

# Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Direct line: 020 7066 9346

Local fax: 020 7066 9728

Email: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)

Shaun Swan/Priya Lukka  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

Our ref: CP 06 8\*\*/KW

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Dear Shaun and Priya

## **Consumer Panel Response to CP 06/8\*\***

The Panel is pleased to have this opportunity to comment on the FSA's detailed proposals for the regulation of home reversions and home purchase plans. I would also like to thank you for agreeing to this short extension to the deadline for submission of responses. The Panel was not able to discuss the CP in detail at a meeting until last week so this has been very helpful.

The Panel's response is below. I would specifically draw your attention to the response to questions 20. The Panel is very concerned that unauthorised individuals will be able to invest in home reversions resulting in much reduced consumer protection, and the potential for severe consumer detriment. The Panel has learned there may be an anomaly in the way in which the FSA has interpreted the legislation. There appears to be a different approach adopted for home reversions than with the mortgage regime. The Panel would urge the FSA to re-think this aspect of the consultation and would like a response to the query it raises in relation to the interpretation of the business test.

## Response to questions

**Q.3:** *Do you agree with our preferred approach for regulating HRs?*

**A:** The Panel broadly agrees with the approach adopted.

**Q.4:** *Do you agree with our preferred approach to regulating HPPs?*

**A:** The Panel broadly agrees with the approach adopted.

**Q.5:** *Are there any other consumer education initiatives you would like to suggest?*

**A:** The Panel has already stated that for home purchase plans especially, consumer education will be an extremely important tool in helping to ensure that purchasers of these products are well-informed. The proposal for early amendment of existing leaflets is therefore welcomed. Bearing in mind the fact that these are higher risk products, and that price comparison may be more difficult for consumers (see comment below in relation to APRs) the Panel would urge the FSA to amend the comparative tables so as to incorporate some means of cost comparison for consumers.

**Q.8:** *Do you agree with:*

*(i) the proposed amendments to our Glossary of defined terms?*

*(ii) the proposed amendments to PERG and are there any other scope issues that you consider the perimeter guidance might usefully cover?*

*(iii) our proposal to allow HR and HPP appointed representatives to have separate principals for each of these products (as well as for standard mortgages and lifetime mortgages)? and*

*(iv) our proposal to require individuals in HR and HPP firms who are carrying out 'significant influence' functions to become approved persons and comply with the approved persons requirements in our Handbook?*

**A:** The Panel criticised the FSA's policy in relation to interim authorisation when the mortgage and general insurance regimes were introduced. It has the same comments in relation to the proposals here. The Panel understands the reasons why the FSA believes it is not fair to expect regulated firms to contribute towards funding compensation payments made in respect of unauthorised firms whose compliance with threshold conditions has not been assessed. However, the principle of interim authorisation benefits the industry as those firms whose application for authorisation has not been determined may continue in business. Unfortunately the risk of adopting this approach is placed entirely with consumers. Whilst there will be rules in place requiring firms to point out the impact of interim authorisation, the Panel urges the FSA to re-think its position. As these firms are being charged periodic fees for the period they had the benefit of interim authorisation, the Panel feels there should be a means of charging them FSCS fees. The Panel has urged the Treasury to require all firms operating in the home reversion and home purchase plan market to be covered by the FSCS.

**Q.14:** *Do you agree with our proposals relating to HR financial promotions?*

The Panel broadly agrees with the approach proposed for financial promotions. However, it is concerned that without an APR, consumers will be less able to make real comparisons between products and providers. Whilst firms will be required to ensure promotions are clear, fair and not misleading, there is no proposal to require

firms to include a standardised costs comparator. The Panel would therefore urge the FSA to implement a suitable cost comparison requirement in promotions where appropriate (see below).

