sophisticated of consumers. There may be plenty of choice in this market but it will be a very long time until consumers can exercise their market power effectively. We look forward to the day when consumers have the information and the knowledge to demand high quality products and services, to ask searching questions, to compare products and to identify and resist pressurised selling and misleading advertising. But that day is a long way off and we remain disappointed that far too much of the industry is still characterised by mis-selling, misleading advertising and a failure to treat customers fairly. We implore the industry to examine itself closely and take urgent and effective steps to bring everyone up to the standards of the best. We should all share a common goal of restoring confidence in this important market so that consumers can shoulder their financial responsibilities secure in the knowledge that they are buying suitable products from reliable firms who will deal with them fairly.

We have welcomed the FSA's initiatives to secure a better long-term deal for consumers; in particular we have given our support to the Financial Capabilities Strategy, the consumer needs research and the work on treating customers fairly. However, we sound a warning note. It will take years for some of these initiatives to bite and we would be deeply concerned if there was any attempt to remove any of the pillars of consumer protection. The principle of consumers taking responsibility for their decisions is indeed enshrined in the Financial Services and Markets Act 2000, but so too is the need for the FSA to consider the risks to which consumers are exposed, their range of experience and expertise and the need for information and advice.

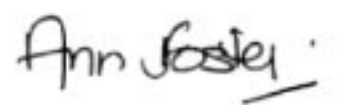
I succeeded Colin Brown as Chairman of the Financial Services Consumer Panel in November 2003. On behalf of the entire Panel, I should like to thank Colin for his superb leadership over the previous three years. Colin led the Panel with great wisdom and good humour and we wish him well in his new career with the Office of Fair Trading. I should also like to thank Jean Gaffin and Jane Vass for their invaluable contribution to the work of the Panel. Old faces give way to new and I should like to welcome Stephen Locke, Adam Phillips and Robert Skinner to the Panel. We had an exceptionally high standard of applicants to join the Panel and as a result we have been able to make three more appointments.



The Panel values greatly its open and constructive relationship with the FSA. The role of 'critical friend' is an important one that requires respect and maturity on both sides and we are grateful to the past Chairman, Howard Davies, for ensuring that this was successfully achieved. We look forward very much to working with Callum McCarthy and John Tiner and we are greatly encouraged by the emphasis that they have placed on the need to treat customers properly in various speeches that they have made. We also welcomed their announcement that there will be far fewer consultation papers to respond to.

The year ahead promises to be one of great change in the high street. It will be important to take stock of these changes in due course and assess whether all the anticipated benefits for consumers actually do transpire.

This year's annual report gives an account of our advice and responses to the FSA throughout the past year. As ever, this could not have been achieved without the hard work and expert help from the Panel Secretariat. I am deeply grateful to them, especially for all the guidance and support that they have given me since I became Chairman.



Ann Foster
Chairman
Financial Services Consumer Panel



Chapter 1: Review of the year

Our annual report covers the period from April 2003 to March 2004. This chapter gives an assessment of the FSA's and the Government's records on improving the financial services market for consumers over this period.

1.1 Throughout the year, our discussions with the FSA, other consumer bodies, industry, the Government and Parliament have returned time and again to the need for major reform in the retail financial services industry and the effect that low standards have had on consumer confidence. In March 2004 two reports were published on issues that have shaken consumer confidence in financial services and point to fundamental changes needed in the industry: Lord Penrose's *Equitable Life Inquiry*¹ and the Treasury Select Committee's report into endowment mortgages². Here we assess the effect on consumers of the actions taken by firms, the FSA and the Government over the last year concentrating on:

- the industry's treatment of consumers and the FSA's record on raising standards (firms' treatment of consumers, paragraphs 1.4-1.21);
- the effect of the Government's and the FSA's plans on the retail market for consumers in the future (tomorrow's high street, paragraphs 1.22-1.30);
- proposals for helping consumers become confident players in the market (communicating with consumers, paragraphs 1.31-1.39); and
- the ability of consumers to take responsibility in this market (consumer responsibility, paragraphs 1.40-1.41).

We then consider:

- how well the FSA's accountability and policy making processes serve the consumer (FSA's accountability and policy making, paragraphs 1.42-1.44); and finally
- the key challenges for the Government and the regulator in building consumer confidence (looking forward, paragraphs 1.45-1.53).

1.2 The Panel makes many written representations to the FSA, the Government and the European Union (EU) on individual policy issues. These are outlined in chapter 2 and our responses to consultations are published in full on our website www.fs-cp.org.uk.

1 *The Equitable Life Inquiry*, report published by HM Treasury, 8 March 2004.

2 *Restoring confidence in long-term savings: endowment mortgages*, Treasury Committee's fifth report of Session 2003/04, published 11 March 2004.



- 1.3 To ensure the Panel speaks in the interests of consumers we undertake a programme of information gathering and research. We publish our research on our website, as above. Meetings with external bodies are listed in Appendix 6. We have used some examples from our research to illustrate our comments in this chapter, as shown in blue boxes. The quotes from consumers used throughout this chapter are taken from our *Consumer Concerns in Great Britain* report, which we published in April 2003.

Firms' treatment of consumers

- 1.4 There are still too many instances where the financial services industry continues to demonstrate insufficient regard for the fair treatment of its customers as evidenced by the continuing mis-selling, widespread misleading advertising and a failure to deal with complaints properly. Howard Davies, former Chairman of the FSA, noted at his last annual meeting:

'The biggest disappointment of my time at the FSA has been the failure of firms, and particularly their senior management, to learn the lessons of past mis-selling. Sadly, the recent history of the British retail financial services industry is proof of the adage that those who fail to understand the mistakes of the past are condemned to repeat them. Though the pensions mis-selling debacle, which cost the industry over £11 billion in compensation, should have been a stark lesson of the dangers of uncontrolled and unsuitable selling, it is hard to see evidence that that lesson has been widely understood. Again and again we find examples of high street firms disregarding the suitability requirements in our rule book, requirements which merely, in my view, describe what most service companies would regard as good customer service. Unfortunately, much of the industry remains focused on short-term gain from "shifting product"³.

- 1.5 In a recent report the Treasury Select Committee agreed with this assessment.

'The picture that emerges from our inquiry into endowment mortgages is one of a long-term savings industry wedded to an inappropriate sales and commission led business model which is damaging the reputation of the industry and undermining consumer confidence in long-term savings. In this context, the current regulatory framework is left struggling to tackle the symptoms of that inappropriate business model⁴.

If the FSA is to raise standards in the industry, it must act faster and be less accepting of industry assurances.

- 1.6 In his report on Equitable Life, Lord Penrose heavily criticised previous regulators' approach as lacking effective scrutiny:

'There was challenge, but it was ineffective. Unsatisfactory answers were accepted without follow-up. Lines of inquiry were abandoned or postponed in the face of resistance⁵.

Whilst Lord Penrose is most heavily critical of regulation before the FSA was responsible for Equitable Life, he does criticise the FSA and indeed the FSA acknowledges that more needs to be done to ensure supervisors effectively challenge firms. (See paragraph 2.37 for our comments on Equitable Life.)

3 FSA Annual meeting, 17 July 2003.

4 *Restoring confidence in long-term savings: endowment mortgages*, Treasury Committee's fifth report of Session 2003/04, published 11 March 2004, paragraph 78.

5 *The Equitable Life Inquiry*, report published by HM Treasury, 8 March 2004, chapter 19, paragraph 228.



1.7 We believe the FSA does sometimes accept industry assurances too easily. Sadly, it seems inevitable that many firms will continue to act poorly without intervention, or a credible threat of intervention, from the FSA. In our submission to the Treasury Select Committee's inquiry into endowment mortgages we raised our concern that 'the FSA must approach its dealings with firms with a healthy dose of cynicism. It is disturbing, but unsurprising, that it was not until the FSA put pressure on firms to raise standards in firms' complaint handling that they did so'⁶. The Committee agreed with this assessment⁷ and went on to say that 'in future, the FSA needs to be much more rigorous in ensuring that its policies and strategies are being effectively implemented by the financial services industry'⁸. (See paragraphs 2.82-2.85 for our comments on mortgage endowments.) The following are some more examples of where we felt the FSA should have been less trusting of the industry.

"You trust the Government only slightly less than you do some of these companies. They're watchdogs [the FSA], but they've not really got any clout."

(ABC1 men, 25-40, young family, Scotland)

1.8 Following allegations in the media that mortgage fraud was being encouraged by the industry, the FSA undertook a review of lending controls that apply to self-certified applications and, to some extent, fast-track mortgages where the lender reserves the right to verify an applicant's income. The key concern is that consumers were being encouraged to overstate their income and therefore take out mortgages they may not be able to afford. The review was based on information from 15 major lenders in this market. The Panel was not convinced by the FSA's findings that, generally, lenders have adequate systems in place to spot fraudulent claims. We thought that the FSA's approach was too accepting of the industry's response and that this was an area where mystery shopping, a regulatory tool we think the FSA should use more of, could be used to find out what actually happens when potential borrowers contact firms to ask about mortgages. The FSA does not yet regulate mortgage business, but will do so from the end of October this year.

1.9 We raised similar concerns in relation to the FSA's action in warning consumers about the risks of 'precipice bonds', now known as SCARPs⁹. Many firms misled consumers in the way they have promoted these products, prompting the FSA to revise its rules and guidance on the promotion of such products. However, the FSA should require firms to give consumers the clear FSA factsheet¹⁰ rather than the companies' own versions. History should have taught the FSA not to trust the industry so much. (See paragraph 2.108 for our comments on SCARPs.)

1.10 A further example where we believe the FSA should have been less trusting of industry is in its new rules on firms' use of past performance figures in advertising and marketing material. The FSA's research¹¹ showed quite clearly that using monetary values for describing past performance can be misleading for consumers. Yet, the new rules require the presentation of past performance data in a standard percentage form but step back from prohibiting the use of monetary values altogether. (See paragraph 2.90 for our comments on past performance.)

6 Financial Services Consumer Panel, submission to the Treasury Select Committee on Restoring confidence in long-term savings: endowment mortgages, December 2003, paragraph 44.

7 *Restoring confidence in long-term savings: endowment mortgages*, Treasury Committee's fifth report of Session 2003/04, published 11 March 2004, paragraph 69.

8 Ibid.

9 These products were sold under a variety of names, for example high-income bonds. The FSA has in the past called them 'precipice bonds' but now refers to them as SCARPs (structured capital at risk products).

10 FSA factsheet, Capital-at-risk products - Products where you could lose some or all of the money you invest (your capital), February 2003.

11 *Standardisation of past performance*, FSA Consumer Research 21, May 2003.



There are several encouraging signs that the FSA is taking a more proactive approach to addressing risks to consumers and that it intends to act more quickly. However the FSA must use all the available tools if it is to be an effective regulator.

- 1.11 The FSA is taking forward work to ensure that firms understand what is required under the principle that a firm must 'pay due regard to the interests of its customers and treat them fairly'¹². This work aims to ensure firms develop strategies for treating their customers fairly, which are agreed at the highest level and implemented at every level. The work also includes training supervisors to identify when a firm's strategy fails to address the need to treat their customers fairly. We are very supportive of this work.
- 1.12 The Treating Customers Fairly theme is one strand of some important projects the FSA is developing which provide the FSA with important new tools to deliver its consumer protection objective. The FSA has reviewed its regulatory requirements and data needs¹³ and in future it will collect information about the products firms are selling and to whom. The FSA has also developed a tool for assessing the risks of particular products, called the Product Risk Framework. Together these projects will give supervisors important information to be able to identify, investigate and act on risks to consumers based on firms' products and selling strategies.
- 1.13 The FSA has set up the 'Consumer Risk Group' to bring together people from across the FSA, to support its aim of becoming more 'fleet of foot'. We have continually pressed the FSA to act faster in response to market developments. We welcome its intention to do so and support the work of this group in drawing together intelligence from industry, consumer groups and within the FSA to identify quickly both risks and the appropriate regulatory response.
- 1.14 This should significantly contribute to the FSA's ability to protect consumers. We will look to the FSA to use its new tools in delivering a better market for consumers. For our comments on these projects, see paragraphs 2.111-2.112 (treating customers fairly); paragraphs 2.53-2.56 (FSA's data needs and regulatory reporting); paragraph 2.92 (product risk framework); and paragraph 2.19 (consumer risk group).
- 1.15 In contrast, we are disappointed that the FSA has not taken forward our suggestion to make use of mystery shopping as a regular part of the regulatory toolkit in order to: investigate particular concerns; help evaluate changes to the regulatory regime; and as a method of early warning of abuses in the market place. We believe this is a powerful regulatory tool, and important in creating the right incentives for firms. Changing industry culture will only work if there is a credible threat of inadequate standards being detected.
- 1.16 The FSA's use of theme work is important in addressing risks to consumers across firms. We welcomed the FSA review of the activities of firms specialising in 'pensions unlocking' (see paragraph 2.91), which is a good example of the importance of theme work in protecting consumers.
- 1.17 We have also been pleased by the high profile of the FSA's enforcement activity in recent months. This is crucial in sending messages to other firms and in encouraging firms to treat their customers fairly. Some firms may only respond to radical action such as a league table of offending firms and drawing more attention to firms when they have been fined. We will be discussing possible additions to the FSA's toolkit with them over the next year.

12 *FSA Handbook of Rules and Guidance*, principle 6, 'Principles for Business'.

13 *Regulatory reporting: a new integrated approach*, FSA Consultation Paper 198, September 2003.



'There were doubts among consumers as to whether financial services organisations would fear the FSA, and whether such a body would have the necessary power to inflict penalties upon those non-complying organisations.'¹⁴

Some firms have a poor record in putting things right and the FSA's record in requiring them to do so is mixed.

- 1.18 Achieving appropriate redress when things go wrong is a key part of consumer protection. There are a number of ways of delivering redress. The FSA can require, on HM Treasury's authority and subject to Parliament's approval¹⁵, an industry wide review of past business to identify cases where consumers would be due compensation. The FSA can also require individual firms, as part of its enforcement activity, to provide restitution to consumers. Individual consumers can make complaints to firms and have access to the Financial Ombudsman Service (FOS) if they are not happy with the outcome of their complaint.
- 1.19 Our last annual report said that the FSA should analyse the costs, benefits and problems of different models of redress and the FSA has done some work on this, which we look forward to discussing with them.
- 1.20 One example of the FSA requiring a firm to make compensation arrangements as part of its enforcement powers is the FSA's action against Lloyds TSB for mis-selling Scottish Widows Extra Income and Growth plans. In this case, certain categories of consumers were identified as qualifying for compensation. However, others who fell outside these limited categories might very well have been entitled to compensation but needed to make a complaint to be individually assessed. We felt that the letter sent by Lloyds TSB to its customers did not clearly and prominently set out their right to complain. The FSA could have done more to ensure that arrangements were effectively communicated to the bank's customers, particularly to those who needed to take action if they felt they had been mis-sold.
- See paragraphs 2.95-2.97 for our comments on redress.
- 1.21 Some firms' records on handling mortgage endowment complaints have been poor and the FSA has now taken enforcement action against a number of firms. We have asked the FSA about their strategy for helping consumers whose complaints were dealt with inadequately and will be discussing this with them in the near future. (See paragraphs 2.82-2.85 for our comments on mortgage endowments.)

Tomorrow's high street

- 1.22 The Government and the FSA have been developing plans for reforming the retail financial services market. The Government is concerned with closing the 'savings gap' and plans to introduce a suite of 'simplified products' to encourage the mass market to save. The FSA has continued to develop plans for de-polarisation¹⁶, alongside the new regulatory regimes for mortgages and general insurance, as well as considering whether it can develop a lighter regulatory system to sell simplified products. In addition,

¹⁴ *Consumer concerns in Northern Ireland*, research report by MORI MRC for the Financial Services Consumer Panel, April 2003, page 14.

¹⁵ HM Treasury have the powers (under section 404 of FSMA) to make an Order authorising the FSA to establish and operate a scheme for reviewing past business. The process would involve a parliamentary debate and a positive resolution in both the House of Commons and House of Lords.

