

Financial Services Consumer Panel

Response to DTI Consultation  
06/682 'Strengthen and Streamline  
Consumer Advocacy –  
Consultation on Consumer  
Representation and Redress'

April 2006

## 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 (FSMA) 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.

## Executive summary

As a representative of consumers' interests, the Panel wholeheartedly supports the Government's desire to make consumer advocacy more streamlined and effective. However, having considered the three options for change set out in the DTI consultation paper, the Panel is unable to support any of the options proposed insofar as they affect the on-going operation of the Panel itself. In brief, the Panel sees the following as being key arguments against the options currently proposed.

1. The Consumer Panel, along with the Practitioner Panel, is at the heart of the FSA's public accountability arrangements. Removing the Panel or its statutory basis would damage these arrangements, and diminish the influence the Panel – and therefore consumers – has over the development of FSA policy.
2. The Panel does not handle consumer complaints and so there seems little sense to brigade it with other consumer organisations which have this as a central remit.
3. Consumer issues in the financial services sector – and the detriment arising as a result – are very different from those of the other sectors which the paper proposes should form part of Consumer Voice.
4. The Panel believes that the models being proposed will all result in an increase in specific costs relating to the administration of the Panel itself over present arrangements.
5. Any requirement for the Panel to report to another organisation before advising the FSA, or to curtail its independence in any way, will severely undermine its ability to provide timely and effective advice to the FSA.

Despite its opposition to the proposals outlined in the consultation paper, if Consumer Voice is established the Panel would anticipate there being a need for regular contact with the new organisation. The Panel would wish to maintain close co-operation and dialogue with Consumer Voice and would therefore be keen to explore ways in which this could be achieved once the new organisation has been established. The Panel is in regular contact with a number of other consumer organisations and would expect similar arrangements to be put in place with Consumer Voice.

The following response discusses these and other key issues in greater detail.

## Response to consultation – general issues

### The obligation to maintain a Consumer Panel

The FSMA currently obliges the FSA to maintain a Consumer Panel. The Panel cannot support any proposal which will not include this obligation. The options outlined in the consultation propose abolishing the current Panel arrangements (Options 1 and 2), and as an alternative allowing the different regulators to maintain expert consumer panels *if they so choose* (Option 3). The FSMA *requires* both Practitioner Panel and Consumer Panel input. To remove the obligation to consult a Consumer Panel will leave a significant imbalance in the accountability arrangements required under the legislation. It is likely therefore that the interests of practitioners will be taken account of to a greater extent where only Practitioner Panel input is an *obligation* placed on the FSA. Changing FSMA to remove the compulsion on the FSA to have a Consumer Panel will dilute consumer input and upset the balance between practitioner and consumer involvement in key FSA decisions; the FSA will continue to be obliged to take account of the views of industry, whilst those of consumers may carry less weight or even be ignored.

### FSA accountability

By virtue of Section 11 of FSMA, the FSA must give the Panels a statement in writing of its reasons for disagreeing with a view either Panel has expressed or proposal they have made. If the FSA is no longer required to maintain a Consumer Panel, this important feature of the FSA's accountability framework in respect of representations made on behalf of consumers will also disappear.

### Interaction with the FSA

The arguments used to promote the creation of 'Consumer Voice' seriously understate the nature of the interaction with the FSA the Panel needs to maintain in order to have any significant impact – it is far more than providing expertise in consumer policy. It should also be borne in mind that FSA staff frequently attend Panel meetings. The Panel meets twice monthly either as a full Panel or in two smaller working groups, and it is not uncommon for 5 or 6 FSA visitors to attend each of the three meetings to discuss policy issues. If Consumer Voice were to be located anywhere other than very close to the FSA, the costs of, and time required for such visits would escalate significantly. What is more likely however, is that FSA staff would stop attending altogether, and this would result in considerable weakening of the Panel's effectiveness and consumer input to FSA policy. The Panel's input to policy development at an early, often informal stage in the process is a key element of the regulatory dialogue.

## Statutory independence

The Panel is also concerned that a move to incorporate it within an organisation with a wider remit will remove its statutory independence. This independence is evidenced by the fact that although the appointment of the Chair is made by the FSA, it must be approved by the Treasury, and perhaps as important, so must his/her dismissal; the Panel has the ability to conduct its own research and express opinions; the FSA is obliged to provide information and on request to give reasons why it disagrees with the Panel. These factors are critical not just for the Panel's independence and integrity, but also for the FSA's accountability to the public interest. The Panel believes there is a severe risk of the loss of this independence with the arrangements proposed for Option 3 as outlined in paragraph 7.17 and 7.18 of the consultation paper.

