

Financial Services Consumer Panel

Submission to Treasury Select Committee

Europe and the Financial Services Industry

December 2005

Treasury Select Committee

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Executive summary

The Financial Services Consumer Panel is pleased to have this opportunity to inform the Select Committee about issues of concern to financial services consumers arising from EU initiatives. There are numerous challenges here, but we have focused this submission on our key concerns.

Consumer representation: The European Commission has criticised the lack of response from EU consumer groups to discussion documents on financial services regulation. The Consumer Panel organised a Conference of EU consumer groups to find out why. The meeting concluded and advised the Commission that most groups do not have the resources to be involved in debates about EU financial services. We are therefore delighted to see from the recent White Paper that the Commission proposes to establish a permanent group of consumer representatives from across Europe with a focus on financial services issues.

Evidence-based policy making: Despite public protestations to the contrary, to date there seems to be a frustrating 'one size fits all' approach to EU policy making. This stems at least in part from the almost complete absence of information available about how retail markets actually work in individual Member States. The White Paper contains a positive commitment to evidence-based policy making in the future and we look forward to seeing this carried forward.

Financial services policy 2005-2010: Consumer protection measures should not be considered a barrier to a single market. Far greater use needs to be made of competition and other powers to open up the markets, with greater emphasis placed on post implementation evaluation and evidence-based policy-making.

Markets in Financial Instruments Directive: MiFID contains far-reaching proposals affecting both wholesale and retail issues. The impact on retail

consumers of some of these measures – and the extent of any benefit - is still unclear, although ultimately the cost will be borne by consumers.

Mortgages: The Panel is broadly supportive of any initiative which attempts to replicate the benefits enjoyed by UK consumers and of the level of consumer protection available. We are concerned however that any EU legislation in this area could result in additional cost to the UK mortgage industry and to consumers.

Asset management: We agree that there is a need to ensure that the current legislative framework is in place and working effectively before consideration is given to further legislation in this area. We do however see an urgent need for a revision of the simplified prospectus.

Better regulation: The Panel supports the Commission's recent statements that all new financial legislation should be subject to a cost/benefit analysis. As the costs of regulation are largely met by consumers in higher fees and charges, consumers have a vested interest in regulation providing value for money. However the value may not always be tangible or easily measured.

PRINCIPAL CONCERNS

Consumer representation

When the Treasury Committee last considered EU financial services the Head of Unit F1, DG Markt was prompted to comment that “.... enormous efforts were made to include consumer and user representatives in the process and the Commission should therefore not be blamed for the appalling lack of interest shown by consumer organisations”

In part as a response to DG Markt's comments, the Panel held a Conference for consumer groups across the EU in early November. Not only did this form the basis for a network of financial services-focused consumer representatives, but Conference delegates also agreed a resolution which we

have since sent to the Commission setting out the steps we believe the Commission needs to take in order to address the issue of insufficient consumer input to the policy-making process. A copy of the resolution is attached as an appendix to this submission.

We agree that there is insufficient consumer input into the EU policy-making process. The commendable steps the Commission has taken to date, for example by establishing FIN-USE, together with the firm commitment in the White Paper to set up a permanent group of consumer representatives across Europe, should go a long way in addressing the core issues. In addition one of the Lamfalussy Committees, CESR, has taken positive measures to include consumers in policy debate by setting up 'consumer days' to discuss CESR proposals. The recent Retail Investor Workshop in Valencia was both constructive and productive and we expect to see real change coming from this initiative. We would like to see other Lamfalussy bodies taking a similar approach.

It was clear at our Conference that many national consumer organisations do not have the expertise within their organisations to analyse often complex issues written in a language other than the national one. We are not convinced that the periodic newsletter referred to in the White Paper will provide enough help in this area. It is also the case that consumer organisations do not often have the luxury of specialist advisers. The Commission must do more to improve the consultation process as it is vital that the real needs of consumers are properly understood by policy makers at all levels. Fundamental change is needed and the steps set out in the resolution and the White Paper will help the Commission to take this forward.

Evidence-based policy making

There is a remarkable lack of evidence about the ways in which retail markets within the EU actually operate and how well they meet consumer

needs. This is a severe hindrance to good policy-making which should always be evidence based. This is a missed opportunity for the Commission which should be using this information to focus its resources more effectively and to learn from the experience of consumers of retail markets in individual Member States. We hope that the commitment set out in the White Paper will bring a new, rapid approach.