¹⁶ De-polarisation is the removal of the requirement that those selling life assurance, personal pensions and unit trusts, should either be: independent, acting in the interests of their customers and selecting products from across the market; or a representative of a particular product provider which means that they are an agent for that company and can only sell products in its range.



legislation from the European Union (EU) will affect consumer protection as it implements policies to create a single market for financial services. The Panel has been monitoring and influencing developments in all these areas as reported in full in chapter 2. Here we highlight key issues.

Attempts to close the savings gap at the expense of consumer protection will only serve to undermine future consumer confidence.

- 1.23 The Government plans to introduce simplified products, as recommended in the Sandler report¹⁷ to help close the savings gap. Our view on these products and the regulatory regime that accompanies them is informed by the fact that consumers have a variety of reasons for not saving. If the savings gap is defined as additional savings needed in order to have a comfortable retirement, it is not always the case that the best course of action for those affected is to increase their savings. Some consumers will have higher priority financial needs such as paying off their debts or ensuring they have adequate financial protection for them or their dependants if they should be unable to work or in the event of death. Others simply may not be able to afford to save.

We commissioned some research into consumers' understanding of their financial needs which suggested that consumers do not think of their financial needs in the same way that the FSA or the Government do.

'As the amount of available cash increases, respondents were more likely to put this towards a short-term need, but generally there is less and less evidence that consumers pigeon hole their funds by type of goal such as short term, medium/longer term or emergency funds. More likely a "pot" of accessible savings is developed, which is multi-functional¹⁸.

- 1.24 Even simple products are not safe if they are not right for the individual consumer. We advised the FSA that the regulatory regime for these products should include a suitability requirement. This means that the consumer's financial needs should be identified in the sales process to reduce the risk of consumers buying products that are not right for them. The product in the proposed range which offers the most risk of being mis-bought is the medium-term investment product. In comparison to a simplified pension, this product is far more likely to be mistaken for a short-term savings product. With up to 60% invested in equities its value would be sensitive to fluctuations in the stock market making it unsuitable for anyone likely to need to access their money at short notice.

Our research also mirrored our concern that many consumers do not understand the risks attached to equity based products and which products are equity based.

"Equity ISA – does that mean the stocks and shares ISA, or the cash ISA? Well I suppose they are both in the same [risk bracket]". (Pre-school children, low debt, middle income).

The term equity appeared to be the root of the confusion and in some cases artificially linked the product with property and housing.

"I've heard the terms ... wouldn't know the difference between a cash ISA and an equity ISA ... Equity is probably in your house?" (At school dependants, high debt, middle income)¹⁹.

17 *Medium- and long-term retail savings in the UK*, a review, published by HM Treasury, July 2002.

18 *Understanding financial needs*, research report by ORC for the Financial Services Consumer Panel, May 2003, page 6.

19 *Understanding financial needs*, research report by ORC for the Financial Services Consumer Panel, May 2003, page 17.



1.25 As part of its attempts to design a regulatory regime for simplified products, the FSA has carried out consumer research to test the quality of outcomes of sales using a sales script, or filtered questions, aimed at identifying people for whom these products are suitable. We asked the FSA to test the extent to which the filtered questions would control the risks of mis-buying or mis-selling where the consumer is subject to pressure from a salesperson whose focus is achieving sales' targets. We are very disappointed that it did not find a way to do this. Commission and sales pressure has played a key role in past poor treatment of consumers and poses a continuing risk as recognised by the Treasury Select Committee.

'Whatever level the price cap on Sandler products is set at, the fee structure proposed will simply continue to bias the industry towards the aggressive pursuit of sales, since that it is what it will be rewarded for.'²⁰

1.26 The first set of research results highlighted the risk of consumers being recommended the wrong product by following the filtered questions, as there was a significant difference in the recommendations from the filtered questions to those the FSA judged appropriate. We are pleased that the FSA decided more work was required to deliver adequate consumer protection and that it revised the filtered questions and has carried out further research. We have warned²¹ about the dangers to future consumer confidence of failing to provide appropriate consumer protection for the sale of these products – especially as they will be perceived as being endorsed by the Government. We will continue to put these points to the FSA as it finalises its approach.

At the time of writing we have had further discussions with the FSA on its second round of research and policy conclusions. We expect a consultation paper on the FSA's regulation of simplified products to be published around the same time we publish our annual report and we will be responding to this consultation paper. (See paragraphs 2.100-2.102 for our comments on Sandler and simplified products over the period 2003/04.)

Consumers' understanding of the service they are getting from firms, and their rights and protection is affected by the coherence of the regulatory regime. The FSA's work to develop new regulatory regimes has not always sufficiently taken account of this.

1.27 Following the introduction of de-polarisation and the FSA's regime for mortgages and general insurance, the potential for consumers to be confused by the regulatory regime will increase. Whilst consumers should not be expected to understand the regime itself, their understanding of the service they receive and their rights and protection are influenced by the complexity and coherence of regulation. That is why we were particularly disappointed that the FSA has taken forward proposals for its general insurance regulatory regime that will see the term 'independent' mean two very different things in the retail market. The FSA will allow unrestricted use of the term 'independent' (as long as it complies with the 'clear, fair and not misleading' rule) in the general insurance market. We asked them to restrict the use of the term 'independent' so as to bring it into line with investment firms. Consumers who buy both investment and general insurance will be expected to understand that an independent financial adviser offers an entirely different service to an independent insurance broker, even if they are the same firm or person. This is not realistic. The FSA's decision to allow two very different meanings of the term 'independent' is in conflict with its stated approach that the regulatory regime should reflect consumers' needs. If consumers are to

20 *Restoring confidence in long-term savings: endowment mortgages*, Treasury Committee's fifth report of Session 2003/04, published 11 March 2004, paragraph 80.

21 Financial Services Consumer Panel, submission to the Treasury Select Committee on Restoring confidence in long-term savings, January 2004, paragraphs 31-34.



understand the service they are receiving then coherence is required. (See paragraph 2.60 for our comments on 'independent' and the general insurance regime.)

- 1.28 In contrast, we are pleased that the FSA has reflected consumers' needs in its regulation of long-term care insurance. The FSA has decided to introduce a regime based on the regulatory regime for selling investment products. We think this is appropriate as these products are sold alongside each other, sometimes to meet the same financial need. (See paragraphs 2.76-2.80 for our comments on long-term care insurance.)
- 1.29 We do not know the effect that these retail reforms will have on consumers. The FSA will need to review the effect and assess whether the planned benefits have really been delivered, and if the potential downsides are properly covered by appropriate consumer protection tools.
- 1.30 Another example of consumers reasonably expecting similar protection around products apparently sold for the same purpose are the equity release products: lifetime mortgages and home reversion schemes. These are sold, marketed and bought to meet the same financial need. We are pleased with the Government's recent announcement (10 May 2004) that home reversion schemes will come within the FSA's scope. (See paragraphs 2.38-2.39 for our comments on equity release/home reversion schemes.)

Communicating with consumers

- 1.31 Some firms have been able to persist in poor behaviour because consumers find it hard to identify products to meet their needs and to differentiate between firms who treat their customers fairly and firms who do not. The FSA seeks to address this through:
- increasing consumers' financial capability;
 - requirements on firms about the information they provide to consumers; and
 - direct communication with consumers.

No amount of simplification, education and information will replace the need for help; the FSA now needs to make progress on developing plans for providing access to generic advice.

- 1.32 The FSA's initiative to increase financial capability is welcome. It is bringing together those with a key interest in the provision of financial information, education and generic advice to create a national strategy. This is a daunting task. The Steering Group overseeing this work must ensure that its objectives are specific, realistic and achievable. We have warned against substituting consumer education for consumer protection. The FSA must be realistic about consumers' ability to understand both complex financial products and the complicated regulatory regime and protections available which differ between products and between firms. In particular, the FSA should not reduce consumer protection in anticipation of raising consumers' financial capability.
- 1.33 One of the most useful things the strategy could achieve would be to close the advice gap. At present most consumers do not have access to general financial planning advice. The Panel, along with other consumer representatives, has been calling for a generic advice service to meet consumers' needs. We asked the Government and the FSA to conduct a feasibility study into different models of providing generic advice. Whilst we were disappointed that such a study was not carried out, we are pleased that the FSA are now considering the provision of general financial planning advice.



A mystery shopping exercise commissioned by the Consumer Panel into banks' financial reviews reinforced our concern about the lack of general financial planning advice available to the mass market.

'Whilst banks do offer a range of services, all our evaluators asked for a 'general review of their finances' and most did not receive this. ... It is clear from this research and other studies, that customers (in this case in the form of mystery evaluators) are unaware that they may have a financial need. If marketed and dealt with in the correct way, the availability of general financial reviews could be of real benefit to consumers, regardless of whether or not they decide to go ahead with any recommendations'²².

The FSA should have made more progress on improving the information firms give to consumers, but we are delighted they now plan to take more action on marketing material.

- 1.34 The FSA has been reviewing the effectiveness of the disclosure requirements for packaged products to help consumers understand the product they are considering buying. We have been supportive of the proposed changes, to be called Key facts which would be more effective in informing consumers. Although giving consumers better information was identified as a key priority for the FSA in its 2003/04 Plan and Budget, we are disappointed to learn that these proposals will not be implemented until after a review of the prescribed projection rates regime for life and pension products. Furthermore, the Panel wants the disclosure regime to be extended to new and complex products. Recent mis-selling and mis-promotion of complex products, such as split caps and precipice bonds, have shown that they have been targeted at unsophisticated consumers. So, extending the disclosure regime would help close the consumer protection gap and further the objective that regulation should reflect consumers' needs.

"Get rid of the small print. Make it bigger. Why make it small? It makes no sense making the most important details of the whole thing so small you can barely read it."
(ABC1 men, 18-30, pre-family, South East)

- 1.35 In last year's report we supported the FSA's plans to review the effectiveness of the information consumers receive after they have bought a product²³. We are disappointed that the FSA has not brought forward proposals in this area. Meeting consumers' need for ongoing information is an important part of treating customers fairly. We hope the FSA will make progress next year.

See paragraphs 2.26-2.29 for our comments on disclosure requirements.

- 1.36 Misleading marketing by some firms exacerbates the difficulty consumers have in understanding financial products. We are extremely pleased that the FSA has responded to the Panel's calls for more effort in monitoring and taking action on promotional material and has committed more resources to this for the second year in a row²⁴. The FSA has also taken up our suggestion to monitor television advertising and to think more strategically about how to alert consumers to misleading statements by firms.
- 1.37 We are pleased that the FSA is taking forward proposals to increase transparency about the cost of advice. As part of de-polarisation, firms will be required to give consumers a 'menu' that explains the options for paying for advice. However, this menu will not tell consumers why this is important information, which would make it more likely that consumers would engage with the information. Consumers should be told

22 *Financial review mystery shopping*, research report by BPRI for the Financial Services Consumer Panel, October 2003, pages 14 and 16.

23 Financial Services Consumer Panel Annual Report 2002/03, page 42.

24 FSA's Business Plan 2004/05, page 23. FSA's Plan and Budget 2003/04, page 6.



that one advantage of paying by fee is that it avoids the possibility of the adviser being influenced by commission. Telling consumers this would reflect a 'consumer needs' approach to regulation. (See paragraphs 2.21-2.25 for our comments on de-polarisation.)

"It [the FSA] should be advertised. I think there is an awful lot of people out there that need help."

(C2DE women, 25-40, young family, South East)

The FSA has an important role in providing information directly to consumers - and it could do better.

1.38 The FSA's own research shows that 'the FSA branding of the factsheet adds weight to the communication and therefore had a positive impact on readership levels and behaviour'²⁵. The FSA could have made more use of its factsheets in helping consumers understand important messages. The FSA should require firms to include an FSA factsheet on mortgage endowment complaints in reprojection mailings. The FSA should have required companies promoting SCARPs to send the FSA's factsheet which explains the risks surrounding these products, rather than allowing firms to develop their own factsheets. Some firms have been guilty of mis-promoting these products with considerable consumer detriment.

1.39 We remain concerned about the FSA's strategy in communicating key messages to consumers through its website and the media. We have discussed with the FSA the effectiveness of its consumer alerts and have asked for this to be evaluated. The FSA could have been quicker in putting information for consumers about Standard Life on its website following speculation in the media about its financial position. We also think the FSA website

"They [FSA] should explain how people can be taken the wrong way, telling you what the scams are. They should issue maybe once a year a booklet of new things and just send it out to everybody."

(C2DE men, self-employed, South East)

could be made more accessible to consumers. In particular, consumers' ability to find specific information on the website could be greatly improved. An effective search engine is essential in helping consumers faced with a particular concern about one of their investments. This is an area we will be looking at more over the coming year. We believe that the regulator has an important role to play in imparting clear and objective information to consumers, particularly in times of crisis and uncertainty.

Consumer responsibility

There is much to do to make the retail financial services market a fair and understandable one before consumers can be expected to take more responsibility for themselves.

1.40 The retail financial services market is one where:

- many firms persistently mislead, from their marketing material to the sales process and have a poor after sales record;
- there is reluctance to put things right when problems are identified; and
- the regulatory regime and associated protection differs from firm to firm and product to product.

²⁵ CR22, *Purchasing annuities and an examination of the impact of the open market option*, IFF Research Limited, November 2003.



Against this background it is unrealistic to expect the majority of consumers to take full responsibility for their own financial decisions. In the long term the Panel hopes that consumers will become better informed and more confident as a result of the Financial Capabilities Strategy, but this will take at least one generation and some consumers will never be confident in dealing with financial matters. Firms will always need to take responsibility for the way that they behave towards consumers.

- 1.41 Senior FSA management and others often quote ‘the general principle that consumers should take responsibility for their decisions’²⁶, referred to as caveat emptor (buyer beware). However, when Parliament passed the Financial Services and Markets Act its intention was that the FSA should give equal importance to a number of factors, as the consumer protection objective sets out:

‘In considering what degree of protection may be appropriate, the Authority must have regard to –

- a) the differing degrees of risk involved in different kinds of investment or other transaction;
- b) the differing degrees of experience and expertise that different consumers may have in relation to different kinds of regulated activity;
- c) the needs that consumers may have for advice and accurate information; and
- d) the general principle that consumers should take responsibility for their decisions’²⁷.

We encourage those involved in the debate about the future of the retail regulatory regime to pay as much attention to the first three considerations as to the last.

“I think it’s down to you to read the information but I think it’s down to them to put it in terms so you can understand it”
(C2DE women, 18-30, pre-family, Wales)

“I’d say look at the actual industry itself and sort out the sharks”
(C2DE men, 35-54, South East)

FSA’s accountability and policy making

- 1.42 As in previous years, we have noted examples where the FSA should have taken account of consumer research in developing its policy. One example is the FSA’s review of firms’ use of past performance in advertisements. The FSA failed to act on its own consumer research, which indicated that consumers were confused by the use of monetary values to illustrate past performance. The FSA should have followed its research and prohibited the use of monetary values. On other occasions the FSA should have undertaken research, for example to help assess the risks to consumers around general insurance claims handling. (See paragraphs 2.17-2.18 for our comments on consumer research.)
- 1.43 We have raised concerns about some cost benefit analyses. The approach advocated by the central cost benefit analysis team is not always properly reflected by policy makers. (See paragraph 2.20 for our comments on cost benefits analysis.)

26 Financial Services and Markets Act 2000, section 5(2)(d).

27 Financial Services and Markets Act 2000, section 5(2).



- 1.44 Some work that we expected to see published this year has not appeared, for example the outcome of the Harnessing Market Forces theme work. We saw a draft of this in autumn 2002. This work is important for helping inform attempts to drive up standards in the industry and we are disappointed that it has not been published. The FSA has also done some work to learn the lessons of the pensions review. This is important as it will help inform the effectiveness of future policy and we have pressed for publication of the findings. We hope the FSA will publish both documents in the next year.

