

## Financial Services and Markets Bill

### Financial Services Consumer Panel briefing for MPs

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## Introduction

1. The Financial Services Consumer Panel ('the Panel') was established to advise the Financial Services Authority (FSA) on the interests and concerns of consumers. We are independent of the FSA – we can raise our own concerns, initiate research and publish reports.
2. We warmly welcome the Financial Services and Markets Bill and encourage its passage through Parliament without delay. We welcome some of the changes made to the Bill as a result of the pre-legislative scrutiny process and comments from consumer groups. However, we have outlined areas in this briefing where the Bill requires amendment if it is to meet the Government's aspirations for a new regime that provides adequate protection for consumers.

## Public awareness objective (Clause 4)

3. We support the public awareness objective and fully endorse the FSA's interpretation of this clause to include the development of financial literacy skills as well as the provision of advice and information. This will help

consumers to make informed decisions. It will help empower consumers to ask the right questions and to shop around when purchasing financial services and products.

4. The wording of this objective should be amended to make clear the importance of the FSA's role in consumer education to improve and develop the public's financial literacy skills. It should also require the FSA to promote awareness of the FSA, Ombudsman and Compensation Schemes to consumers so, for example, that they are aware of the importance of checking that a firm is authorised.

## Consumer protection objective (Clause 5)

5. We welcome the change to this clause that acknowledges consumers' need for advice and information . We also welcome the statement in the Government's response to the Joint Committee that Clause 5(2) of the Bill should be read as a whole. We accept caveat emptor as a general principle and recognise that it is a principle in common law. Given this, we remain of the view that it is unnecessary for it to be repeated in this legislation.
6. We think the clause as drafted fails to fully recognise the particular difficulties consumers may face because of the complexity of financial products and the lack of clarity of much information on financial services. It also fails to recognise that many consumers may need to rely on the expertise of a professional adviser to undertake an assessment of which financial products are suitable to meet their needs, and the responsibility of the professional adviser in that process. To address these omissions we support the following amendments to this clause:
  - that account should also be taken of the different degrees of **complexity** involved in different kinds of investments and other transactions as well as the different degrees of risks by amendment to Clause 5 (2) (a).

- that consumers need **clear** as well as accurate information by amendment to Clause 5 (2) (b);
- that the FSA should take into account **the responsibility of authorised persons to provide advice on the suitability of financial products to meet consumers' needs** by adding a new subsection to Clause 5(2). This will counterbalance the responsibility placed on consumers. This is in line with the Joint Committee's recommendation that in considering what degree of consumer protection is appropriate the FSA should have regard to the **responsibility of authorised persons** to make full and prominent disclosure of the main characteristics of the financial service which might affect consumer choice.

## Disadvantaged consumers (an addition to Clause 2(3))

7. We think the FSA should be required to take into account the needs of disadvantaged consumers. This is not covered in the Bill and would require an addition to the list of matters the FSA should have regard to in undertaking its functions at Clause 2(3). We recognise that reducing financial exclusion is a matter for Government. But it is important that the FSA has regard to the Government's objectives when carrying out its functions. Such an amendment would enable the FSA, for example:
- to look at the particular needs of low income consumers for advice and information on the few products that are suited to their needs;
  - to allocate the costs of regulation in a way that is not burdensome on small not-for profit organisations such as credit unions if they are bought within FSA" remit; and
  - to set compensation limits for the Compensation Scheme to reflect the needs of those least able to sustain a financial loss.

## Consumer Panel (Clause 9)

8. We welcome Clause 9 of the Bill that puts the Panel on a statutory footing. However, this does not go far enough in ensuring that the Consumer Panel can play an effective role. We call on the following changes and additions, possibly in the form of a schedule to the Bill:

- **Remit:** the Panel is extremely concerned by the definition of consumers in Clause 9(7). This would restrict the Panel's activities to the needs of consumers using or contemplating using services provided by authorised persons in the course of carrying on regulated activities. This would mean that the Panel be unable to examine whether there is a case for regulation for financial services not currently regulated (eg the current position on mortgages) to or consider the needs of financially excluded people who are not currently using or contemplating using financial services. We support an amendment to Clause 7(9) for 'consumers' to be defined as those 'who use or who are potential users of financial services'.
- **Consultation:** there should be an obligation on the FSA to consult the Consumer Panel on matters which impact on consumers.
- **Sufficient funding:** Consumer representatives are poorly resourced compared to practitioners. The Bill should contain a requirement for the FSA to fund the Panel in order to produce an annually proposed work programme and for the Panel to be accountable for its expenditure in its Annual Report.
- **Publication:** a right for the Panel to publish its work and its views, which reflects current practice in the Panel's terms of reference agreed by the FSA.

## **Ombudsman Scheme (Clause 202 (3))**

9. We call for the deletion of the power that Clause 202(3) gives the FSA to make rules authorising the award of costs by the Scheme against complainants. This completely undermines the principle of ombudsman schemes which to date have been free to consumers. The introduction of a charge would act as a significant deterrent to consumers using the Ombudsman Scheme for dispute resolution. As the current ombudsman schemes have powers to reject cases that are frivolous or vexatious we do not consider there is any justification for introducing a power for the FSA to enable the Ombudsman to recover its costs from consumers.
10. Information about consumer complaints from the Ombudsman Scheme is an important source of evidence of regulatory problems for the FSA and the Consumer Panel. To ensure that this information is forthcoming the Bill should require the Ombudsman Scheme to provide information on complaints to the FSA and the Consumer Panel. Whilst the Consumer Panel could receive this information in anonymised form, the FSA would need details of the firms involved to take regulatory action if necessary.

## **Mortgages, long term care insurance and voluntary codes of conduct**

11. We fully endorse the Joint Scrutiny Committee's recommendations that mortgages and long-term care insurance should be included in the FSA's remit from the outset, and are disappointed at the Government's response.
12. We are disappointed at the Government's decision to remove FSA's powers to endorse voluntary codes of conduct. This would have allowed the FSA to promote good practice in those areas of financial services (deposit-taking and general insurance) which are not subject to conduct of business regulation but which are important to consumers. We call for this clause to be reinserted.