**Q.15:** *Do you have any comments on our proposed disclosure requirements for HRs relating to:*

*(i) the single IDD for HRs and LTMs?*

*(ii) the CIDD for use across various sectors, except where equity release services and mortgage / HPP services are both undertaken?*

*(iii) the KFI to be provided when a firm makes a particular recommendation or provides personalised information?*

*(iv) the offer document (including an updated KFI)?*

*and do you have any comments on any of the sample documents at Annex D?*

**A:** The Panel is broadly supportive of the approach adopted. One of the objectives in requiring KFIs for the mortgage sector was to encourage consumers to shop around to ensure they purchased the best deal. Whilst the home reversion market is much smaller, the Panel feels these objectives are equally as important in this sector. Therefore, as with financial promotions, in order to ensure consumers are able to make appropriate comparisons, the Panel urges the FSA to require some kind of standardised cost comparison mechanism. Looking at the sample KFI in Annex D, the Panel believes a simple requirement, for example, to demonstrate that if the property had to be sold at today's value, the direct cost to the consumer (or his estate) would be in the region of £36000, would aid the consumer's understanding of the cost of these products. This direct cost is not immediately apparent from the way in which the figures are set out.

**Q.16:** *Do you agree with the proposed requirements on advised and non-advised HR sales (including the scope of the suitability requirement)?*

**A:** The Panel is broadly supportive of the proposals for the advised and non-advised sales of these products. However, the Panel has already raised the issue of requiring firms to provide advice in these cases. It is extremely disappointed at what it sees as a reduction in consumer protection with the new regime when compared to current industry standards (for members of SHIP) which prohibit home reversions from being sold unless advice has been given. The Panel believes the justification given for this by the FSA – that it is not a requirement for lifetime mortgage sales – is weak.

The Panel has discussed this issue at some length and feels that alternatives to compulsory advice may be a suitable compromise to ensure that consumer protection remains at the highest standard for what are higher risk products. One example may be to set the default requirement that all firms must provide advice, but that firms may – providing they can satisfy the TCF requirements – sell a product without advice where the consumers are judged to be sophisticated enough not to need it. This way the onus is placed on the adviser to judge the level of the consumer's understanding of the product, rather than potentially vulnerable and ill-informed consumers mistakenly believing they do not need advice.

**Q.17:** *Do you have any comments on our 'bespoke' HR proposals relating to:*

*(i) the protection of consumers' interests in the event of the onward sale of HR to a third party or the default of the provider?*

*(ii) a possible requirement on providers to obtain confirmation that the consumer has received legal advice before completing an HR sale?*

*(iii) independent valuations?*

**A: (i)** The Panel is broadly supportive of the protections put in place where the interest in the property may be sold to a third party.

**(ii)** The Panel would support a requirement for provider firms to obtain confirmation from the consumer's legal representative that the full legal implications of the transaction have been explained.

**(iii)** In relation to independent valuations, the Panel has previously raised concerns that bearing in mind the large number of valuers who are on the 'panel' of valuers for a number of lenders, their true independence may be compromised by conflicts of interest. The Panel notes the requirement that valuers must be independent of the firm and not connected to it, but does not see how this will work in practice bearing in mind the way the market operates at the moment. The Panel believes that to be truly independent, a valuer must not be in the valuation panel of the provider for e.g. standard or lifetime mortgage business.

**Q.18:** *Do you agree that our proposed suitability and disclosure requirements – together with the proposed requirement for income products to be underwritten by a guarantee or insurance - should be sufficient to protect consumers who buy HR income products – or are there other measures that you would also consider necessary?*

**A:** The Panel believes the measure proposed will adequately protect consumers.

**Q.20:** *Do you agree with the high-level requirements we propose to apply to protect HR 'investors' considering becoming reversion providers – and reversion occupiers who might consider doing business with them?*

**A:** The Panel has some serious concerns that the market will be allowed to operate in this way. The Panel understands that in the mortgage regime, an individual acting as a lender can be entering into a regulated mortgage contract – and therefore need to be authorised – where this is done on only one occasion. This is because the by way of business test in section 22 of FSMA applies to lenders. The perimeter guidance for the mortgage regime explains that where the individual lender expects to receive interest or some other form of profit, then the activity will be done by way of business, even where the activity is undertaken only on an isolated occasion. The Panel fails to see how the same does not apply in the home reversion market. Clearly to be a home reversion investor, one will be due to receive a return once the property is sold and therefore the Panel would interpret such activities as requiring authorisation. It would appear that the narrower carrying on the business test (which the Panel understands is in the Business order) has been applied to home reversions investors, which in the mortgage regime would normally only apply to arrangers and advisers. The Panel would like the FSA to explain this anomaly.