Looking forward

- 1.45 We have identified some areas that we think are crucial in providing appropriate consumer protection, information and advice; and to raise consumers' confidence in retail financial services. Here we briefly set out these issues which we will focus on over the coming year.
- 1.46 **Firms' culture from top to bottom** – In particular, we are interested in the FSA's Treating Customers Fairly project and we will be discussing with them tools and mechanisms to change the industry's culture. We will be discussing the role of commission, penalties for mis-selling including fining individuals and other options such as increased publicity around poorly behaving firms.
- 1.47 **Generic advice** – We think that closing the advice gap by providing general financial planning help to the mass market is essential to empowering consumers to get the most from their money. We will input into the FSA's work to address this gap, which it is taking forward as part of its financial capability work.
- 1.48 **The information consumers receive from firms** – We will monitor and hope to influence the FSA's work on: revising the disclosure regime (pre- and post-sale and extending the regime to complex products); reviewing projection regulations; developing the menu for financial advice (as part of their de-polarisation work); and taking action on firms' financial promotions.
- 1.49 **The information consumers need from the FSA** – The FSA has a key role in providing consumers with up to date information, help and firm or product specific warnings. We will be looking for improvements in its services for consumers including its website, consumer alerts and the Consumer Contact Centre.
- 1.50 **Reform of the retail market** – The coming year will see the mortgage and general insurance regulatory regimes come into force. In addition the final de-polarisation rules will be made and the approach of the regulatory regime for simplified products will be agreed. We will be monitoring and advising on these developments. In particular, we will continue to pursue adequate consumer protection in relation to general insurance claims handling and equity release products.
- 1.51 **Current consumer protection** – We will look at the FSA's use of its unfair contract term powers and its work on mortgage endowments; precipice bonds; and split caps.
- 1.52 **Future consumer protection** – We will be considering proposals from the European Union and advising the FSA as well as inputting directly where they would impact on UK consumers' protection. We are working on the review of the Financial Ombudsman Service and hope to input into the FSA's review of redress mechanisms.
- 1.53 **FSA accountability** – We will monitor the FSA's record on: using consumer research in policy making; taking into account consumers' interests in its cost benefit analysis work; and publishing work which helps promote debate and the evaluation of its effectiveness.



Chapter 2: Responses made by the Panel

This chapter gives a record of the Panel's advice to the FSA, the Government and the European Union (EU) in 2003/04 on a wide range of topics. We hope it will provide a useful reference guide to the Panel's views.

Appointed representatives

- 2.1 A key part of the new mortgage and general insurance regulatory regimes will be the extension of the appointed representatives system to firms that advise on or arrange mortgages or general insurance. An appointed representative is a firm that is allowed, by an authorised firm (their Principal), to carry on certain regulated activities under a contract. The Principal must accept responsibility for the appointed representative's compliance with FSA rules in relation to the scope of their work agreed with the Principal (the terms of their contract with the Principal could be restricted to part of their business). So the representative does not need to be authorised in his own right and understanding who is responsible for compliance could be confusing. We do not object to appointed representatives having a number of different Principals for different parts of their business but we have asked the FSA to take steps to minimise consumer confusion. An added complication will be ensuring that consumers also understand the nature of the service they are being offered, as the same representative could provide advice across the whole of the market for one part of its business, but offer the products of just one company in another. The FSA will require firms to give information on their status to consumers in a disclosure document. The Panel would like the FSA to undertake research to see whether this document will help consumers understand exactly whom they are dealing with and which service they are getting.

Capital requirements

- 2.2 The Panel was consulted on the proposed changes to the capital requirements for life insurers (including Friendly Societies). We supported the concept of a capital requirement calculated in a way that reflects the risks accepted by firms. We also supported the requirement for a capital assessment by firms based on the same principles and requiring them to carry out stress and scenario testing based on FSA guidance. Whilst we also supported the proposed requirement that firms report their realistic position publicly to improve transparency, we pointed out that the public availability of this information would not of itself lead to better-informed consumers. Only the most sophisticated investors would be able to assess the significance of the information provided.
- 2.3 The Panel generally supported the FSA's proposals to strengthen the capital regime for non-life insurers. We suggested, however, that the Enhanced Capital Requirement (the informal benchmark for determining the amount of capital a firm should hold when the FSA gives 'individual capital guidance') should be calibrated to an amount that was most appropriate for small firms rather than large, well-run, well-diversified firms. This was on the basis that the reviews of small firms' individual capital assessments, if undertaken in line with the FSA's risk-based assessments, would not be completed for some time. We expressed the view that it would be better to come up with a calibration suitable for small firms that could where appropriate be waived for large firms.



Child trust fund – regulatory regime

- 2.4 The launch of the child trust fund will be a significant test of how the mass market engages with the financial services industry. There are important consumer protection issues, especially given the range of funds allowed in non-stakeholder child trust funds, for example single company shares. In ensuring consumers have the right information to make decisions about which child trust fund to use, the Government and regulator must demonstrate a joined-up approach using a variety of ways to reach consumers. We have been briefed by the FSA, HM Treasury and Inland Revenue on plans that aim to do this. We asked this group to undertake comprehensive research to evaluate the effectiveness of such communication. This is a chance to learn important lessons that will be crucial to the effectiveness of the wider financial capability strategy.
- 2.5 Another important issue is whether people are aware of the stakeholder child trust funds and able to compare them with non-stakeholder products. We are pleased the FSA is requiring marketing material to alert the customer to the stakeholder alternative. However, consumers could be misled by firms suggesting unrealistic growth rates that may be used to justify high charges on non-stakeholder products. We are disappointed that the FSA intends to remove the requirement for a projection of ‘what you might get back’ for products within a child trust fund.

Collective investment schemes

- 2.6 The FSA’s proposals for a more principles-based approach to regulating collective investment schemes (unit trusts and open ended investment companies) have risks for consumers in two areas:
- failing to meet consumers’ needs and expectations; and
 - the potential for firms to abuse the regulation.

On the first point, we are concerned that the introduction of limited redemption funds and performance fees may not be clear to consumers, leading to unsuitable or poor value purchases. Secondly the greater freedom on fund administration and governance might permit abuse. The FSA acknowledged that the proposed ‘fair value’ pricing could give rise to price manipulation. We thought that the proposed changes to the detailed running of funds risked an increasingly opaque industry, should several different approaches allow poor practice to flourish. Whilst we are unable to judge whether the benefits of these changes outweigh the risks, we suggested the FSA must be more vigilant in supervision, in monitoring the promotions of these products and in ensuring the effective disclosure of limited redemption.

- 2.7 We welcomed the FSA’s statement on market timing¹. The FSA moved quickly to investigate whether collective investment scheme funds may have been managed in a way that has enabled market professionals to profit at the expense of retail consumers. They found limited evidence of market timing activity. We are pleased that where the FSA have found problems they are addressing the need to compensate these funds.
- 2.8 The Panel has been following developments on the European debate on the simplified prospectus for collective investment schemes, part of the UCITS² directive. We are pleased that some progress has been made, although we are still concerned that the content of the simplified prospectus is likely to be less helpful to consumers than the FSA’s proposed Key facts disclosure documents. The Panel understands that no final decisions have yet been taken on this important issue and future timing is unclear.

1 FSA press notice, *FSA statement on market timing*, 18 March 2004.

2 Undertaking for collective investment in transferable securities (UCITS)



Compensation arrangements for Association of Chartered Certified Accountants (ACCA)

- 2.9 The Panel was briefed on the FSA's proposals to reduce the risks to consumers arising from the failure of an exempt professional firm that was a member of the ACCA. The designated professional body regime permits non-authorised ACCA firms to carry out a limited range of regulated activities that form part of their core professional services. Retail selling is not permitted under the regime. The ACCA's designated professional body arrangements include compulsory professional indemnity insurance. However, the ACCA does not have a scheme to cover compensation in the event of a firm's failure. Although the FSA concluded that there was not a case for the ACCA to set up a compensation scheme to cover its exempt professional firms, there were steps that could be taken to reduce the risks of loss to consumers. These included removing the holding of assets (such as share certificates) and collecting dividends from the scope of the scheme; and requiring firms to disclose in customer agreements that there is no stand-alone compensation scheme. The Panel supported the proposals.

Complaints against the FSA

- 2.10 The Panel has had discussions with both the FSA and the Complaints Commissioner about complaints handling. We had been concerned about a lack of awareness about the procedure within the FSA, which could lead to frustration and delay for complainants. We were also mindful of the likely increase in complaints once mortgage and general insurance come within the FSA's remit.

Consumer alerts

- 2.11 In our last report we said that we would push the FSA to evaluate the impact of its consumer alerts. The FSA told us that it is aware that consumer alerts are not always the most effective means of protecting consumers and that their use needs to be rationed to maintain their impact. There does not, however, appear to be any objective measure in place to judge their success and we would like the FSA to tackle this in the near future.
- 2.12 The Panel has been concerned about the FSA's overall strategy in communicating key messages to consumers through its website and the media. This is an area that the Panel will be looking at more over the coming year.

Consumer confidence

- 2.13 Consumer confidence has been the subject of an inquiry by the Treasury Select Committee. Our submission emphasised the need for the financial services industry to change its culture so as to focus on treating customers fairly. We stressed the need for the FSA to have a sceptical approach to the industry and to adopt radical action to raise standards. We also highlighted consumers' unmet needs for help or advice. We discuss these issues more in chapter 1.

Consumer needs

- 2.14 As part of its work on retail reform (see paragraphs 2.98-2.99, below), the FSA is researching consumers' needs in order to develop a 'consumer needs' approach to regulation. We welcome this work. We agree that the way in which consumers wish to deal with financial services should be the driver for the way in which:
- the FSA informs and educates consumers;
 - the FSA regulates the market; and
 - firms are expected to deal with consumers.



- 2.15 We have long been concerned that the FSA does not sufficiently take into account consumers' needs when developing policy, in particular, to take account of how consumers perceive their financial needs. We have made this point in relation to consumer education and to the coherence of regulatory requirements across different regimes. This year we have seen a notable example of where consumers' needs have not been met by the FSA allowing different meanings of the term 'independent' for the general insurance and investment firm regimes. (See paragraph 2.60.)
- 2.16 Another example is the differing consumer protection around 'packaged products' and 'complex products'. Consumers will not see the distinction between packaged and complex products sold alongside each other to meet the same financial need, yet many of the FSA's consumer protection requirements only apply to packaged products. (See our comments on disclosure, paragraph 2.27, below.) We also pointed out that a consumer needs approach will not reduce the need for robust regulation. We look forward to discussing this further with the FSA.

Consumer research

- 2.17 We monitor the extent to which the FSA's policy making takes account of consumer research. As in previous years, the FSA has a mixed record. In this chapter we record some examples of where the FSA could have made better use of consumer research. See our comments on past performance (paragraph 2.90), general insurance claims handling (paragraph 2.61) and SCARPs (paragraph 2.108).
- 2.18 We have asked the FSA to make use of mystery shopping in evaluating how well changes to the regulatory regime are working, for example following de-polarisation; and as a regulatory tool for spotting, and creating a disincentive for, poor practice. We are disappointed not to see resources set aside for this in the Business Plan.

Consumer risk group

- 2.19 The Panel sought a briefing on this cross-FSA group, the main purpose of which is to support the FSA's aim of becoming more 'fleet of foot' in anticipating and reacting to consumer issues. The Group's work includes drawing on intelligence from industry and consumer groups as well as from within the FSA. We support this work, which we consider to be vitally important for consumers. We have asked for a further briefing later this year.

Cost benefit analysis

- 2.20 We have expressed some concerns over the use and quality of the FSA's cost benefit analysis (CBA). In particular some examples of CBA have aggregated very large numbers of small extra costs to firms and contrasted those with smaller numbers of extra benefits to consumers, indicating that a rule change should not be undertaken. We are concerned about the way in which the costs of potential detriments to consumers are calculated, for example about whether the wider consequences of financial loss on other aspects of household behaviour and family life are taken into account and the relative impact of what may appear a small loss on a low income household. Whilst we appreciate the advantages of having CBA done by policy makers rather than by the expert central team, we are not convinced that the work of the central team is reflected properly in policy making. We look forward to continuing discussions on how to provide policy makers with CBA guidance that adequately reflects sophisticated economic techniques.



De-polarisation

- 2.21 This year the FSA has been taking forward proposals to remove the requirement that firms giving investment advice must be either tied to one product provider (an agent of that provider and selling only their products) or independent (acting on behalf of the consumer and looking across the whole of the market to select a suitable product). Although broadly supportive of de-polarisation as a way of providing greater choice for consumers, we remain concerned as to whether the proposed rules will be sufficient to ensure that consumers realise tangible benefits from this change.
- 2.22 Consumers need to be told in clear terms the range of products available (and how that range has been chosen) so that they can satisfy themselves that they are not choosing from a limited range of poor value products. We felt the proposed initial disclosure document should set this out and explain the importance of the information to consumers. If the FSA wants consumers to engage with the information in the initial disclosure document, the document must set out why this information is important. The FSA proposed statement read: 'We [can] only [select] [deal with] products from a **limited number** of companies'. In contrast, the Panel suggested that it would be better if it read: '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'. The FSA has not taken up this suggestion.
- 2.23 We told the FSA that it needed to develop an awareness strategy to ensure that consumers appreciate the difference between an independent adviser (who will do the shopping around for them) and a tied or multi-tied firm (which will not). We felt that firms should be required to take steps (e.g. in shop fronts and/or in letters) to ensure that consumers know what kind of outlet they are going into before they see an adviser or salesperson.
- 2.24 We reiterated our view that abolition of the 'better-than-best' rule need not go hand-in-hand with the de-polarisation proposals. The 'better-than-best' rule was designed to avoid conflicts of interest arising for independent financial adviser (IFA) firms where they are commercially affiliated with a product provider as the adviser would only be able to make a recommendation to buy one of the connected firm's products if they were sure they were better than the best on the market. We maintain that the proposed disclosure requirements will not be as effective as the 'better-than-best' rule in providing effective safeguards for consumers. The proposed requirements would not make it clear to consumers why they were being given information about financial links and connected providers. The disclosure requirements, in the absence of the 'better-than-best' rule, need to be enhanced so that they alert the consumer to the question of bias. Consumers need to understand why they are being given information if they are to take it into consideration. We do not think that the FSA has gone far enough in addressing these concerns.
- 2.25 The Panel supports the concept of introducing more transparency and consumer understanding into the cost of advice. The FSA has conducted some research into the 'menu' to see whether this disclosure document will help achieve this. In our view, the research indicated a number of problems with the proposed approach for ensuring that the consumer is aware of the options open to them. The Panel is currently considering its formal response to Consultation Paper 04/03, which consults on proposals for the 'menu'.

Disclosure

- 2.26 Improving information given to consumers is vital. Its importance was reflected in the FSA's Plan and Budget 2003/04: 'We will complete our work to improve the quality of information about investment products that firms give to consumers at the point of sale. We have substantial evidence that the current system is ineffective, with consumers finding material difficult to use and often dismissing it as inessential



... they [the Key facts documents] will be FSA branded to make clear to consumers the independence and objectivity of the material.’ We welcomed the FSA’s proposals to improve the effectiveness of the disclosure of important information to consumers before they purchase life and packaged products. The new Key facts regime would, we felt, greatly benefit consumer understanding and help reduce mis-selling and mis-buying. The changes represent a significant improvement to the disclosure documents promoted under the Association of British Insurers’ (ABI) Raising Standards initiative. The FSA’s research showed the importance of pre-sale disclosure to consumers. The decision to continue with suitability letters was welcome and in stark contrast to the decision taken on mortgages (see below). We are pleased the FSA took up our suggestion to require reference to its Comparative Tables on point-of-sale documents. (See paragraph 2.8 for our comments on the simplified prospectus for collective investment schemes.)