## Consumer issues

The argument for a commonality of issues across all sectors is over-stated. The Panel believes the stated synergies simply don't exist to the extent being suggested. Whilst at a strategic level some synergies will exist, financial services and the utilities are unlikely to share many common consumer issues. For example, the financial services industry is a highly competitive market – whereas the utility regulators have been set up in part to facilitate competition. Financial services markets incorporate a strong intermediary-based distribution chain which includes a large number of small firms. The nature of financial services is very different from the other sectors being suggested for inclusion in Consumer Voice – the long-term relationship, heavy dependency on expertise, trust and confidence, and the fact that the relationship is also capable of changing substantially after the consumer has entered the original contract.

Issues faced by consumers of utilities and financial services are likely to be very different. For example, the role advice plays in the sales process; the complexity of financial services products; the relationship with individual goals and personal circumstances, and the high degree of information asymmetry between firm and consumer. Utility companies are mostly former nationalised monopolies, delivered by networks which embody significant elements of monopoly and/or switching costs. Some, such as energy, water, and public transport raise major questions of sustainability and externalities, for example, in relation to climate change. The Panel is surprised some of these sectors are excluded from the paper when financial services are included. Financial services raise important issues of links with other aspects of public policy such as education, taxation, benefits, pensions and employment, and market stability/prudential controls. Best practice in the financial services industry is likely to be different to the utilities industry. At a basic level there will be some synergies, but detailed considerations are unlikely to be the same.

Consumer detriment resulting from the financial services sector is totally different from that in the utilities. For example, the scale of detriment is likely to be considerably higher in the financial services world. The estimate as at June 2002 of damages paid to consumers by firms under completed cases following the pensions and free standing additional voluntary contributions reviews was in the region of £11.8 billion.

Consistency across markets may be a laudable aim, but may be unrealistic in practise as individual circumstances change along with products and the market context in which they sit. The key point is that designing systems of this kind is always going to require a balance between synergy and market scan on the one side, and focus and expertise on the other. Individual regulators have specific needs which must be catered for. It may be feasible to envisage an organisation drawing together all utilities issues, but even then there is some argument over what constitutes a utility. But to look across markets which are too diverse may not serve the consumer effectively. There needs to be a degree of specialisation reflected in governance arrangements as well as staffing. The benefit of including all sectors is simply not clear, whilst the risks are self-evident. Where it may be helpful would be to adopt simple and effective mechanisms for co-operation and information sharing.

In addition, the governance structure of the new body has not been properly addressed. Who would be in charge of for example, setting priorities and agreeing budgets in the financial services area – the Panel or Consumer Voice? Even more seriously, who will decide on key policy issues - the Panel as the expert body or Consumer Voice as the ultimate authority? It is clear that it will therefore not be possible to prioritise issues across all sectors.

## Complaint handling

The consultation paper refers to consumer complaints handling and expresses concern that utility companies are not addressing them adequately. The FSA Handbook includes rules covering complaint handling and these place strong obligations on authorised firms. Therefore this argument is not wholly relevant in relation to the financial services sector. Nor does it take account of the fact that the Panel has no remit to deal with complaints. The argument used to promote this suggestion is based on clarity and ease of use for consumers. As the Panel is not a body for consumers to use it believes inclusion within Consumer Voice will confuse consumers rather than add clarity. This is especially relevant if one of the main reasons for the proposal is to improve complaint handling.

Consumer Direct is mooted to become a single point of contact for consumers across all sectors. This argument ignores the existence of the FSA Consumer Contact Centre. The Panel believes that for financial information and advice,

Consumer Direct is not, at any stage, going to be more than a 'gateway' handing on to more specialist bodies.

To establish another port of call for consumers with financial services problems will dilute the effectiveness of both, and consumers will be confused by there being two separate contact points. It will also have a negative impact on the intelligence gathering role of the Consumer Contact Centre for the FSA, which is used to facilitate the performance of its statutory obligations, and also to help consumers.

There is a case for sharing information across sectors, for example, on best practice customer service, but the benefits of this may be quite limited and can easily be leveraged under existing arrangements. It should also be borne in mind that financial services is a specialist area, and it is wholly unrealistic to expect call centre operators to have an in-depth knowledge across several distinct consumer sectors. This will result in a loss of expertise in financial services – there are many complex issues to deal with which is likely to involve retaining specialist staff within the organisation. Expecting staff to deal with issues across all sectors will inevitably lead to a loss of in-depth knowledge, with staff having only superficial knowledge of each area. Early Panel experience was such that where its Secretariat staff had other responsibilities within the FSA, they were not able to provide the right level of support needed by the Panel for it to fulfil its functions to the best advantage.