Financial services policy 2005-2010

The Commission published its White Paper on Financial Services Policy 2005-2010 on 5 December. The Commission has an ambitious agenda which we were pleased to see included the implementation, enforcement and evaluation of existing legislation. There is much to be learned from the experience of individual Member States since the Financial Services Action Plan was first drawn up and we regard post-implementation evaluation as a high priority. Looking forward, the Commission's focus should be on removing the remaining barriers to the integration of wholesale markets. This would lead to, for example, greater freedom for mortgage lenders and would pave the way for the more open and economically efficient EU financial market envisaged by the Commission. The Panel is not convinced however that there is currently a significant demand amongst retail consumers for many cross-border financial products or services. This might change over time, but consumers would have to have confidence in the relevant regulatory regime and a great deal of work would have to be done in areas such as the provision of effective, consumer-tested pre-sale information and acceptable advertising standards.

Markets in Financial Instruments Directive

The impact of the Markets in Financial Instruments Directive seems to have grown significantly during its period of development and the implications of the implementation of the final measures are still not absolutely clear to us. The

Panel's principal concern about MiFID to date has now been alleviated following the announcement of the exclusion of generic advice from the definition of "investment advice" in the Directive. There are other measures where retail consumers could be disadvantaged, however. For example, the provisions relating to best execution will not we understand necessarily result in the best deal for consumers; and we will be looking closely at the FSA's forthcoming Consultation Paper setting out a MiFID-compliant revision of the existing requirements imposed on regulated firms in relation to advertising. The substantial costs of the extensive changes arising from MiFID will, of course, be borne ultimately by the consumer.

Mortgages

The Panel was fully supportive of the introduction of the regime covering the sale of mortgages in the UK. It believes this has been an important step in ensuring consumers are protected during what is often the most significant purchase they are likely to make. The Panel is therefore encouraged that the Commission is seeking to ensure other EU consumers benefit from mortgage regulation. That said, the Panel is concerned that any EU legislation in this area could result in additional cost to the UK mortgage industry, at a time when it has only recently absorbed significant costs associated with the new regime in the UK. However, the Panel is broadly supportive of any initiative which attempts to replicate the benefits enjoyed by UK consumers both in terms of the diversity and innovative nature of the UK market, and of the level of consumer protection available.

The Panel does not see the single market becoming a reality by means of consumers buying their homes with finance provided by a lender in another Member State. It therefore doubts there will be significant demand for cross-border sales of mortgage products. There may be some niche markets - second homes abroad for example - but the market will overwhelmingly from the consumer's perspective remain a national one.

The Panel believes the route to a more integrated EU market lies in harmonising funding arrangements allowing greater freedom for lenders, which will result in the creation of more diverse products becoming available across Europe. It also believes that a more consistent approach to valuations, early repayment charges, credit worthiness checks, and the relaxation of other legal constraints will play a much more significant role in promoting an integrated market. The Panel does not believe that consumer protection measures alone can achieve the stated aims of the Green Paper. Indeed in isolation such measures are likely to have little effect. For example, the Panel fails to see how the introduction of a compulsory standardised information sheet can facilitate cross-border sales. Consumers need appropriate information at the right time in the mortgage buying process. But in view of the diversity of local arrangements the correct way to address this is to ensure each member state requires suitable pre-sale information which accurately reflects the local market and is not constrained by EU requirements which may not be appropriate in every case.

The Panel believes that the right way to achieve the stated objective in the Green paper is first to address the restrictions in wholesale funding of mortgages and other legal constraints which exist in some member states. Opening up such restricted markets to more innovative products will have an obvious and direct benefit for consumers.

Asset management

The Panel supports the Commission's overall approach to the enhancement of the EU framework for investment funds. We do however have two main concerns:

- The simplified prospectus does not meet consumer needs and should be improved. Both regulators and policy-makers must recognise the need to test all disclosure documents such as the prospectus on real

consumers active in the financial markets. The level of understanding of the recipients of these documents is the true indicator of their effectiveness. The simplified prospectus falls short of what is required.

- There are risks to consumers in the changes introduced in UCITS III, where there is a real possibility of confusion. Amongst consumers of investment products the UCITS term is becoming known and understood and this is something that could be built on now. But there is a need to distinguish between pre and post UCITS III products, where the risks could be significantly different.