- 2.27 The only major concern we had about the disclosure project was that the regime should be extended to cover new and complex products as well as life and packaged products. These are sold alongside each other and a regulatory approach based on consumer needs should offer the same protection across products designed to meet the same financial need. The FSA did intend to explore extending the regime³ but has since told us that it does not have the resources to carry out this work. Whilst we accept that the FSA’s finite resources must be used where they are most needed, the need to ensure that consumers are properly informed is a high priority. In view of the work already undertaken on Key facts, we are surprised by the FSA’s decision.
- 2.28 The FSA decided in July 2003 to put on hold introducing the Key facts regime pending the outcome of its review of its prescribing projection rates. This is bad news for consumers. We do not accept that it would be detrimental to consumers’ interests to implement the Key facts regime before the conclusion of the projections review. The current disclosure regime is not giving consumers what they need. The strength of the views in the FSA’s own Plan and Budget, supported by the ‘evidence’ in its possession, suggest that the FSA shares our concerns. Although we agree that some aspects of the Key facts regime could lead to confusion – such as consumers being given information about charges in two different formats – these areas of possible detriment could be minimised with effective management. The Panel is sceptical about the FSA’s suggestion that it would be disproportionately expensive to ask firms to suppress/amend elements of their existing illustrations before the outcome of the projections review is known. Given the cost to firms and consumers of mis-selling and the cost to consumers of mis-buying, we are very disappointed with the FSA’s decision to put back introduction of the Key facts regime.
- 2.29 The FSA has been considering changes to the rules on disclosure of information to consumers after the point of sale. This is another area where the Panel strongly supported the FSA’s work and is disappointed with the lack of progress (see paragraph 2.112, below).

Distance Marketing Directive

- 2.30 The Distance Marketing Directive seeks to encourage cross border purchasing by consumers across the EU. We believe that consumers will need to be confident that they have effective protection before they would consider purchasing financial services from another Member State. Our response to the Treasury consultation document suggested that this could be addressed by providing consumers with documents clearly stating the name of the responsible regulatory agency and by the creation of a ‘clearing house’ to refer complaints to the appropriate authority.
- 2.31 In our response to the FSA, we expressed concern that the definition of a distance contract appeared to exclude large amounts of business from the directive. Whilst we acknowledged that there are problems with

3 FSA Annual Report 2002/03, page 133.



the requirement for full contractual terms and conditions to be given up front, we would prefer that a sensible solution was found rather than disqualifying a whole range of business. We were also concerned by the omission of consumer groups from the list of interested bodies that the FSA will work with on the meaning of 'distance contract'.

Endowment mortgages

See mortgage endowments

Enforcement

- 2.32 We were briefed on the FSA's review of enforcement processes. The Panel has been concerned about the position of consumers who deal with firms that are under investigation by the FSA, where the fact of the investigation is not made public until enforcement action has been taken. The scope for consumer detriment is heightened by the considerable time it takes for enforcement to be completed. However, we are pleased that the FSA is considering streamlining its enforcement process; we were also encouraged by its plans to review its policy on publicity in certain circumstances.
- 2.33 We asked the FSA what powers it had over firms under investigation. We were pleased that it can require a firm to set aside sufficient assets to meet possible claims from consumers, to segregate new deposits from existing ones, to seek other undertakings from a firm and to vary a firm's permissions.
- 2.34 The Panel is keen to see senior management held accountable for their actions and punished where appropriate. We are therefore pleased that the FSA recently announced that it had used its statutory powers to fine a director of a listed company for the first time.
- 2.35 The Panel supported the proposal to extend the use of mediation to cases involving allegations of dishonesty or impropriety and to cases involving own initiative variations of permission.
- 2.36 The Panel is pleased by the high profile of the FSA's enforcement activity in recent months. Creating an effective disincentive to firms to treat their customers poorly is crucial. Individuals as well as firms must face a credible threat of being subject to enforcement action. We see this as key in the FSA's drive to get firms to treat their customers fairly.

Equitable Life

- 2.37 Lord Penrose's report into Equitable Life raised a number of vital issues including:
- a) the importance of robust governance arrangements in protecting consumers;
 - b) whether supervisors effectively probe firms;
 - c) the complexity of with-profits products, which makes it difficult for consumers to understand them; and
 - d) the need to provide consumers with better information about products and about firms in difficulty.

We have raised these issues with the FSA both in response to the Penrose report and in a number of other discussions, including: as part of the with profits review, see paragraphs 2.115-2.116, below; in relation to firms in difficulty, see paragraphs 2.58-2.59, below; and regarding the FSA's Treating Customers Fairly theme, see paragraphs 2.111-2.112, below. We will continue to pursue these and consider the implications of Penrose for future FSA regulation.



Equity release/home reversion schemes

- 2.38 The Treasury has been consulting on the regulation of home reversion plans, which currently fall outside the remit of the FSA and will not be covered by the mortgage regulation regime from October 2004. On 10 May 2004 HM Treasury announced that home reversion schemes will be regulated by the FSA. We have strongly supported the regulation of home reversion by the FSA alongside mortgage-based products. From the consumer's perspective, equity release mortgages and home reversion schemes fulfil the same need and we argued that the structural differences between these products should not justify some consumers being put at a disadvantage in terms of protection, redress and compensation. In the absence of FSA regulation there could be extensive mis-selling to those who, by the nature of the product, are unlikely to be able to recoup their losses. We argued that safeguards (such as the FSA's approved persons regime, disclosure requirements and monitoring of financial promotions) should be applied to the home reversion market.
- 2.39 We also called for mandatory independent legal advice for those considering a home reversion plan and we believe that consumers should also instruct an independent surveyor to value their home.

European Union

- 2.40 European Union directives can significantly affect consumer protection in the UK. We have long been arguing for better consumer representation both directly with the European Commission and in the Government's development of its negotiating position. Whilst the Consumer Panel is now represented at the regular International Roundtable and EU Stock-take meetings organised by the FSA and the Treasury, we still do not feel part of the process that feeds into the UK's negotiating policy on EU legislation. The FSA acknowledges the need for consulting consumer representatives on policy developments in the European arena at an earlier stage and is developing mechanisms for doing so.
- 2.41 One of the difficulties in developing policy across the European Union is the lack of information on the individual retail financial markets. There is no overview of the European market for consumers and this makes it difficult to assess the impact of proposals on consumers in different EU countries. We have drawn this to the attention of the FSA and propose to discuss further how this might be addressed.
- 2.42 We are very pleased that one of the Panel's members, Paul Salvidge, has been appointed to the FIN-USE Panel recently established by the Commission. This committee has been set up to represent users of financial markets to the Commission, specifically DG Sanco and DG Markt, the main parts that effect legislation on financial markets.

Financial capability

- 2.43 In our last annual report we welcomed the FSA's commitment to developing a coherent strategy for consumer information, education and generic advice. We are pleased that John Tiner has since set up a Steering Group to develop a National Strategy for Financial Capability. Its task will be to ensure that the FSA and its partners produce a cohesive plan that draws together initiatives to meet consumers' needs. The Panel is looking forward to contributing to this work.
- 2.44 The Steering Group is facing a daunting task in raising consumers' financial capability and it is essential that its objectives are specific, realistic and achievable. The Group will also have to devote time to managing expectations of the project, both within the FSA and outside, to ensure that others do not turn it into a useful hook on which to hang responsibility for all consumer issues. We have long warned against substituting consumer education for consumer protection. The FSA must be realistic about consumers'



ability to understand complex products and the complicated regulatory regime and protections that differ from product to product and firm to firm. An example of expecting too much of consumers' understanding is shown in the FSA's approach to dealing with conflicts of interest in investment research (paragraph 2.72). Furthermore, the FSA cannot afford to lose sight of what is important for consumers now and it should not divert all its consumer-facing resources into this project. Similarly, we do not want to see agencies with voluntary funding losing their financial support to pay for the Financial Capability work.

- 2.45 Work to develop the provision of generic advice will be part of this project. We see the gap in the provision of general financial planning advice as a key problem and have been pressing the Government and the FSA to undertake a feasibility study into the method of delivering generic advice. We are pleased that consideration of this topic has been identified as an early priority for the Financial Capability Strategy. For further comments on generic advice see paragraphs 2.62-2.64, below.

Financial Ombudsman Service

See FSMA review

Financial promotions

- 2.46 We are delighted that for the second consecutive year the FSA has committed itself to increasing its efforts to reduce the number of unclear and misleading advertisements. Its 2004/05 Business Plan states that it will set up a new Department to lead this work – including staff visiting firms to assess their controls over financial promotions - and that it will expand its monitoring to include television commercials. This is something the Panel had been pressing the FSA to do and the importance of this has, we believe, been highlighted by recent disciplinary action against Berkeley Jacobs for misleading advertising and serious failings in the advice it gave to consumers to release cash early from their pensions.
- 2.47 This financial year saw the release of the FSA's third Financial Promotions Bulletin. This contains a great deal of useful information for consumers but it will not reach many of them because it is only available on the FSA's website. This is a missed opportunity and we are pleased that the FSA's latest Business Plan says that it will consider additional ways of communicating with consumers and firms about financial promotions.
- 2.48 We look forward to discussions with the new Financial Promotions Department.

Financial Risk Outlook and Business Plan

- 2.49 We were briefed at an early stage in the development of the FSA's Business Plan and its Financial Risk Outlook (FRO). We echoed concerns in the FRO about levels of consumer borrowing. The message the FSA needs to get across to consumers is that interest rates could rise and they need to consider the effects of this on them. We suggested that consumer research should examine the triggers that would change consumer borrowing patterns.
- 2.50 When consulted on the draft Business Plan, we expressed the view that the proposed simplification of the handbook could cause problems for the FSA and for consumers as a result of the increased responsibility of senior management in firms in interpreting what is expected of them.
- 2.51 We expressed our concerns that the Unfair Contract Terms Regulations did not appear specifically in the Business Plan. We remain unhappy that the FSA has failed to make use of its powers under these regulations (see paragraph 2.114 below).



2.52 We felt that the FSA should have planned to undertake mystery shopping. This is an extremely valuable tool, and a crucial disincentive to firms to treat their customers poorly.

FSA's data needs and regulatory reporting

2.53 The FSA has been reviewing firms' reporting requirements to improve its ability to spot problems and enhance consumer protection. The proposals would require some firms to report more frequently and e-regulation would facilitate this.

2.54 We took a particular interest in the reporting by firms of the complaints they receive. We also pointed out that, if it was left to firms to decide the category under which they reported a complaint, this might result in a distorted picture as it could be different to the consumer perception of the problem. We felt that the FSA should be taking steps to ensure the quality of complaints reporting. We noted that supervisors would use the information collected to identify problems. Complaints reporting will be examined as part of 'themed visits' to firms.

2.55 We asked about maintaining the accuracy of standing data (such as that on the FSA Register) and were informed that a separate 'integrity review' on this was being undertaken.

2.56 In the context of the de-polarisation proposals, we suggested that the FSA should consider publishing data on the scope and range of products sold by firms.

Financial Services and Markets Act (FSMA) review

2.57 The Treasury is reviewing the Financial Services and Markets Act 2000 (FSMA). We welcome this review and were pleased to have the opportunity to contribute to its pre-consultation phase. We will respond to the various consultation papers, setting out proposals arising from the review. Our main concern is the suggestion from some parts of the industry for an appeal system to be bolted on to the Financial Ombudsman Service (FOS). The FOS works because it is simple, accessible and efficient. An appeals process could bring delays and confusion and could create an imbalance, which would work against consumers. However it is important that the FOS and the FSA are more transparent when it comes to judgements that have implications for some or all parts of the industry beyond the individual cases to which they relate.

Firms in difficulty

2.58 The Panel has encouraged the FSA to provide early information to customers of firms in difficulty. The Panel has become concerned about the way consumers can be misled by inaccurate stories in the media and considers there to be a consumer protection role for the FSA here. The general push to make consumers take more responsibility for financial decisions means that consumers must be given enough information on which to make these decisions. We appreciate that, when information is not in the public domain, there will be times when the FSA will decide not to make information available on the grounds that this will only make the position of the firms worse. However, there are other times when the FSA could be more helpful in providing information for consumers on matters that are speculated about in the press. In any event we believe that if the FSA is unable to make important information available to the public it should ensure funds from new customers are ring-fenced by firms and protected (see paragraph 2.29).

2.59 Last year, we welcomed the FSA's commitment to draw up internal guidelines on disclosing information about individual firms. We had expected to see this proposal developed in the FSA's Harnessing Markets Forces report and regret that this has not yet been published (see paragraph 2.68, below).



General insurance

- 2.60 The Panel was surprised by the FSA's decision to allow unrestricted use of the term 'independent' (other than compliance with the 'clear, fair and not misleading' rule) in the general insurance market. The Panel asked the FSA to restrict the use of the term independent to give more coherence with requirements on investment firms. Consumers who purchase both investment and general insurance products cannot be expected to understand that an independent financial adviser offers an entirely different service to an independent insurance broker, especially if they are the same firm or person. We believe this demonstrates a lack of consistency across the FSA. The FSA has indicated that it wishes to develop a regulatory regime in the retail market that reflects the way consumers approach the market: 'our preferred approach is to focus on the way consumers want to deal with financial services – this is what we call a consumer needs approach'⁴ (see paragraphs 2.14-2.16). The FSA's own paper on a Strategy for Financial Capability identifies the need for clear, simple messages to be used in communications with consumers, yet for consumers the term 'independent' will mean something different depending on the type of product they are buying. Ignoring consumers' needs in this way makes the market more complicated for consumers to understand and undermines consumer protection. The FSA did not accept our views during the consultation and we appealed directly to the Chief Executive but were still turned down.
- 2.61 More generally the Panel is supportive of the new regime for regulating general insurance, although the FSA could do more to protect consumers' interests. In particular we are concerned that the FSA has not researched consumers' experience of claims handling, where many consumers might not get their entitlement because of the length of time taken to deal with claims, the complexities of the process and some firms' practice of negotiating down.

Generic advice

- 2.62 The Panel has been calling for the provision of generic advice because general financial planning advice is not currently accessible to the mass of consumers. The Government and the FSA agreed that there is a gap and we asked them to take forward a feasibility study into different methods of delivering this service. Closing the advice gap is so vital to restoring confidence in the financial services market that we were disappointed with the lack of progress. We are now pleased that generic advice will be part of the financial capability work (see paragraphs 2.43-2.45, above). We hope that this work meets the Panel's expectations.
- 2.63 The FSA's first attempt at developing a generic advice tool was its work on a financial healthcheck CD Rom. The prototype was available last year. We welcomed it and looked forward to its development. It is disappointing that there has been no progress on the prototype since then. It has only recently become clear that the FSA would be considering the issue of generic advice as an early priority for the broader financial capability work (see above). We will be calling for an early update on this project.
- 2.64 We were struck by the number of high street banks advertising financial reviews. We decided to look into what was on offer for consumers and last summer we decided to commission a small mystery shopping exercise into the quality and accessibility of these reviews⁵. We found a gap between what is offered by banks and the service that is actually delivered. Banks must be absolutely clear about what is being offered and must deliver what they promise. We believe they should set some minimum standards for the delivery of the financial reviews. If they advertise their service as offering a full financial review it should cover

4 FSA Business Plan 2004/05, page 21.

5 *Financial Reviews*, report by the Financial Services Consumer Panel, February 2004.



debt management; eligibility for State benefits and tax credits (or reference to a local service who can advise on this); insurance; mortgages; and savings and investments (including pensions).

Handbook

- 2.65 The FSA has expressed an intention to move their handbook from detailed rules towards principles and high level rules. We were concerned that this might lead to a gap in firms' understanding of what is expected of them, and ultimately to consumer detriment. The FSA has assured us that they will issue guidance to clarify firms' understanding of what is expected of them where it would add value, for example in explaining practical implications especially for small firms.
- 2.66 Additionally we asked about the impact on enforcement action, in particular whether it would provide firms with an opportunity for extensive debate about the interpretation of the principles. We have been reassured that when looking at rules, the FSA will consider the implications of enforcement.
- 2.67 Generally the FSA has reassured us that its proposals to move towards principles and high level rules will not lead to a loss of consumer protection. The FSA must now ensure that this is the case.

Harnessing market forces

- 2.68 In 2001 the FSA undertook a project to examine how market forces might be harnessed to help achieve its objectives. In our last annual report, we urged the FSA to publish the outcome of the Harnessing Market Forces theme and said that we looked forward to further discussions with the FSA on this. We are disappointed that the FSA has not published the results of its project and urge it to do so.