## Price control

The arguments used for a commonality of price control are totally irrelevant in the financial services sector. The consultation considers that one benefit to having a single consumer representative body would be more effective price control, but the FSA – and therefore the Panel – is not an economic regulator and does not have a similar control function over the financial services industry.

## Costs

Based on the fact that specialist staff will be needed to service the Panel going forward, there is unlikely to be any cost benefit in making these changes. The Panel believes that all the options being considered will result in an increase in its costs over current arrangements. It is likely that similar staffing levels will continue to be required. In any event only 5 members of FSA staff are involved in providing dedicated support to the Panel. It should also be borne in mind that the Panel is not funded by UK tax payers, but obtains funding from the financial services industry through fees collected from authorised firms by the FSA.

Other considerations include how, in practice, the levy needed for Consumer Voice will be set. Once this has been done, will Consumer Voice be obliged to spend the relevant amount (and no more) specifically on financial services issues? If so it will not be master in its own house. In any event the costs and time involved in co-ordination will be significant – a task that is not needed at all under the current very simple arrangements.

The Panel does not retain any staff – its Secretariat is employed by the FSA. The Panel does not have an office but uses facilities at the FSA's offices. It is inconceivable the establishment of Consumer Voice would lead to any savings either in Secretariat staff resources devoted to financial services issues (5) or in the FSCP's modest budget of some £0.5 million. On the contrary the greater element of staff work implied of a larger organisation, together with the increase in co-ordination activity, could substantially increase costs. Coupled with the potential for increased costs for FSA staff attendance at meetings, the Panel believes the costs argument to be overstated in relation to its activities.

The Panel feels it is unlikely that the financial services industry will be happy to foot the bill for such a wide ranging organisation as Consumer Voice. The Panel would not be confident about promoting any increase in resources needed to provide for greater co-ordination within Consumer Voice as a value-for-money improvement. There is constant criticism of the levies placed on firms for their on-going FSA/FOS and Financial Services Compensation Scheme fees, and to add another body to this will create strong opposition. What does not seem to have been taken account of is that 97% of the firms regulated by the FSA are small firms. The FSA has already acknowledged that proportionately, the burden falls heavier on them than on larger firms. This will not be a popular move.

## Europe

The Panel has been a role model in Europe especially in relation to the establishment of FIN-Use which is an active consumer advocate. It is one of only a few active consumer voices dealing with financial services regulation in the EU. The EU White Paper on Financial Services 2005-2010 mentioned plans to establish an EU Financial Services Consumer Panel based on a similar model to the FSCP as a means of overcoming the difficulties in obtaining input from other generalist consumer organisations. Getting rid of or amending this widely recognised and respected UK model would be counterproductive and hinder further efforts to ensure effective consumer representation at EU level.

## Consumer education

The paper does not refer to the FSA's *statutory* objective of promoting public understanding of the financial services system. This would be an extremely important factor in any of the proposed arrangements for Consumer Voice. The Panel is therefore concerned that not enough consideration has been given to the real impact these changes will make on consumer representation in the financial services sector.

## Answers to questions

Q1. Do you agree that companies who provide services should have complete responsibility towards their customers, including the resolution of complaints? To what extent do you consider that companies currently fail to do this?

*A: The Panel believes that companies should have responsibility for dealing properly with complaints and for treating their customers fairly. The model adopted in the FSA's Handbook of rules may give a useful insight into how this can be achieved. The Panel does not have any knowledge of how utility companies are failing to do this at present.*

Q2. Do you consider that additional incentives need to be placed on suppliers in order to secure improved standards in handling consumer enquiries and complaints? If so, what form should these incentives take (licence obligations; statutory targets; etc)?

*A: See answer to question 1 above. There should be an obligation of this kind placed on firms. However, the Panel does not have a view of how best to achieve this in the case of utility companies.*

Q3. Do you agree that it would be beneficial to extend complaint resolution through ombudsman schemes to electricity, gas, and postal services?

*A: The Panel is fully supportive of the Financial Ombudsman Scheme and believes other consumer sectors would benefit from similar arrangements.*

Q4. Do you agree that the electronic communications model is to be preferred, with service providers being obliged to belong to an ombudsman scheme, but leaving it to the companies to come up with their own scheme (or join an existing scheme) subject to regulatory approval?