The Green Paper on Investment Funds opened up the discussion on alternative investment markets and substitute products. Consumer protection is an issue if the retail mass market is to be opened up to investments such as hedge funds. It is generally accepted that products of this type tend to be complex and opaque, making risk assessment more difficult for consumers and even for their advisers.

Better regulation

Of course the Panel supports "better regulation" both on a national and EU-wide basis. We are pleased that there seems to be an acceptance that all new EU financial legislation should be subject to a cost/benefit analysis. As the costs of regulation are largely met by consumers in higher fees and charges, consumers have a vested interest in regulation providing value for money. However the value may not always be tangible or easily measured. For example it is clear that regulation - if it is seen to be effective by consumers - increases their confidence in the industry as a whole. The Panel does not wish to see regulatory requirements in financial services swept aside on simplistic cost grounds alone.

Whatever the regulatory approach, however, the Panel supports effective regulation that is robustly enforced.

Conclusion

The Panel believes that the overall objectives set out in the recent White Paper deserve support, as do a great many of the financial services initiatives we have seen over the past few years. An argument that existing national standards are 'best practice' is not in itself a sustainable position in the long term, although we will continue to work with others in identifying areas where UK consumers could be disadvantaged. But the Commission must do more to facilitate effective participation by consumer groups in the consultation process and we will be taking a close interest in the development of the consumer group referred to in the White Paper. We are looking forward to a positive response from the Commission to the other points raised in the Conference resolution. We also believe that evidence-based policy-making is the only sensible way forward and we have called for this on many occasions. We are glad that the Commission has taken this on board.

John Howard

Chairman

Financial Services Consumer Panel

Financial Services Consumer Panel

The Financial Services Consumer Panel (the Panel) was established by the Financial Services Authority (FSA) in December 1998 to represent the interests of consumers in advising the FSA on its policy and practices and monitoring its effectiveness. Subsequently, the Financial Services and Markets Act 2000 (the Act) made it a statutory requirement for the FSA to establish and maintain a Consumer Panel. The relevant sections of the Act came into force on 18 June 2001.

Role of the Consumer Panel

The main purpose of the Panel is to provide advice to the FSA. Consequently the emphasis of the Panel's work is on activities that are regulated by the FSA. The Panel is also responsible for assessing and commenting on the effectiveness of the FSA. In addition the Panel looks at the impact on consumers of activities outside but related to the FSA's remit. Examples include European issues and policy proposals by H M Treasury and others. The Panel has regard to the interests of all groups of consumers, including those who are particularly disadvantaged in the context of financial services. The Panel can also advise the Government on the scope of financial services regulation; and consider other matters that assist it in carrying out its primary functions.

How the Panel operates

The full Panel meets about 10 times per year. In addition, smaller 'working groups' meet monthly to deal with specific issues in more detail and to consider the Panel's formal responses to FSA and other consultations. FSA staff and other third parties are invited to these meetings and participate in discussions. The Panel also holds meetings outside the FSA's offices (most recently in Cardiff) with members of the financial services industry, as well as

with consumer representatives. The Panel now has closer links than ever before with its statutory counterpart, the Financial Services Practitioner Panel, with a view to developing a better understanding of industry viewpoints and working together wherever possible to tackle areas of mutual interest. Although the Panel has less direct involvement with The Smaller Businesses Practitioner Panel, we do exchange minutes and hold occasional joint meetings. From time to time, the Panel also commissions research to obtain a better understanding of consumers' views and to identify areas of concern. A monthly report of the Panel's work and concerns is provided for the FSA Board.

Accountability

The Panel publishes an annual report on its activities. Annual Reports, responses to consultations, research reports and other information is available on the Panel's website at www.fs-cp.org.uk. The website contains the Panel's e-mail address, but makes it clear that the Panel is not in a position to pursue individual or specific complaints from the public about financial services. The Panel does however consider carefully the wider implications of any complaints or other information provided by consumers and others who contact the Panel.

Membership

Panel members are appointed by the FSA Board following an open recruitment process based on the Nolan principles; the appointment of the Chairman must have the formal approval of the Treasury. John Howard became Chairman of the Consumer Panel with effect from 1 October 2005, having been a Panel member since October 2000. Adam Phillips, who joined the Panel in March 2004, was appointed Vice Chair with effect from 1 November 2005.

Members of the Panel have a wide range of relevant experience such as consumer advice and advocacy, front-line advice, legal expertise, market research, consumer policy and the media.