Home reversion schemes

See equity release

Information after the point of sale

See treating customers fairly

Insurance Mediation Directive – investment firms

- 2.69 The Insurance Mediation Directive applies to insurance intermediaries but not to insurers. For our comments on how the FSA has adopted the Directive for general insurance business see paragraphs 2.60-2.61, above.
- 2.70 We agreed with the proposal to extend the disclosure requirements to insurers where they are dealing with private customers - to achieve a level playing field and to ensure clarity for consumers.
- 2.71 For non-advised sales, we accepted that intermediaries could satisfy the requirement for a statement of the customer's demands and needs by asking the customer to provide the information on the application form. However, the format of the application form would need attention by the FSA and testing to see how well it identified whether a potentially high risk product would be suitable for a consumer. This must ensure that, in the absence of advice, consumers are properly alerted to the effect the product might have on their needs.



Investment research – conflicts of interest

- 2.72 We discussed the proposals for conflicts of interest that arise from the use of research material in the media. The most common example is research being quoted in the financial or weekend press, which some consumers rely on in reaching their own investment decisions. There is potential detriment to consumers here and on the whole we are supportive of the FSA's work. Nevertheless we are sceptical about the prospects for success for the proposed 'low-level' media campaign to raise awareness of the risks associated with acting on recommendations in the media.

Investment trusts

- 2.73 We welcomed the FSA's proposals, in particular the requirement for the listing particulars (the information that must be given to the London Stock Exchange (LSE) before shares can be admitted to listing and traded on the LSE) to contain a detailed description of the investment policies in a prominent position and in clear language.
- 2.74 The consultation paper raised the issue of whether investment trusts should become regulated products. We believe that this should be thoroughly examined as consumers would be surprised to learn that a product sold in competition to unit trusts, through similar channels, is not regulated in the same way. We are aware that this is not a matter for the FSA and will be raising it with the Treasury.

Listing review

- 2.75 The Panel were pre-consulted on the Listing review prior to publication of the consultation on this issue. We discussed a number of key issues for consumers, in particular the introduction of over-arching enforceable principles (in addition to rules and guidance) and the proposal to provide additional rights for investors when a company intends to cancel its listing. On 'de-listing', some members wondered whether investors would be sufficiently protected by the proposed requirement for companies to obtain 75% approval from shareholders before de-listing. In general, however, the proposals were supported by the Panel and it was agreed that they would strengthen the regime in areas where additional consumer protection was required.

Long-term care insurance

- 2.76 We generally welcomed the proposals for regulating long-term care insurance. However we were concerned that the FSA's analysis of consumer risks had not included the possibility that advisers could combine long-term care insurance with equity release arrangements to create their own packaged product. As such packaged products would be risky and difficult to identify we suggested that the FSA should monitor financial promotions to see whether any such products emerged.
- 2.77 The Treasury does not intend to amend the Financial Promotions Order so that pure protection insurance contracts are subject to the full financial promotions rules. These products will be targeted at vulnerable consumers so it is vital that the regulatory emphasis should be on preventing mis-selling and mis-buying rather than dealing with problems after the event. The Treasury's decision not to allow the FSA to take action on financial promotions of pure protection insurance contracts denies the FSA a key tool in preventing problems.
- 2.78 We supported the proposal to bring long-term care insurance intermediaries into the Financial Services Compensation Scheme. However we are concerned that compensation would be limited to £48,000 (because it would be treated as an investment product) and asked for the limits to be reviewed.



- 2.79 We expressed our concern over the proposal to 'grandfather' existing advisers without assessing whether they are competent under the Training and Competence requirements. Given the extent of knowledge required to sell these products, combined with the lack of any existing qualification, existing advisers should be required to pass an examination as part of their continued professional development.
- 2.80 We also expressed concern about the definition of activities of daily living (ADLs), which are used to decide if a claim is payable. We believe that bench marking is needed to enable consumers to compare policies without having to examine the detailed wording of different policies. The information about events or circumstances that could lead to a claim should be contained in a special key features document, which would also clearly explain ADLs. We are disappointed that the FSA has decided not to introduce standards for definitions of ADLs.

Money laundering

- 2.81 Naturally the Panel welcomes the Government's initiative to reduce money laundering and financial crime, which is ultimately paid for by the consumer. We do have reservations, however, about the type of documents sought to verify a person's identification when trying to open a bank account. This particularly affects those who are opening an account for the first time. We are anxious that no requirements should be introduced that effectively exclude certain groups from banking services. Instead guidance should be proportionate and flexible. It is also important that consumers understand why these measures are necessary. We would like any proposals to be 'stress tested' with likely new customers from a range of different backgrounds before implementation to see whether they exclude those who should be able to access banking services.

Mortgage endowments

- 2.82 We raised with the FSA questions about:

- help and information for consumers;
- firms' complaints handling; and
- dealing with firms with a high concentration of mis-selling mortgage endowments.

We also asked the FSA to collect information to evaluate the effectiveness of their approach.

- 2.83 Consumers need help in understanding a number of issues about complaining and redress. The FSA should require firms to include an FSA leaflet focused on complaints in their reprojected mailings. In particular, consumers may naturally assume that they have to wait until the actual size of their shortfall is known (i.e. when the policy matures), before they can complain. A more targeted approach to informing consumers about time bars would help. More importantly, the FSA should make every effort to encourage the industry to relax time bars so that consumers' complaints are not restricted by matters unrelated to the merit of their case. The Treasury Select Committee suggested that the relevant section of a 'red' reprojected letter should be coloured red. We have asked the FSA to take up this suggestion and said that the time bar should not start until a consumer has received such a letter.
- 2.84 We have asked the FSA how it is dealing with firms that have been mis-handling endowment complaints and what steps it is taking to ensure consumers whose complaint has already been dealt with by these firms will be fairly treated. We have also asked for information to help evaluate the extent to which the FSA has taken effective action on the firms guilty of widespread mis-selling. We look forward to discussing this with the FSA this year.



- 2.85 It is important to evaluate the effectiveness of the FSA approach both in helping those due compensation to achieve it; and in helping those facing a shortfall address it. The FSA should evaluate, using a combination of consumer research and a review of respondents' cases by a suitably qualified person, the proportion of consumers likely to have a compensatable loss, or to have been mis-sold. We continue to discuss this with the FSA. We have made a number of suggestions about research, including the need to assess consumers' understanding of their options; how they are coping with a projected shortfall; and what help they might need.

Mortgage regulatory regime

- 2.86 Overall the Panel is pleased with the approach adopted by the FSA to mortgage regulation, although there are some areas where we would like to have seen a more prescriptive approach, particularly relating to self-certification mortgages. We are disappointed that the FSA decided to drop the use of suitability letters in the mortgage market (in spite of research in the investment market, which showed that suitability letters were read and used effectively by consumers) and we would have liked to have seen the FSA logo being used on the initial disclosure document. This is particularly important in the area of so-called 'lifetime mortgages' and mortgages for debt consolidation purposes, where there is to be no cooling-off period.

Mortgages – current consumer protection issues

- 2.87 In the Panel's last annual report we referred to information we had received suggesting that there might be a widespread problem with mortgage administration, in particular a high level of errors in the calculation of interest and capital repayments. We continued to press the FSA on this in advance of mortgage regulation and we understand that some regulatory work has already been completed. We will be discussing this with the FSA again towards the end of the year.
- 2.88 The Panel has been speaking to the FSA about the alleged widespread abuse of self-certification mortgages. The principal allegation is that advisers are encouraging consumers to exaggerate their earnings in order to take out larger loans. The Panel is concerned about the implications of this for both consumers and industry. Making a fraudulent application for a loan is a serious matter but the industry cannot distance itself from abuses of the self-certification process. It is of grave concern that there seems to be a culture of aiding, encouraging and facilitating distorted applications among sales staff. We are struck by the willingness of lenders to continue to advance funds on a self-certified basis when allegations of this gravity had been made. If, in reality, lenders are prepared to advance more to borrowers than the historic income multiples would allow, lenders should be open about this, which would alleviate the pressure on consumers to inflate their income to meet the multiples 'rule'. We are not as reassured as the FSA are by the industry's responses to the FSA's inquiries that firms' systems are sufficient. This is an area where the FSA could use mystery shopping to find out what actually happens when potential borrowers contact firms to ask about mortgages.

Non-zero failure regime

- 2.89 The FSA has stated that it operates a 'non-zero failure regime'. The Panel agrees that it would not be practical to sustain a financial services market in which the regulator could guarantee that no firm or product would ever fail. However, it is the responsibility of the FSA to ensure, so far as possible, that consumers are in a position to take informed decisions about their money and to accept responsibility for those decisions. This calls for greater transparency on the part of the FSA. We encouraged the FSA to think more widely and proactively about its opportunities for getting messages across to consumers, most notably in the areas of misleading advertisements and enforcement. We would like to see the FSA employing high-impact promotions of the implications of a non-zero failure regime for consumers,



including advertising and interviews on television and radio. The FSA is currently reviewing its enforcement process and is considering making more use of its existing powers. We will be asking the FSA for updates on these developments in the coming year.

N2+2 review

See FSMA review

Past performance

- 2.90 The Panel welcomed the introduction of new rules to require firms to present data about past performance data in advertisements in a standard percentage form. However, we were disappointed that the FSA decided not to follow its own research findings and prohibit the use of monetary values. It is a recipe that could lead to problems in the future. The FSA's own research into consumers' understanding of monetary values in advertisements⁶ said: 'Despite the appeal and preference for monetary values over percentages there was clear evidence of their potential misuse when assessing a fund'. We would have preferred to see the FSA acting on its own consumer research findings and prohibiting the use of monetary values altogether.

Pensions unlocking

- 2.91 We were pleased that the FSA decided to review the activities of firms specialising in pensions unlocking and we have been advised that there are strong indications of a high level of unsuitable sales. The FSA's disciplinary action against Berkeley Jacobs, a company fined £175,000 for misleading advertising and failings in the advice it gave to consumers, is a case in point. We are seeking assurances that consumers who lost out as a result of these practices will be properly compensated. We also are anxious to see the review extended to firms who offer services other than pensions unlocking. This is because we are concerned that the FSA may not yet have a realistic idea of the scale of this issue.

Polarisation

See de-polarisation

Precipice bonds

See SCARPs

Product risk framework

- 2.92 The FSA has been developing a product risk framework that would enable supervisors to understand the key characteristics of products and to make judgements about their potential to cause consumer detriment. We hope this work will help supervisors identify products around which extra controls are needed. We are particularly interested in the application of the product risk framework to the suite of so-called 'stakeholder' products, which, it has been suggested, could be subject to a 'light touch' sales process. We think that the sales process should be integral to the assessment of product risk. If an inherently risky product is sold properly, it should not cause a problem; on the other hand, if a 'safe' product is sold badly it may cause big problems to a large number of consumers. The FSA reassured us that integrated into the product risk framework is an assessment of the controls around which products - particularly those with the potential to cause consumer detriment - are sold and the need for after sales maintenance.

6 *Standardisation of past performance*, FSA Consumer Research Paper 21, May 2003



Projection rates

- 2.93 The FSA is reviewing its regulation of the illustrations used by firms to show consumers the potential future returns from a product and the effect of charges on the future value of a product. We support work to review how to best illustrate these to consumers and look forward to discussing this further with the FSA.
- 2.94 The FSA decided to delay implementing their proposals for replacing key features documents with the much improved Key facts documents, until the work on reviewing the regulation of projection rates is completed. We regret this delay in implementing proposals that are in consumers' interests. We do not accept that the two sets of changes have to be implemented together.

Redress

- 2.95 The FSA did respond to our calls for a 'review of reviews' to analyse the benefits, costs and problems of different models of redress. We have asked to input into this work and hope that we will have a chance to do this shortly.
- 2.96 The Panel discussed a paper on the Pensions Review which highlighted a number of key lessons arising from the Review. We asked the FSA to publish its findings and are disappointed that, to date, it has not done so as this would help consideration of the effectiveness of different ways of ensuring appropriate redress when mis-selling has occurred.
- 2.97 In September 2003 the FSA fined Lloyds TSB for unsuitable sales of the Scottish Widows Extra Income and Growth Plan (EIGP) through the Lloyds TSB branch network. It also announced an agreement with Lloyds TSB for compensating those consumers readily identifiable as having been mis-sold. We raised concerns with the FSA about the arrangements for protecting those consumers who fell outside of the compensation categories agreed between the FSA and Lloyds TSB. In our view, the letter from Lloyds TSB to non-compensation qualifying consumers failed to state clearly that these consumers could still have a valid claim. The letter should have clearly explained that although those receiving the letter fell outside of the agreed compensation categories they could still have a valid claim for compensation which could be pursued directly with the company and, if necessary, with the Financial Ombudsman Service. Whilst this information was in the Questions and Answers document which accompanied the letter, it was not prominent. We were disappointed that the FSA did not agree with the Panel's concerns claiming its primary concern was to ensure that the letters and Questions and Answers communicated a complex issue simply and clearly and that Lloyds TSB had set up an infrastructure to deal with remaining queries.

Retail market reform

- 2.98 The FSA is developing a long-term strategy to shape its regulatory approach to the retail market. We emphasised the need to be clearer about the expectations of consumers in identifying their own financial needs: there will always be inequalities of financial knowledge and some consumers will always need advice to identify their needs. As well as developing plans for delivering generic advice (see paragraphs 2.62-2.64, above), the FSA should do more to ensure firms provide high quality advice. A comprehensive training and competence regime is an essential component of this.
- 2.99 Other components of this work are commented on elsewhere in this chapter as follows: consumer needs (paragraphs 2.14-2.16); de-polarisation (paragraphs 2.21-2.25); and Sandler, below.



Sandler

- 2.100 This year the FSA has been exploring the use of filtered questions for selling the proposed 'simplified products', suggested in the Sandler review⁷. We welcomed the intention to conduct consumer research to test whether such a sales process could provide appropriate consumer protection and asked the FSA to test whether a filter question approach would be effective in controlling the risks of mis-buying or mis-selling. We are concerned that salespeople taking consumers through the filtered questions will be influenced by the prospect of commission and might therefore be inclined to offer inappropriate persuasion to consumers to buy products. It is the extent to which the filtered questions allow this (or, indeed, mitigate against it) that we would like to have seen 'stress tested' in the research. We are disappointed that the FSA did not do this.
- 2.101 The FSA published the results of the first round of research in December 2003. These results revealed considerable risk of the filtered questions delivering an unsuitable outcome. We welcomed the FSA's decision that the filtered questions that were tested would not provide sufficient consumer protection and that the filtered questions needed to be revised and then re-tested in a second round of research.
- 2.102 During the year, the FSA has been reviewing the suitability standards introduced in advance of the stakeholder pensions in 1999. It is doing further research on costs and benefits before deciding on any change. We made it clear that we strongly support the guidance given to the industry through Regulatory Update 64, which requires firms to have regard to the existence of stakeholder pensions when selling a pension, regardless of whether they have a stakeholder pension in their range. We believe that this has been a powerful tool against mis-selling as well as being a driver for keeping prices down and we would oppose the FSA dispensing with it.

At the time of writing we have had further discussions with the FSA on its second round of research and policy conclusions. We expect a consultation paper on the FSA's regulation of simplified products to be published around the same time we publish our annual report and we will be responding to this consultation paper.

Soft commissions

- 2.103 We agreed with the FSA's conclusions that 'bundling' and 'softing' arrangements create a conflict of interests between fund managers and their customers. Bundling is where the commission paid to the broker pays for both the transaction (trade execution) and other services (such as research materials) provided by the broker, or their firm, to the fund manager. The charges for these additional services are combined together with the charge for the trade execution into a single price. Under soft commissions arrangements a broker agrees to pay for certain goods and services that are supplied directly to the fund manager, usually by a third party and where this arrangement is dependent on the fund manager sending a specific volume of business to the broker.
- 2.104 In our response to Consultation Paper 176⁸, we supported the proposal to exclude goods and services for which demand is reasonably predictable from the range of goods and services that can be purchased with commission, whether under softing or bundled arrangements. We also supported the proposal that, where a fund manager uses commission to buy other services additional to trade execution, the fund manager should determine the cost of those services and rebate an equivalent amount to the customer's funds. Indeed, we were particularly attracted by the greater transparency and accountability that the latter proposal would introduce and the tangible benefit it would realise for investors.