Whilst the Panel notes that advisers involved in these transactions will still be subject to some of the high-level handbook requirements, and some disclosure requirements, the proposal for advisers, arrangers and administrators to ensure consumers are protected to a reasonable standard is much too weak in the

circumstances. What would be considered reasonable? Will there be any guidance in this respect?

The Panel has also learned that home reversions are becoming more attractive to property developers. The Panel feels especially concerned that individual investors will be seeking to cash in their investment at the earliest opportunity and will therefore opt for the 20 year termination provision (which the Panel opposes) as allowed for in the HMT proposals for the legislative changes needed for this regime. This could result in vulnerable consumers facing eviction where the 20 year minimum term had expired. This is scope for very severe consumer detriment.

**Q.24:** *Do you have any comments on our proposal to treat the HPP market as a separate market, including those relating to the independence of intermediaries?*

**A:** The Panel broadly supports the approach adopted.

**Q. 25:** *Do you have any comments on our proposals relating to HPP financial promotion requirements – and are you aware of any specific issues that might require additional rules or guidance?*

**A:** The Panel broadly supports the approach adopted. As with the home reversion market, the Panel feels that cost comparison is an important aspect of the purchase of such a major financial services product. Whilst it can appreciate that there are difficulties associated with quoting an APR in promotions for home purchase plan products, the Panel would urge the FSA to consider if, in the absence of any suitable alternative, a requirement to quote the APR should be included in financial promotions rules – subject to appropriate triggers for its actual inclusion.

**Q.26:** *Do you agree with our proposed HPP pre-sale disclosure requirements relating to:*

*(i) the IDD?*

*(ii) the Risks and Features Statement?*

*(iii) the Financial Information Statement?*

*(iv) the offer stage disclosure?*

*and do you have any comments on any of the sample documents at Annex D?*

**A:** The Panel is broadly supportive of the proposals for the disclosure package. As with financial promotions, the Panel urges the FSA to consider making an APR obligatory in the Financial Information Statement. Firms should be allowed, if they wish, to include explanatory text which outlines why the percentage appears.

**Q.28:** *Do you have any comment on our proposals in relation to the advised and non-advised sales process for HPPs?*

**A:** The Panel is broadly supportive of the proposals for advised and non-advised sales.

**Q.29:** *Do you agree with our proposal to apply a responsible financing provision to the HPP market?*

**A:** The Panel agrees with the FSA's proposals for responsible financing.

**Q.35:** *Do you agree with our proposal to bring HR and HPP providers, intermediaries and administrators into the compulsory jurisdiction of the FOS and make them subject to our complaints-handling rules in DISP?*

**A:** The Panel supports the proposal to bring home reversioners and home purchase plan providers, administrators and intermediaries within the compulsory jurisdiction of the FOS scheme and make them subject to DISP. The Panel has previously expressed concern over the limit of compensation the FOS scheme is able to pay. These products are higher risk products being sold to vulnerable elderly consumers. The potential for consumers to sell their homes to a reversion company and face the possibility of compensation up to a maximum of only £100,000 is unacceptable where the home is more than likely to be worth more than this limit. The Panel believes that no upper limit should exist.

**Q.36:** *(i) Do you agree with our proposal to include advisers and arrangers within the FSCS and that HR and HPP claims should be subject to the same limit as for RMCs?*

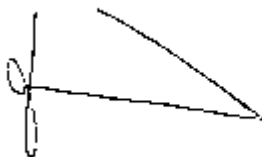
*(ii) Do you agree that HR and HPP providers and administrators should not be brought into the scope of the FSCS?*

**A:** The Panel agrees with the proposals to include advisers and arrangers within the FSCS scheme. However, as with the compensation limits for the FOS scheme, the Panel believes the upper limit would not be adequate compensation for consumers should a home purchase plan firm fail.

The Panel has some concerns over the proposal not to include plan providers and administrators with the FSCS. Whilst the measures proposed for rules to protect consumers are adequate, should firms fail to follow the rules properly, and subsequently fail, there is some scope for consumer detriment which could otherwise be avoided. The Panel would therefore urge the FSA to consider if these firms could be included within the FSCS, in view of the very different nature of the transactions for these products.

I look forward to receiving the FSA's response to the issue raised in the Panel answer to question 20.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Howard'. The signature is written in a cursive style with a vertical line on the left and a horizontal line extending to the right, ending in a small loop.

John Howard

Chairman

Financial Services Consumer Panel