APPENDIX

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Alexander Schaub
Director General
DG Internal Market and Services
European Commission
Brussels

23 November 2005

Dear Mr Schaub

Financial Services Consumer Panel: Conference for Consumer Groups in the EU

On 4 November 2005 the Financial Services Consumer Panel hosted a one-day Conference for Consumer Groups in the EU. At the end of the Conference delegates agreed a resolution to be sent to the Commission which sets out the action that delegates believe the Commission needs to take to ensure effective dialogue between consumer groups in Member States and policy-makers in Europe. My purpose in writing to you is to present this Resolution formally and to seek your response by the end of January 2006.

First I should explain something of the background to the Conference. The Panel decided to organise the event in response to earlier comments by the Commission about the lack of consumer representatives to consult on financial services issues. Clearly something needs to be done. The Panel wants to ensure that the positive and negative impact of policy changes on consumers is communicated effectively to the Commission from an informed standpoint in all Member States. We also wanted consumer groups that are not/cannot be members of BEUC, for example, to have access to a consumer-facing network of consumer groups in the EU. The Conference was a first step towards meeting these objectives.

The principal aims of the event were to:

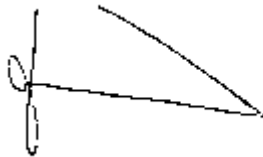
- Develop a pan-European network of consumer groups interested in financial issues;
- Identify key issues for consumers of financial services in different EU countries;
- Compare how the different groups are working to tackle those issues;
- Debate how to get a more effective voice for consumers in Europe; and
- Look at how consumer groups can work better across the EU in future.

As well as consumer representatives from a large number of Member States, delegates included members of FIN-USE, BEUC and UK-based consumer groups. Speakers included Harsha Shewaram from DG Internal Market whose input was particularly valuable. We are grateful to Harsha for spending so much time at the Conference and for participating so positively. We also heard from Dominique Forest (BEUC); Manfred Westphal (FINUSE) and Paul Wright from the UK Financial Services Authority.

The Conference, which was preceded by an informal dinner the previous evening, went a long way towards developing a pan-European network of financial services consumer groups and we are committed to developing this further. As I said earlier, Conference delegates also agreed on a Resolution to be put to the Commission and a copy of this is enclosed.

I will be happy to provide further background to the Resolution and also to answer any questions you have, either in writing or at a meeting. I hope that the Commission will react positively to the steps that the Panel and the Conference delegates have taken to respond to the Commission's comments about the lack of financial services consumer representatives in Europe.

Yours sincerely

A handwritten signature in black ink, consisting of a vertical line on the left, a horizontal line extending to the right, and a diagonal line crossing the horizontal one from the top right towards the center.

Chairman
Financial Services Consumer Panel

**Final Resolution
from
Consumer Groups in the EU Conference**

**London
4th November 2005**

At a meeting held in London today, representatives of consumer groups from across the EU, resolved to work for the following to take place:

1. The Commission to call on Member States to support consumer groups with knowledge of financial services.
2. The creation of an additional forum organised and funded by the Commission, consisting only of consumer representatives.
3. The Commission to publicise more widely to consumer groups, its work plan and road maps.
4. The Commission to create and distribute to national consumer organisations, consumer relevant summaries of financial services discussion documents in all EU languages. This should reduce the demand on the scarce resources of national consumer groups.
5. A similar more proactive open approach to obtaining consumer input to be developed by other European players such as the Lamfalussy Committees.
6. The Commission to collect, on a comprehensive basis, evidence of how consumers fare in financial markets across the EU, showing problems and strengths of different approaches.
7. The Commission to increase the money available to European consumer bodies such as BEUC to strengthen the resources for financial services work.

The consumer bodies at the conference were:

- Financial Services Consumer Panel, UK
- Citizens Advice, UK
- Which?, UK
- Konsument, Austria
- Test-Achats, Belgium
- Cyprus Consumers Association
- Spotřebitelský poradenský a informační Servis, Czech Republic
- Consumers Defence Association, Czech Republic
- Estonian Consumers Union

- German National Consumer Association
- National Association for Consumer Protection, Hungary
- Consultative Consumer Panel, Ireland
- Consumer Rights Protection Centre, Latvia
- LN Consumers Federation, Lithuania
- Consumers Association, Malta
- Consumentenbond, Netherlands
- Associacao Portuguesa para a Defesa do Consumidor, Portugal
- ZPS, Slovenia
- ADICAE, Spain
- BEUC (Bureau Européen des Consommateurs)