7 *Medium- and long-term retail savings in the UK*, a review, published by HM Treasury, July 2002.

8 *Bundled brokerage and soft commission payments*, FSA consultation paper 176, April 2003.



2.105 In March 2004, however, we were informed that, although the FSA intends to go ahead with its proposal to limit the use of commission to buy services other than 'research' and trade execution, it had decided not to proceed with the mandatory rebating proposal. Instead, the FSA will encourage trialling of industry proposals that would require fund managers to 'unbundle' or separate out the cost of research from the cost of trade execution, but would allow charging for these within 'commission'. The Panel was disappointed that the FSA had decided not to proceed with the mandatory rebating proposal, although we were to some extent reassured by its commitment to hold this proposal 'in reserve' in the event that the industry's disclosure proposals do not prove effective.

Stakeholder pensions

2.106 The FSA has reviewed the decision trees used to help consumers identify whether a stakeholder pension is right for them. Whilst it may also be used as part of the advice process, it was designed primarily to be used by consumers without necessarily needing advice. We suggested that it should be made very clear that this process comprised information - the consumer was not getting advice - and that the document should provide more useful information on how the consumer could get advice. We also asked the FSA to give more prominence to the explanation that stakeholder pensions are stock market based investments. We are pleased that the FSA is changing the decision trees to give more prominence to the warning that the decision trees provide information and not advice and are adding new text to explain the investment risk.

2.107 We are glad that the FSA is undertaking research into consumers' understanding of terms such as 'today's prices', as part of its work on disclosure documents and statutory money purchase illustrations. We look forward to discussing the results and their implications with the FSA.

Structured Capital at Risk Products (SCARPs)

2.108 We have long been pressing the FSA to take action to prevent further consumer detriment from the sale of precipice bonds, which the FSA now refer to as 'Structured Capital at Risk Products' (SCARPs). We welcome the new rules and guidance on financial promotions for SCARPs and other structured deposits, which had been drawn up in response to research conducted by the FSA's supervisory area into advertisements run by 14 authorised firms. We were concerned, however, that firms are to be permitted to develop their own factsheets for consumers, rather than being required to provide copies of the FSA factsheet, which the Panel considered to be well-written and clear. The FSA research into its own factsheet on shopping around for annuities stated that: 'the FSA branding of the factsheet adds weight to the communication and therefore had a positive impact on readership levels and behaviour'⁹. This is another area where we would have liked to see the FSA acting on its own research findings.

Training and competence

2.109 Whilst responsibility for the training and competence regime for people working in financial services remains with the FSA, a new body, the Financial Services Skills Council, is taking forward the examination review. We are concerned that the new body, unlike the FSA, is not required to consult stakeholders about its proposals. The Panel has informed the Financial Services Skills Council that there should be some form of consumer representation on its Board and we welcome the appointment of Panel member Yvonne Gallacher to sit as an observer on the Board. We were also concerned about how the two organisations would work together as the training and competence requirements form a vital part of consumer protection

9 R22, *Purchasing annuities and an examination of the impact of the open market option*, IFF Research Limited, November 2003.



measures. We asked how information from the FSA's supervision work revealing shortcomings that could be addressed by the training and competence requirements would be fed across to the Financial Services Skills Council. Although we were assured that such information would be shared we remain concerned that the memorandum of understanding between the organisations does not set a formal basis for this to be done.

2.110 We are concerned about the possibility that larger firms could develop their own in-house examinations, although the FSA has informed us that it believes that this would not happen often.

Treating customers fairly

2.111 The FSA is working on a project aimed at improving the way firms deal with consumers and at ensuring that supervisors consider treating customers fairly issues in their work. The FSA maintains that firms have always had a duty to do this as it is principle 6 of the FSA's Principles for Business to which all authorised firms must adhere. We are very supportive of the emphasis the FSA is now giving to this requirement. In chapter 1 we discuss the need for culture change in the industry and change needed from the FSA to achieve this. Crucial to restoring confidence in the industry is:

- ensuring that strategies for treating customers fairly developed in the Boardroom are transferred to sales staff;
- firms being more willing to address and rectify mis-selling quickly; and
- the FSA developing penalties for those who persist in poor behaviour that actually provide a disincentive for individuals to chase sales above treating customers fairly.

2.112 This work was initiated by one of the first FSA theme projects called 'treating customers fairly after the point of sale'. It identified improving the information consumers receive after the point of sale as a priority. We were supportive of this, which we discussed in 2002 and are disappointed that the FSA was not in a position to update us on this work this year. We hope the project will progress over the next year and look forward to discussing it with the FSA.

UCITS

See collective investment schemes

Unfair Commercial Practices Directive

2.113 The draft Unfair Commercial Practices Directive describes misleading and aggressive practices that should be prohibited. We support the principle behind this but are concerned that if implemented as a maximum harmonisation Directive it could reduce consumer protection in financial services in the UK. We support the proposal that this Directive should operate on a minimum harmonisation basis for financial services and hope that this amendment is contained in the Directive as finally adopted.

Unfair contract terms

2.114 In October 2002 the Panel wrote to the FSA strongly supporting its proposals to use its powers under the Unfair Terms in Consumer Contracts Regulations 1999 in a proactive and thematic way, as well as responding to complaints from outside the organisation. We are disappointed that since then we have seen no evidence of this proactive approach and the number of cases dealt with is disappointingly small. The FSA's work on unfair contract terms seems to lack the impetus and proactivity it deserves. We will be pressing the FSA to decide how it will be using its powers and to put that into practice as soon as possible.



With profits

- 2.115 We believe that consumers should be provided with clear pre-sale and post-sale information and asked the FSA to require firms to produce a consumer-friendly version of the Principles and Practices of Financial Management. The FSA did take this forward and we look forward to the development of these documents.
- 2.116 We are pleased that the FSA took note of our belief that conflicts of interest were inevitable if the with-profits actuary was also a member of the Board. Where the interests of the shareholders were different from those of policyholders, the duty of the actuary to act in the best interests of the policyholders would always conflict with his/her duty as a director to act in the best interests of shareholders. The FSA has now brought forward proposals for two separate roles: one to advise the Board on its use of discretion affecting the interests of policyholders and one to advise the Board on general actuarial matters.



Chapter 3: The Financial Services Consumer Panel

This chapter describes the Panel's role, membership and activities. It also reports on our expenditure.

- 3.1 The Financial Services Consumer Panel (the Panel) was set up by the FSA in December 1998. It was placed on a statutory footing when the relevant parts of the Financial Services and Markets Act 2000 (the Act) came into force in June 2001.
- 3.2 The Act requires the FSA to maintain effective arrangements for consulting consumers, including setting up a panel of people to represent the consumer interest. The Panel:
 - represents the interests of consumers by advising, commenting and making recommendations on existing and developing FSA policy and practices as appropriate;
 - speaks on behalf of consumers by reviewing, monitoring and reporting to the FSA on the effectiveness of its policies and practices in pursuing its duties;
 - reviews and influences actual and potential developments in financial services in order to be able to represent and speak for consumers effectively.

Our full terms of reference are set out in Appendix 2.

Panel membership

- 3.3 Members are appointed to the Panel using an open recruitment process based on Nolan principles. The membership brings together a wide range of relevant experience, such as financial services, regulation, working with vulnerable consumers, consumer protection, consumer education, front-line money advice, legal expertise, competition policy, public policy analysis, market research and news media.
- 3.4 Colin Brown, Chairman of the Panel from January 2001, left in October 2003 to work at the Office of Fair Trading. Colin had been a Panel member since the Panel's inception in December 1998 and Vice-Chairman, under the Chairmanship of Barbara Saunders, from May 1999 to December 2000. Jean Gaffin and Jane Vass, also Panel members since December 1998, left the Panel at the end of 2003. We were very sad to say goodbye to Colin, Jean and Jane who all made extremely valuable contributions to the Panel.
- 3.5 To replace them, the FSA recruited three new Panel members. These are Stephen Locke, Adam Phillips and Robert Skinner who started in March 2004.

Members of the Consumer Panel over the period 2003/04 are listed in Appendix 3.



Panel activities

- 3.6 As a full Panel, we meet monthly to discuss significant policy issues, regulatory events and our work programme. In addition, we meet through smaller working groups to discuss a wider range of issues, such as policy developments within the FSA or other bodies, our particular concerns, or FSA responses to specific questions we have raised.
- 3.7 As well as submitting formal responses to FSA consultation papers, we can improve the consumer information and protection aspects of a consultation paper at the pre-consultation stage, through the working groups or our full Panel meetings. We also communicate with the FSA through other meetings and letters. Our website gives an overview of our interactions with the FSA on a range of issues.

You can access our website on www.fs-cp.org.uk.

Our budget

- 3.8 The FSA's Board agrees a budget for Panel members' fees, expenses and any work we commission; and we are supported by a dedicated Secretariat of FSA staff. Our budget (including FSA staff costs) for the 12 months ending 31 March 2004 was £686,000. Actual expenditure for this period was £580,000 (see Table 3.1).



Table 3.1: The Panel's budget and expenditure for 1 April 2003 - 31 March 2004

	Budget April '03 - March '04 (12 months) (£000)	Actual April '03 - March '04 (12 months) (£000)	Actual April '02 - March '03 (12 months) (£000)
Panel members' fees and expenses	204	185	188
- Fees	174	155 ¹	158
- Expenses	30	30	30
FSA staff	267	290 ²	251
Professional fees	205	81	115
- Research	155	54 ³	90
- Other	50	27	25
Sundries ⁴	10	24	10
Total	686	580	564

1. Panel members have been paid flat fees as follows:

From 1 April 2003 to 31 December 2003

Members whose minimum commitment is 45 days a year - £14 000 per annum

Members whose minimum commitment is 35 days a year - £11 000 per annum

Members whose minimum commitment is 25 days a year - £8 000 per annum

From 1 January 2004 to 31 March 2004

Members whose minimum commitment is 45 days a year - £15 750 per annum

Members whose minimum commitment is 35 days a year - £12 375 per annum

Members whose minimum commitment is 25 days a year - £9 000 per annum

The Chairman and Vice-Chairman have received fees of £35 000 a year and £17 500 a year respectively during the period from 1 April 2003 to 31 March 2004.

2. Throughout most of the review period, the Panel was supported by a dedicated Secretariat of six FSA staff (including a part-time Press and Public Relations Officer).
3. Includes research on consumers' understanding of their financial needs; and mystery shopping of banks' financial reviews.
4. Includes costs of non-FSA meeting venues and facilities, couriers, catering (FSA and external).



Appendix 1: Comments on the FSA's response to our last Annual Report

This appendix reports on developments on the key issues we raised with the FSA in our 2002/03 annual report. A full report of our advice to the FSA during 2003/04 is contained in chapter 2, including more on many of the topics listed here.

<i>Panel said (in our annual report 2002/03)</i>	<i>FSA responded (in their annual report 2002/03)</i>	<i>Progress since April 2003</i>
Sandler <p>We strongly advised the FSA that the Sandler Review's proposals to simplify the sale of investment products ran the risk of promoting equity-based investments at the expense of consumer protection. We suggested one way of bridging the gap between the Government's wish to establish a simplified regulatory regime for 'stakeholder' products and the FSA's responsibility for ensuring that consumer protection safeguards are not compromised. That way was to have a properly defined financial health check. The FSA had been developing such a tool, which we encouraged them to develop so that it produces an output in the form of a portable fact-find (a summary of an individual's financial situation) or prescription of individuals' financial needs.</p>	<p>The FSA agrees that it will be essential to undertake consumer research to test the effectiveness of a sales process meeting differentiated regulatory requirements. The FSA shares the Panel's view that simplicity of product cannot ensure suitability for all consumers.</p>	<p>We welcomed the FSA's decision to conduct consumer research to test whether a sales process using filtered questions to identify a consumer's financial needs could provide appropriate consumer protection. We asked the FSA to test whether filter questions will be effective in controlling the risks of mis-buying or mis-selling where the consumer is subject to pressure from a salesperson whose focus is on achieving sales targets. We are disappointed that they did not 'stress-test' the proposed sales process in this way.</p> <p>The results of the first round of research revealed considerable risk of the filtered questions delivering an unsuitable outcome for consumers. We welcomed the FSA's decision that these filtered questions would not provide sufficient consumer protection and that they needed to revise them and conduct a second round of research. We have had further discussions with the FSA about the development of the regulatory regime and look forward to their proposals this year.</p>



Panel said (in our annual report 2002/03)

FSA responded (in their annual report 2002/03)

Progress since April 2003

De-polarisation

We warned over the potential confusion for consumers about the status of an adviser following de-polarisation. To avoid this, it is crucial that the FSA gets the disclosure requirements right but we felt that there were gaps in what the FSA was proposing. The following issues were among the points we made to the FSA:

- Only those offering 'whole of market' advice should be allowed to call themselves 'advisers'. Other salespeople will be acting as agents for the firms whose products they would be selling and should call themselves salespeople.
- Commercial affiliations between firms need to be made clear to consumers as they pose potential conflicts of interest. We support the menu approach to explaining charges and commission to consumers.

The FSA does not accept the Panel's argument that only those offering 'whole of market' advice should be allowed to be called 'advisers'. This is because they are subject to identical regulatory requirements.

We maintain our view that only those offering 'whole of market' advice should be allowed to call themselves 'advisers' and are disappointed that the FSA has not agreed with us on this point. We think more could be done to ensure consumers are not confused about the service they are receiving. This includes enhancing the disclosure requirements and developing an awareness strategy to ensure that consumers appreciate the difference between an independent adviser (who will do the shopping around for them) and a tied or multi-tied firm (which will not).

We also felt that the disclosure requirements to alert consumers to a firm's commercial affiliations could be improved so that consumers understand the importance of the information that they are being told.

Appointed representatives

The Panel's main concern was how to make it clear to consumers exactly who appointed representatives are, who they are responsible to and on whose behalf they act. We were not convinced that disclosure on the basis proposed by the FSA would meet this need for clarity. We asked the FSA to undertake extensive and detailed testing with consumers before extending the appointed representatives regime.

The FSA has consumer tested a version of the combined initial disclosure document that would be used by appointed representatives whose scope includes general insurance and mortgages, with positive results.

The Panel remains concerned about how consumers will know when a firm is an appointed representative; to whom it is responsible; and on whose behalf it acts. The FSA must undertake further testing of all disclosure documents before extending the regime so as to avoid consumer detriment.



Panel said (in our annual report 2002/03)

FSA responded (in their annual report 2002/03)

Progress since April 2003

Disclosure - investments

We were pleased with the progress the FSA had made on developing the Key facts documents and called on the FSA to extend the scope of the regime to complex products. We also supported the FSA's review of information consumers receive after they have bought a financial product. However we were worried about the impact that the UCITS Product Directive would have on the disclosure regime for collective investment schemes. We called on the FSA to consumer-test the simplified prospectus.

The Panel was concerned by the FSA's willingness to allow collective investment schemes to be called 'capital protected' when, in some cases they lack 100% capital protection. We called on the FSA to conduct research into consumer understanding of this term.

The FSA's proposals in relation to the simplified prospectus were based on research findings. The FSA was confident that by delivering this through the Key facts framework it had enhanced the value of the prospectus.

Terms such as 'capital protected' may only be used where the percentage that is protected is specified in the description of the fund. Research into consumer understanding of the term 'capital protected' remains a possibility for the future.

The FSA delayed the introduction of the Key facts disclosure regime pending the outcome of the FSA's review of its role in prescribing projection rates. The FSA told us that it does not have the resources to carry out work to extend the Key facts regime to complex products. This is bad news for consumers. We have told the FSA that we do not accept that the introduction of the Key facts regime and the projections review are inextricably linked.

We have been following developments on the European debate on the simplified prospectus for collective investment schemes and are pleased that some progress has been made. However, we are still concerned that the content of the simplified prospectus is likely to be less helpful to consumers than the FSA's proposed Key facts disclosure documents.

Financial promotions/advertising

We welcomed the FSA's commitment in its Plan and Budget for 2003/04 to devote more resources to monitoring the retail markets, analysing new products and the associated policing of such promotions.