*A: Given the experience of the financial services sector, the Panel would oppose any arrangement that allowed proliferation of more than one scheme within a given sector. This does nothing for consumers other than increase confusion; any choice of scheme would be exercised by firms not consumers, and there are significant risks of levelling down of service standards to the consumer's detriment.*

Q5. Which of the strategic models do you prefer, and why?

*A: Insofar as the proposals affect the Panel, the FSCP is unable to support any of them, as all three options will remove the obligation on the FSA to maintain a Consumer Panel whilst there would remain an obligation to maintain a Practitioner Panel. Options 1 and 2 would remove consumer advocacy in financial services from its position at the heart of the FSA. This*

*will weaken consumer influence over financial services policy and increase costs.*

*The DTI paper is unclear about how Option 3 might work in detail, but it is proposed that Consumer Voice would incorporate parts of some, or all of the listed bodies including the Financial Services Consumer Panel (7.19 on p33). No details are provided, but the Panel sees significant problems here both from an operational and a governance perspective.*

*On the operational side, the Panel does not see how any split can sensibly be made within the areas it currently covers. The Panel is obliged to monitor all FSA activity and to carve some of this off to another body makes no sense. Clearly the Panel's function would be undermined if any of its existing role or responsibilities were removed to Consumer Voice.*

*The document suggests that for Option 3, some sort of reporting arrangement to Consumer Voice would exist and that the Financial Services Consumer Panel would 'fall under the wing of Consumer Voice....' (8.6 on p41). This would create major issues of governance. The Panel sees grave difficulties if it had to report to, or seek approval from, Consumer Voice before being able to provide advice to the FSA.*

*Furthermore the Panel is a small organisation supported by a Secretariat of 5 staff and a budget of some £0.5 million. It relies heavily on the expertise and commitment of Panel members. Introducing another layer of governance through the main board of Consumer Voice – however this was done – would add to complexity and reduce effectiveness and value for money.*

*In relation to how the proposals affect utility companies, the Panel does not have a view.*

Q6. Do you agree that the benefits to consumers will be diminished by the exclusion of any of the bodies listed?

*A: The Panel can see there being some consumer benefit in drawing together an organisation which can comment on issues common across certain sectors of the consumer market. However, the exclusion of other utility based organisations such as transport will not achieve the objective of streamlining consumer representation and redress. The Panel does not believe there are any benefits to consumers from including the FSCP within Consumer Voice.*

Q7. Do you agree that Consumer Voice should have a UK-wide role, but with restricted scope in some areas?

*A: The Panel does not have a view.*

Q8. Do you agree that offices should be restricted to one in each of Scotland, England, and Wales? Should Consumer Voice have the powers to appoint regional committees?

*A: The Panel does not have a view.*

Q9. Do you agree that funding should be made partly from Government and partly from those industries that contribute to the funding of sectoral consumer bodies at present?

*A: The Panel believes that there may be some opposition from the financial services industry if they are expected to pay a separate levy for another organisation whose role is to represent consumers across a number of different sectors.*

Q10. Which duties and obligations on the sectoral consumer bodies should be transferred to Consumer Voice? Please give reasons.

*A: The Panel strongly opposes any proposals to transfer its responsibilities to Consumer Voice as previously explained. Insofar as the proposals affect other sectors, the Panel does not have a view.*

Q11. Which of the interactions between the consumer body, regulator, and Government should be preserved and transferred to Consumer Voice? Please give reasons.

*A: The Panel believes that no change should be made to the interaction between it and the FSA for the reasons given above.*

### **Summary of questions within the partial RIA**

Q12. Do you agree with the initial estimates of the benefits of the proposed options? Please provide quantifiable evidence where possible to support your view.

*A: The Panel believes that estimates for the benefits are overstated insofar as they relate to potential savings on its own budget. The budget for the Panel is relatively small, and in view of the likelihood that specialist staff would need to be retained, there is unlikely to be any costs benefit in transferring the FSCP to Consumer Voice.*

Q13. Do you agree with the initial estimates of the costs of the proposed options? Please provide quantifiable evidence where possible to support your view.

*A: The Panel cannot comment.*

Q14. Do you agree with the assessment of the impact of the proposals on small firms? We would welcome, in particular, comments from small firms on the impact of the proposals.

*A: As stated, the Panel believes the impact of these proposals will have a disproportionate impact on small firms which are acknowledged to shoulder a greater regulatory burden.*

Q15. Do you agree with the assessment of the impact of the proposals on competition?

*A: The Panel does not have a view.*