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Dear Mr Kerr

DP 10/1 Consumer Complaints

This is the Financial Services Consumer Panel's response to the FSA DP 10/1: Consumer Complaints (emerging risks and mass claims).

Overleaf, the Panel has responded to the questions in the discussion paper. The Consumer Panel supports the proposals outlined in the discussion paper and it would like to suggest that further work is undertaken to better understand how the proposals would work in reality. The Panel welcomes the proposed Consumer Protection Committee but believes that it is necessary for the three bodies (the FSA, the Ombudsman and the OFT) to run scenarios to test the new structure, before it is established. We would suggest using payment protection insurance as one scenario, then test again with an 'imagined' new emerging risk which saw potential for a large number of consumers facing detriment.

We would welcome the opportunity to discuss these proposals in detail over the coming months.

Yours sincerely

Adam Phillips
Chair, Financial Services Consumer Panel

Financial Services Consumer Panel's response to FSA DP 10/1:

Consumer Complaints (Emerging Risks and Mass Claims)

Question One: What more can be done to encourage firms to recognise that it is in their long-term interests to handle consumer complaints promptly and fairly?

The Consumer Panel has long believed that greater transparency could engender higher levels of compliance with FSA regulation. We have welcomed the FSA's and the FOS's steps to ensure complaints data is published. The differences in performance between firms in this area can be significant and publishing information, the Panel believes, should encourage higher levels of compliance. The data should be presented in a highly visible fashion, not confined to the internet, and in a way that consumers understand. The data needs to be presented by brand, not simply by firm. Naming, shaming and faming should become the norm. Dealing with complaints promptly and effectively, we would argue, has to be in a firm's and customer's best interests and should help a firm manage its reputation.

We would also encourage the FSA to investigate the market structures that seemingly discourage firms from taking the long view to safeguard their reputation. Why do firms not handle complaints more assiduously? One reason is that the industry as a whole may be inefficient so that bad practice survives, and is not competed away. Another possibility is that firms conclude that short-term profits from selling a particular product will outweigh any long-term costs arising from dealing with complaints, or indeed any potential regulatory action that may ensue. These possibilities may arise from lack of effective competition and poorly aligned incentives in the industry. If so, the promotion of effective competition would be a good way of answering this question.

Question Two: Do you have any analysis or evidence which suggests that the effectiveness of Chapter 1 of DISP could be improved? If so, which elements might be reviewed?

The FSA's report into major banks complaint handling clearly identified wider concerns with complaint handling including: some firms' use of the two-stage complaints process; some firms failing to perform root cause analysis of complaints or taking into account either FOS guidance or previous decisions by FOS when assessing complaints; inadequate quality assurance arrangements within some firms complaint handling departments; and an inadequate level of senior management accountability or oversight for complaint handling.

The Panel welcomed the FSA's announcement that it is reviewing whether it needs to make changes to its existing rules on complaint handling. We look forward to detailed discussions with the FSA on the review.

Question Three: Do you consider that improvements could be made to how information is exchanged and used between the regulators and the Ombudsman?

We believe improvements are always possible but feel the Consumer Panel is not in a position to respond in any detail to this question.

Question Four: Are there additional cost-effective steps that the FSA, OFT or the Ombudsman service could take in order to identify new and emerging risks?

Since consumers cannot be expected to understand the boundaries between different regulators, and since a growing number of individuals who appear on the FSA Register are now marketing investments that fall outside the FSA's remit, the Consumer Panel suggests that all organisations contacted with queries use the opportunity to gather intelligence and pass it to the appropriate body, rather than politely rebuffing or redirecting the consumer.

Question Five: What more could be done to encourage firms to identify new and emerging risks to the FSA and OFT?

It is, clearly, the role of the regulator to ensure firms are compliant and for it to create credible deterrence against any non-compliance. If a firm believes non-compliance will lead to large financial and reputational penalties, then the Panel believes the firm is more likely to take a proactive role in identifying and mitigating emerging risks itself.

The recent financial crisis has highlighted that firms themselves are often remiss in having effective internal risk management resources. We believe that firms' senior management should take personal responsibility for identifying risks and bringing these to the attention of the regulator at an early stage. We also hope that the FSA's emphasis on more intrusive supervision will highlight risks at an earlier stage and also lead to better relationships with firms which will enable an improved focus on risk management.

The FSA could highlight even more strongly the sanctions/credible deterrents it would take if it uncovered any new and emerging risks, rather than the firm bringing them to the regulator's attention. The FSA should also remind firms of the regulatory benefits if they themselves come forward with concerns about their own risks.

Question Six: What further role might consumers play in identifying new and emerging risks?

There is, already, a great deal of consumer intelligence available in the media and through consumer organisations. In addition, all three bodies have access to intelligence from consumers via their consumer contact points (OFT's Consumers Direct, FSA's customer contact centre and FOS's complaint referrals). We would welcome all three bodies reviewing how this market intelligence could be used more effectively and be turned into quick and targeted action. Additionally, the FSA should have access to data from the firms themselves which, if analysed appropriately, could identify concerns at an early stage.

Question Seven: What more could be done to encourage firms themselves to proactively deal with new and emerging risks before they turn into widespread issues?

An obvious starting point is through firms believing that non-compliance would mean an impact on their profitability and lead to an increased regulatory intervention in their business. Looking at other non-financial markets, many companies see regulatory action and mis-selling scandals as damaging to their business and profitability in both the short and longer term. This is through open and transparent recording of such regulatory action and with the firms themselves taking proactive steps to resolve issues. Examples can be seen in the food and motor industries.

Another driver for firms to tackle emerging risks before detriment is crystallised, is to prevent speculative mis-selling complaints from claim management companies (CMCs); the Panel is aware firms have been very critical of CMCs in the past and it does seem as though some CMCs have not lived up to customers' expectations. If firms tackled emerging risks, before they become systemic issues, then the number of customers affected would be greatly reduced. If firms handled complaints fairly and promptly, then there would be less reason for claim management companies to 'fish' for clients.

Firms need to be encouraged to see the benefit of installing internal early warning systems which identify potential areas of detriment, both to themselves and to customers. This could be done in a variety of ways e.g. by monitoring complaints more effectively or mystery shopping their own staff with a view to identifying possible areas of risk..

Question Eight: Would such a committee process improve the handling of emerging issues and mass claims?

As the Panel outlined in its covering letter, it believes the three bodies should test the proposed structure with scenarios to identify where challenges could arise and to investigate ways to mitigate any problems before the committee is up and running.

Question Nine: What are the factors that should be taken into account when identifying mass claims?

The Consumer Panel believes that the three bodies should take into account the number of people (potentially) affected and the quantum of the detriment. The Committee should, undoubtedly, also take note of situations when a relatively small number of consumers are affected, but the detriment experienced to the consumer is high. There will be other factors to be considered but the Panel believes these are the most salient.

[ends]