We had written to the FSA in January 2003 about our concerns that FSMA prevents the FSA from publicising its judgements on adverts as we thought that this would be a valuable tool.

The FSA committed further resources to financial promotions work for the 2003/04 financial year.

The FSA said that it was exploring further what more it might say in public about the actions that it requires firms to take.

We are delighted that for the second consecutive year the FSA has committed itself to increasing its efforts to reduce the number of unclear and misleading advertisements.

We were pleased that the FSA is looking to streamline its enforcement processes and that it plans to review its policy on publicity for cases in exceptional circumstances.



Panel said (in our annual report 2002/03)

FSA responded (in their annual report 2002/03)

Progress since April 2003

Past performance

We were pleased that the FSA's proposals to require past performance to be presented in separate yearly returns, expressed in percentages, were based on consumer research and we supported the approach. We had been disappointed, however, at the length of time taken to introduce the new proposals.

The FSA stated that the timetable reflected not delay but the need for full consideration under the statutory disciplines.

The new rules will be introduced on 1 June 2004. We were disappointed that the FSA decided not to prohibit the use of monetary values altogether leaving firms free to present data in monetary form alongside information in prescribed form. We saw this as a recipe for confusion for consumers.

With profits

We were concerned that the FSA's proposals for appointed actuaries would result in a conflict of interests. The proposals suggested two new functions for actuaries:

- to advise the Board on the methods and assumptions for the valuation of policyholders' liabilities; and
- to advise on the exercise of discretion within a firm's with-profits fund to ensure fair treatment of policyholders.

We were concerned that as the actuary is a member of the Board, shareholders' interests could take precedence over those of policyholders. We proposed that the actuary responsible for advising on discretion should be a separate person, permitted to sit in at Board meetings but not as a member.

The FSA recognised that there are potential conflicts of interest in these two functions being carried out by one person and in having the with-profits actuary sitting on the Board. The FSA considered that it could be appropriate and cost-effective for some firms, such as mutuals, to ask the actuarial function to carry out the with-profits role as well. The FSA proposed to review the position of whether the with-profits actuary role was compatible with full Board membership following the completion of the consultation.

The FSA has now brought forward proposals for two separate positions: one to represent the interests of policyholders and one to advise the Board. We are pleased that the FSA took note of our belief that conflicts of interest were inevitable if the with-profits actuary was also a member of the Board.



Panel said (in our annual report 2002/03)

FSA responded (in their annual report 2002/03)

Progress since April 2003

Unfair contract terms

We welcomed the FSA's review work on interest-rate variation terms and mortgage repayment penalties; we suggested other products that could usefully be included in this 'themed' approach. We argued for publicity to promote the use of the FSA's powers.

The FSA stated that it was already conducting review work in some of the areas suggested by the Panel and would consider other ideas. The FSA had alerted national advice agencies to the scope of its powers and undertook to publicise its powers to consumer bodies and advice intermediaries in the coming year. The FSA proposed that where a firm changed its terms because of FSA intervention it would publish:

- the name of the firm;
- the original term and the FSA's objection to it; and
- the undertakings the firms has made in relation to it.

We are disappointed that there is no evidence of a proactive approach and the number of cases dealt with is disappointingly small. The FSA's work lacks the necessary impetus and proactivity. We will be pressing the FSA to decide how it will be using its powers and to implement its decision.

Mortgage regulation

The Panel believed that the proposed product disclosure requirements for mortgage sales would make a substantial difference to consumers and we welcomed them, although we were disappointed that the FSA did not propose to undertake further consumer research before they are introduced. The Panel also called on HM Treasury to extend the FSA's regulatory scope to include home reversion schemes.

We had been concerned about the effect of the Consumer Credit Directive – if implemented in its current form – on the mortgage disclosure regime.

The FSA said that it had already carried out an extensive programme of consumer testing.

The FSA shared the Panel's concerns about the draft Directive.

Overall the Panel is pleased with the approach adopted by the FSA to mortgage regulation, although there are areas where we would like to have seen a more prescriptive approach, particularly on self-certification.

The Panel understands that the Consumer Credit Directive has been substantially redrafted and we will be monitoring progress of the debate.

The Panel responded to HMT's consultation on the regulation of home reversions to strongly recommend that they are regulated by the FSA. We are pleased that on 10 May 2004 HM Treasury announced that home reversion schemes will be regulated by the FSA.



Panel said (in our annual report 2002/03)

FSA responded (in their annual report 2002/03)

Progress since April 2003

Mortgage endowment complaints

Following our research which showed weaknesses in the way some firms handled complaints, we encouraged the FSA to collect more information. A letter was sent from John Tiner, then Managing Director, to relevant firms, asking for complaints information. We were pleased that it appeared to result in a greater proportion of complaints being upheld. This led us to question the willingness of firms to complete the review without pressure from the FSA.

We expressed concern about the possibility that people might become 'time-barred' from pursuing a complaint for having been mis-sold a mortgage endowment. We obtained a concession that consumers would not be time-barred until at least six months after receiving a second reprojection letter, even if this meant their deadline for raising a complaint would be more than three years after receiving the first such letter.

The FSA's monitoring of the effectiveness of its strategy included: consumer research on why some consumers complain; and monitoring firms to assess how effectively they are handling complaints. As a result action has been taken with firms where there was a strong likelihood that complaints were not being handled fairly and in a manner consistent with the approach outlined in John Tiner's letter; and with clarifying how time limits are affected by the provision on reprojection letters.

Consumers need help in understanding a number of issues about complaining and redress. The FSA should require firms to include an FSA leaflet on complaints in their reprojection mailings. A more targeted approach to informing consumers about time bars would help. More importantly, the FSA should make every effort to encourage the industry to relax time bars so that consumers' complaints are not restricted by matters unrelated to the merit of their case.

We have asked the FSA how it is dealing with firms which have been mis-handling endowment complaints and what steps it is taking to ensure consumers whose complaints were dealt with by these firms will be fairly treated. We have also asked for information to help evaluate the extent to which the FSA has taken action on the firms guilty of widespread mis-selling. We look forward to discussing this with the FSA this year.

It is important to evaluate the effectiveness of the FSA approach both in helping those due compensation to achieve it; and in helping those facing a shortfall address it. We continue to discuss this with the FSA.

Precipice bonds

(the FSA now call these SCARPs: structured capital at risk products)

The FSA appears to have been wrong-footed by the widespread inappropriate sales of precipice (high-income) bonds. The FSA must act faster using all available powers to prevent the inappropriate sale of new products.

The FSA has regularly warned consumers of the risks involved in some high-income bonds, also known as precipice bonds. The FSA has monitored financial promotions to check that they carried the appropriate risk warnings. It issued guidance to firms encouraging them to include the FSA's updated factsheet when sending promotional material to consumers.

We welcomed the new rules and guidance on financial promotions for SCARPs and other structured deposits. We were concerned, however, that firms are permitted to develop their own factsheets for consumers, rather than being required to provide copies of the FSA factsheet, which the Panel considered well-written and effective.



Panel said (in our annual report 2002/03)

FSA responded (in their annual report 2002/03)

Progress since April 2003

Redress

We called on the FSA to review the different arrangements for achieving redress as we thought that the benefits, costs and problems associated with different models should be analysed to inform the FSA's future choices in this area. We were pleased that the FSA had acted to plug a gap in the FSCS that affected claims against companies which had been dissolved for more than two years.

The FSA already has mechanisms in place to learn from the application of different models, but agreed to consider a more formal review.

The FSA did respond to our calls for a 'review of reviews' and we have asked for an opportunity to input into this work. Separately we were briefed on a paper from the FSA looking back over the Pensions Review and we asked the FSA to publish its findings. We are disappointed that, to date, this has not been done.

Small firms

The FSA must ensure that the lighter touch supervisory regime does not result in smaller firms being unlikely to face enforcement action. We are pleased with the FSA's new strategy for small firms to address this problem.

The FSA said it will focus more on working with firms that want help in complying with the regulatory framework, for example by running workshops and roadshows at provincial centres. For those firms unwilling to comply with the minimum regulatory requirements, it established a team to co-ordinate prompt enforcement action.

The FSA has held a number of workshops and roadshows for personal investment firms, specifically as part of its consultation on changes to the rules on professional indemnity insurance.

The Panel will review the overall effectiveness of the FSA's strategy towards small firms in 2004/05.

Firms in difficulty

We had welcomed the FSA's work on Harnessing Market Forces and we were pleased that the FSA had committed itself to drawing up internal guidelines on disclosing information about individual firms. The Panel was concerned that the FSA should do more to set out clearly what is meant by the non-zero failure regime.

The FSA welcomed the Panel's support and stated that a paper on Harnessing Market Forces would be finalised in summer 2003.

The FSA had developed a series of case studies illustrating the implications of the non-zero failure approach and would be using them in meetings with key stakeholders.

The FSA's paper on Harnessing Market Forces has not yet been published. We urge the FSA to do so as soon as possible.

We were pleased to learn from the FSA that it can require firms engaged in the enforcement process to set aside sufficient assets to meet possible claims from consumers.

We have responded to papers on the non-zero failure regime and have considered the case studies that had been drawn up. We have called on the FSA for greater transparency and to think more widely and proactively about getting its message across to consumers.



Panel said (in our annual report 2002/03)

FSA responded (in their annual report 2002/03)

Progress since April 2003

Training and competence

The FSA has yet to address some fundamental issues in the examination review including what standards it expects from those calling themselves advisers.

The FSA agrees that consistency of standards is important. The whole thrust of the examination review has been to increase consistency and to rationalise where necessary.

We remain concerned that the FSA has not adequately addressed consistency, and therefore, transferability of qualifications.

The examination review initiated by the FSA is now being taken forward by the Financial Services Skills Council. We are concerned at their proposal that there be no compulsory examination of advice skills. We believe that any test of knowledge should also include a requirement to demonstrate the ability to apply the knowledge.



Appendix 2: Terms of reference of the Financial Services Consumer Panel

The FSA Board agreed the following revised terms of reference for the Consumer Panel on 15 March 2001.

1. The Financial Services Consumer Panel ('the Panel') is established by the Financial Services Authority (FSA) under the Financial Services and Markets Act to represent the interests of consumers. The Panel is independent of the FSA and can speak out publicly on issues where it considers this appropriate.
2. Panel members are appointed by the FSA in accordance with Nolan principles, in order to represent consumers, with HM Treasury's approval in the case of the Chairman. The FSA Board approves the Panel's annual budget and provides a dedicated Secretariat to support the Panel.

Scope

3. The main purpose of the Panel is to provide advice to the FSA. As such it does not carry out responsibilities on behalf of the FSA. For example, the Panel does not undertake consumer education, nor does the Panel take up individual consumer complaints.
4. The emphasis of the Panel's work is on activities that are regulated by the FSA, although it may also look at the impact on consumers of activities outside but related to the FSA's remit.
5. The Panel will have regard to the interests of all groups of consumers including those who are particularly disadvantaged in the context of financial services, including consumers who have little or no access to financial services.

Purpose

6. The Panel will:
 - a) represent the interests of consumers by advising, commenting and making recommendations on existing and developing FSA policy and practices as appropriate;
 - b) speak on behalf of consumers by reviewing, monitoring and reporting to the FSA on the effectiveness of FSA's policies and practices in pursuing its duties;
 - c) keep under review and influence actual and potential developments in financial services to enable it to fulfil (a) and (b) effectively.
7. In addition, it can advise the Government on the scope of financial services regulation.
8. The Panel can consider other matters that assist it in carrying out its primary functions.



Accountability

9. The Panel shall publish an Annual Report on its work and expenditure.
10. The Panel can speak out publicly when it wishes to draw attention to matters in the public interest and when it disagrees with the FSA.



Appendix 3: Who is on the Panel?

Ann Foster (Chairman from 1 November 2003)

Ann is an independent consumer affairs consultant and formerly a Director of the Scottish Consumer Council. She is a past member of Postwatch, the Consumer Council for Postal Services, and of the Health Professions Council. She took over as Chairman of the Panel on 1 November 2003. Ann was Vice-Chairman of the Panel from January 2001 until 31 October 2003.

Colin Brown (retired Chairman)

While a Panel member, Colin was a consultant working with consumer organisations in the UK and internationally. He was previously Deputy Director of Research at the Consumers' Association and Senior Fellow at the Policy Studies Institute. He was appointed to the Panel in December 1998 and appointed Chairman in January 2001. Colin stood down from the Panel on 31 October 2003 to become Director of Co-regulation, Codes Co-ordination at the Office of Fair Trading.

Dianne Hayter (Vice-Chairman from 1 November 2003)

Dianne is on the board of the National Consumer Council and was, until 2004, on the Board of the 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 of 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, University of London. She was appointed to the Panel in January 2001.

Jean Gaffin, OBE (retired as a member 31 December 2003)

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 positions include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care. She was appointed to the Panel in December 1998 and re-appointed in January 2002.

Yvonne Gallacher, OBE

Yvonne is Chief Executive of Money Advice Scotland, set up in 1989 by the Scottish Consumer Council. She has over 16 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 Financial Capability Group and a member of the NCC Advisory Group. Yvonne is a recent past member of the Scottish Consumer Council. She was first appointed to the Panel in December 1998.



Harriet Hall

Harriet is a solicitor with considerable experience of consumer policy and retail financial services. Currently working freelance, she was formerly the 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 and European consumer legislation. She was appointed to the Panel in January 2001.

John Howard

John is a journalist and broadcaster with extensive experience of consumer issues having been the principal presenter of the daily consumer programme 'You and Yours' on Radio 4 and numerous other financial programmes on radio and TV. He is a qualified solicitor and is a member of the Mortgage Code Compliance Board. He was appointed to the Panel in October 2000.

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. Since his retirement, Vinod has been a Non-Executive Director of the Barnet Primary Care Trust, and a member of the Consumer Liaison Group of the Medical Research Council. Currently, he is a patient representative on the Research and Development Committee of the National Institute for Clinical Excellence, and on the Department of Health's advisory committee on consumer involvement in research. He was first appointed to the Panel in October 2000.

Stephen Locke (appointed March 2004)

Stephen is a National Consumer Council Board member and a member of the Committee of the premium rate communications services regulator, ICSTIS. He was previously Director of the Transition Project setting up Ofcom, working on secondment from the Independent Television Committee where he had been the Director of Advertising and Sponsorship. Stephen has also worked at a senior level in management consultancy and in the consumer movement, as Director of Research and Policy at the Consumers' Association. He was appointed to the Panel in March 2004.

Nick Pearson

Nick has been the National Debt Advice Coordinator at Advice UK since 1997. He also works as a part time consultant to CPP Group on the development of its financial health product. With a career spent in advice organisations including Citizens Advice, where he was Manager of the Money Advice Support Unit he has particular experience of consumer credit, mortgages, debt and personal finance issues and with vulnerable consumers. He was first appointed to the Panel in December 1998.

Adam Phillips (appointed March 2004)

Adam has extensive experience of market research, including research into consumer financial products. He is Managing Director of Real Research, his own market research consultancy, and is a Council Member of ESOMAR (the world association of market research professionals), also chairing ESOMAR's Professional Standards Committee. He was appointed to the Panel in March 2004.

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. He was first appointed to the Panel in October 2000.



Robert Skinner (appointed March 2004)

Robert Skinner has been Director General of the Money Advice Trust since April 2003. In this role he has responsibility for the running of National Debtline in Birmingham, the Trust's training activities, and its traditional work as a fund raising charity for the partner agencies working in the money advice field. Prior to joining the Trust, Robert spent over 25 years working for Barclays Bank, and held a number of senior positions in the retail, private banking and corporate businesses. He has served as a Director of the Office of the Banking Ombudsman and as a member of the BBA Code of Banking Practice review committee. He was appointed to the Panel in March 2004.

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. He was first appointed to the Panel in December 1998.

Jane Vass (retired as a member 31 December 2003)

Jane is an independent consumer researcher specialising in financial services. She is a former Head of the Financial and Economic Research Group at the Consumers' Association. Her committee memberships have included the Council of the Ombudsman for Estate Agents, the FSA Training Advisory Panel and the Inland Revenue Better Guidance Steering Group. She was appointed to the Panel in December 1998 and re-appointed in January 2002.

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 the Consumers' Association. He was also a policyholder representative on the Insurance Brokers Registration Council for nine years. He was first appointed to the Panel in December 1998.



Appendix 4: Publications & press releases

Public responses/public statements

HM Treasury and the Department for Work and Pensions' Consultation on 'Proposed product specifications for Sandler "stakeholder" products' and the FSA's Discussion Paper 19: Options for regulating the sales of 'simplified investment products'

Response to HM Treasury, Department for Work and Pensions Consultation and FSA Discussion Paper 19, April 2003

Electronic Money: Perimeter Guidance

Response to FSA Consultation Paper 172, April 2003

Investment Companies (including investment trusts): Proposed changes to the Listing Rules and the Conduct of Business Rules

Response to FSA Consultation Paper 164, April 2003

Professional Indemnity Insurance for Personal Investment Firms

Response to FSA Consultation Paper 169, April 2003

With Profits Governance, the Role of Actuaries in Life Insurers, and Certification of Insurance Returns

Response to FSA Consultation Paper 167, May 2003

Informing Consumers: Product Disclosure at the Point of Sale

Response to FSA Consultation Paper 170, May 2003

Implementation of the Distance Marketing Directive

Response to FSA Discussion Paper 21, May 2003

Conflicts of Interest: Investment Research and Issues of Securities

Response to FSA Consultation Paper 171, May 2003

Reforming Polarisation: Removing Barriers to Choice

Response to FSA Consultation Paper 166, May 2003

Prudential and other requirements for mortgage firms and insurance intermediaries

Response to FSA Consultation Paper 174, June 2003

Mortgage regulation: Draft Conduct of Business Rules and Feedback on CP146

Response to FSA Consultation Paper 186, August 2003

The CIS Sourcebook - a new approach

Response to FSA Consultation Paper 185, August 2003



Standardising Past Performance

Response to FSA Consultation Paper 183, September 2003

Insurance selling and administration and other miscellaneous amendments

Response to FSA Consultation Paper 187, September 2003

Bundled Brokerage and Soft Commission Arrangements

Response to FSA Consultation Paper 176, October 2003

Implementation of the Distance Marketing of Consumer Financial Services Directive

Response to HM Treasury Consultation, October 2003

Towards a National Strategy for Financial Capability

Response to the FSA's National Strategy for Financial Capability, December 2003

Implementation of the Distance Marketing Directive: proposed rules and guidance

Response to FSA Consultation Paper 196, December 2003

Amendments to the Training and Competence sourcebook: including consultation on Competencies for Mortgages Advisers

Response to FSA Consultation Paper 194, December 2003

Minimum Capital Requirements for non-life insurers

Response to FSA Consultation Paper 190, December 2003

Restoring confidence in long-term savings - endowment mortgages

Submission to the Treasury Committee, December 2003

Regulation of long-term care insurance

Response to FSA Consultation Paper 200, January 2004

Reducing Money Laundering Risk

Response to FSA Discussion Paper 22, January 2004

Implementation of the Insurance Mediation Directive for long-term insurance business

Response to FSA Consultation Paper 201, January 2004

Restoring confidence in long-term savings

Submission to the Treasury Committee, January 2004

Regulating Home Reversion Sales

Response to HM Treasury Consultation, February 2004

Banking Code Review 2004

Response to Banking Code Standards Board, February 2004

Treating with-profits policyholders fairly

Response to FSA Consultation Paper 207, March 2004



Press Releases

Government proposals will not help consumers to save safely

(Government and FSA consultation on 'Sandler' simplified products), April 2003

Four key messages for FSA to consider for consumers during next year

(Annual Report 2002/03), June 2003

Consumer Panel says 'no' to second-class consumer protection

(Response to FSA consultation feedback on 'Sandler' simplified products), July 2003

Treasury review must not undermine Financial Ombudsman Service

November 2003

Industry still not doing enough about endowment mortgages

December 2003

Response to FSA announcement on latest Sandler research results

December 2003

New FSA rules are a recipe for confusion

(FSA announcement on use of monetary values in financial promotions), December 2003

Consumer Panel welcomes Treasury Committee report into Endowment Mortgages

March 2004



Appendix 5: Panel members serving as consumer representatives on other FSA bodies

Financial Capabilities Working Group	Yvonne Gallacher
FSA Collective Investment Scheme Forum (until January 2004)	Jane Vass
FSA / FOS Review of the Ombudsman Service	John Howard
FSA EU Commerce Working Group	Harriet Hall



Appendix 6: Meetings with external bodies

Association of British Insurers (ABI)
Association of Independent Financial Advisers (AIFA)
Banking Code Standards Board
Better Regulation Task Force – Cabinet Office
British Bankers' Association (BBA)
British Chambers of Commerce
Cabinet Office review of self-regulation
Centre for the Study of Financial Innovation (CSFI)
Citizens Advice (previously known as National Association of Citizens Advice Bureaux)
Complaints Commissioner for complaints against the FSA
Consumer Credit Counselling Service
Consumers' Association
Council of Mortgage Lenders
Department of Trade and Industry
European Parliament Committee on Legal Affairs and the Internal Market
Financial Ombudsman Service
Financial Services Practitioner Panel
Financial Services Skills Council
Financial Services Small Business Practitioner Panel
Her Majesty's Treasury
Independent Television Commission (ITC)
Inland Revenue
Institute of Actuaries
Investment Managers Association (IMA)
Life Insurance Association (LIA)
Lloyds TSB
Money Advice Liaison Group



National Consumer Council (NCC)
National Consumer Federation (NCF)
Nationwide Building Society
Office of Communications (OFCOM)
PricewaterhouseCoopers on behalf of FORGE III
Sandler Review Team
Society of Financial Advisers (SOFA)
Treasury Select Committee

In April 2003 the Financial Services Consumer Panel visited Northern Ireland where we met representatives of the following organisations:

Belfast City Council Consumer Advice Centre
Dungannon Citizens Advice Bureau
East Belfast Independent Advice Centre
General Consumer Council of Northern Ireland
Northern Bank
Northern Ireland Citizens Advice Bureaux
Springfield Charitable Association

Events the Chairman or Vice-Chairman have spoken at:

ABI National Conference (April 2003)
LIA Annual Conference (May 2003)
FSA Annual Open Meeting (July 2003)
PEP and ISA Managers Association (PIMA) Conference (November 2003)
BBA Retail Banking Committee (November 2003)
Treasury Committee (evidence session) - Endowment Mortgages (December 2003)
IFA Care Conference (February 2004)
Association of British Credit Unions Ltd (ABCUL) Conference (March 2004)



Appendix 7: Glossary of terms & abbreviations

Appointed representatives

Authorised firms can appoint an 'outside' organisation to advise on its products (if the firm is a product provider) or to provide independent advice (if the firm is an IFA). The organisation may be a company, a firm or a sole trader and is known as an appointed representative.

Association of British Insurers

The trade association for the UK's insurance industry.

Authorisation

A firm wanting to undertake regulated activities is required to be authorised by the FSA before it can do so.

Child Trust Fund

A government proposal to give every new-born child (born from 1 September 2002) a sum paid into a special account, with a further sum at age 7. Family and friends will also be able to contribute to the child's fund, so building up a financial asset over time. The child can withdraw the fund at 18 and use it to invest in their future.

Collective Investment Scheme

Independently managed, pooled investment products which enable people to participate in funds or receive the profits or income from holding shares in the scheme.

Comparative Tables

An FSA initiative intended to help consumers compare the cost and features of various financial products such as stakeholder pensions. The Tables are available at the FSA website.

Decision trees

Questions and answers set out in a flow chart and designed to help consumers decide if a product is suitable for them.

De-polarisation

Removal of the requirement for financial advisers on life assurance, personal pension policies, collective investment schemes (unit trusts and OEICs) and investment trust savings schemes to be either independent (an IFA) and advise across all products and companies on the market or tied and represent just one company and sell only its products.

DG Markt

The Internal Market Directorate-General which co-ordinates the European Commission's policy on the European Single Market. The overall aim is to ensure the free movement of people, goods, services and capital within the European Union.

DG Sanco

The Health and Consumer Protection Directorate-General whose overall aim is to promote a better quality of life by ensuring a high level of consumer protection through legislative and non-legislative actions.



Disclosure requirements

Information which the FSA requires a firm to provide to enable consumers to decide whether to purchase a particular product. Includes information on the product and costs.

Endowment

Investment-type life insurance policy that will pay out a cash sum at the end of a specified period or on death if that occurs first.

Endowment mortgages

An interest-only mortgage combined with an endowment policy. Your monthly mortgage payments pay only the interest on the loan - the amount you have borrowed does not fall. Monthly payments are made to the endowment policy which you hope will grow to provide a lump sum by the end of the mortgage term which is enough to pay off the loan. The policy includes life cover, so your mortgage is paid off if you die before the end of the term.

Equity

The value of asset less the amount of money owing on it.

Equity release (see also home reversion)

A financial arrangement which allows a homeowner to release the equity tied up in their home, to produce capital or income. A home income plan and other types of lifetime mortgage are a kind of equity release scheme.

Execution only

Execution only is when you buy a product without taking advice.

Filtered questions

A series of questions through which sales people would take consumers in order to make a recommendation or screen out those who are ineligible to purchase a product and those for whom the product would represent an unsuitable purchase.

Financial Healthcheck

An interactive computer programme, developed by the FSA, designed to provide generic financial advice.

Financial Ombudsman Service (FOS)

A complaints body set up to resolve disputes between customers and firms engaged in any regulated activity, which the firm has not resolved to the complainant's satisfaction.

FSA's principles of business

11 general principles of business set by the FSA which authorised firms must adhere to.

FSA Register

A public register recording details of every firm authorised by the FSA and every approved person (or prohibited person).

Financial Services Compensation Scheme (FSCS)

A scheme which may pay consumers compensation if money is lost through the fraud or negligence of a firm authorised by the FSA and that firm can't pay redress because it has gone out of business.

Financial Services and Markets Act 2000 (FSMA)

An Act of Parliament that set up a system for regulating financial services and markets. Its provisions include setting up the FSA.

Generic advice

General financial planning advice.



Grandfather

The process of allowing existing advisers who have been deemed competent to give long-term care insurance advice by an authorised firm in line with the current Training and Competence Sourcebook to continue to do that business for up to a maximum of 2 years before they must have complied with the new requirement to pass an appropriate long-term care insurance exam.

Home reversion schemes (see also equity release)

Under a home reversion plan a homeowner agrees to sell all or part of their home in return for a lump sum payment and the right to remain in the house rent free until they die or move home. At such time the home reversion plan provider is free to sell the property.

Key facts

Key facts is a jargon-free document proposed by the FSA which will replace existing information that consumers receive before buying products such as pensions and unit trusts. It is also intended to present cost and charges in a more simplified way. The overall aim is to make it easier for consumers to identify, understand and compare key information before buying investment products.

Lifetime mortgage

An interest-only mortgage whose term is the rest of your life. You either make monthly payments that cover just the interest on the loan and the amount you have borrowed (the 'capital') does not fall, or the interest is added to the outstanding loan which therefore increases as time goes on (called a 'roll-up loan'). The capital and any rolled-up interest are paid off when you die or move into a care home, usually from the proceeds of selling your home. Lifetime mortgages are a type of equity release scheme.

Limited redemption funds

An authorised fund in which the redemption arrangements operated by a fund manager are less frequent than twice in a calendar month.

Market timing

The short-term trading of units in collective investment schemes to take advantage of stale asset prices used in the calculation of unit (dealing) prices. The practise is not illegal on the part of the customer, but can cause detriment to continuing investors.

Maximum harmonisation

One method of implementing a directive across the Member States of the European Union. When a maximum harmonisation directive is translated into national law, Member States are not allowed to have any other national laws or rules which add extra restrictions of their own (for example, no additional consumer protection rules are permitted).

Member States

Countries who are members of the European Union.

Multi-tied firm

An authorised firm which acts as an agent for a number of different firms providing financial products.

Nolan principles

The Nolan Committee, chaired by Lord Nolan published its first report in May 1995 called *Standards in Public Life*. The report detailed a code of practice for public appointment procedures. The report stated that all public appointments should be governed by the overriding principle of selection based on merit and that scrutiny via an independent panel should be the main element of the appointment process.



Non-zero failure regime

The FSA's regulatory regime means that regulated firms will on occasion fail.

Open ended investment companies (OEICs)

An investment similar to a unit trust, shares are bought in a company whose business is running an investment fund or several funds. The share price of the OEIC reflects the value of the investments in the fund. Unlike an investment trust, the share price is not influenced by the demand for shares as there is no limit to the number of shares that can be issued.

Packaged products

Packaged products such as life assurance, endowments, personal pensions, stakeholder pensions, unit trusts, and similar investments contained in ISAs.

Past performance

A record of how products sold by firms have performed in previous years.

Penrose Inquiry

The inquiry into Equitable Life Assurance Society headed by Lord Penrose examining the circumstances that led to the current situation and to identify any lessons to be learnt for the conduct, administration and regulation of life assurance businesses.

Pensions unlocking

Allows someone over the age of 50 to release their pension benefits from an occupational or personal pension before they have reached their selected retirement age. The benefits are transferred to a new pension arrangement from which the maximum amount of cash allowed under Inland Revenue regulations is usually released and the remaining funds are used to purchase an annuity.

Precipice Bonds - see structured capital at risk products (SCARPs)**Principal**

An authorised firm that is responsible for an appointed representative. The representatives themselves do not need to be authorised. Instead the Principal is responsible for checking that they are fit and proper and carry out their business in line with FSA rules.

Product disclosure requirements

The rules which govern what information firms provide consumers when they buy a product.

Projection rates

Projection rates are set by the FSA and used by firms to give consumers illustrations of potential future returns from packaged product investments. The rates are also used in the reprojection letters that indicate the extent of any potential fall in the maturity value of mortgage endowment policies.

Sandler Review

A review initiated by HM Treasury into the future of medium- and long-term retail savings.

Self-certificated mortgages

When taking out a mortgage, the borrower is normally required to provide evidence of their earnings. 'Self-certification' is a type of mortgage offered by some lenders where the borrower provides details of their earnings and is not required to provide any proof. The borrower is usually charged a higher rate of interest because the lender is relying on the information supplied by the borrower.

Split Capital Investment Trusts

These are companies that invest in other companies and unlike ordinary shares, where investors get both income through a dividend and capital growth, split-cap trusts split the income from the capital growth.



Stakeholder products

A group of simple investment and savings products, the features of which would be sufficiently tightly regulated that they would be suitable for sale without the benefit of regulated advice.

Structured capital at risk products (SCARPs)

These are high-income bonds that are made up of complicated derivatives linked to one or more stock markets or to baskets of individual shares.

Theme

FSA projects, focusing on broad strategic issues which may affect various areas of the FSA. Theme projects produce higher level proposals and conclusions, which are incorporated into the FSA's policy and supervision priorities and strategies.

Time-bar

This refers to the point after which a firm can refuse to accept a complaint from a consumer.

Treasury Select Committee

The Treasury Committee is a Select Committee of the House of Commons. Its terms of reference are to examine the expenditure, administration and policy of HM Treasury, the Financial Services Authority and other associated bodies. Select Committees scrutinise the Government, policy proposals and conduct in-depth inquiries on topical issues.

Unit Trusts

An investment fund where investments are held by a professional trustee and managed by a professional manager for investors who have bought units that give them a right to share in the income and profits of the fund. You invest by buying units direct from the management company or through a financial adviser. The return you get is directly related to the performance of the investments in the fund.

Unitised

The term describes investors joining together to buy units in a fund, e.g. a unit trust.

With profits

These policies are long term in nature and contain a life insurance within them. They can be used to repay a mortgage or provide a regular income from savings. Certain features include the use of premiums to invest in a pooled fund usually in the form of equities and property. 'Smoothing' is often used to cushion the policyholder from fluctuating market conditions and a share in the profits or losses of the insurer. The policy does come with certain guarantees such as payment of a guaranteed amount at maturity on retirement, or on death.

