

# Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES





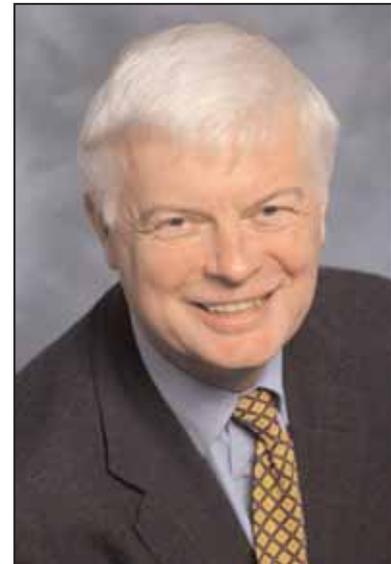
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The financial sector is complex, confusing and frequently more expensive for consumers than it ought to be. The Panel aims to make retail financial services a market where consumers get what they expect and one where clear information about products, independent advice and effective competition deliver better value to customers.

Looking back over the last year, three issues stand out clearly for me. The first is the Thoresen Review of Generic Financial Advice. The Panel has argued for many years that because of the complexity of financial products, people need access to independent advice on what types of financial services and products they should buy, in much the same way that pharmacists provide independent advice on healthcare products. Once someone is clear about the sorts of products they need, it becomes much easier for them to talk to sales people about details and costs and to choose what to buy. The Panel was therefore very pleased that the Thoresen Review came up with a plan for providing this type of advice and that the FSA has agreed to take responsibility for developing the scheme under the title of Money Guidance.

The second issue is the Retail Distribution Review. This review was an attempt by the FSA to launch a discussion about how the retail financial services market could be made to work better, both for its customers and for the industry. The way incentives distort the operation of the market and the role of commission payments to advisers have been major areas of debate with the FSA ever since the Panel was first established. The initial proposals to change the way the market could be regulated, put forward in a discussion paper by the FSA, were over complex. It would have been difficult and costly for the industry to implement and confusing to consumers. However, the FSA listened to suggestions and has accepted the argument that “advice” should mean independent advice covering all products in the market. They also accepted that the adviser and the customer should agree the cost of any advice, rather than it seeming to be free by being concealed in a commission payment to the adviser from the product provider. We hope the FSA will also agree to our recommendation that people who are not independent should not be able to call themselves advisers but should be called sales people, which is what they are.

The third issue is the impact of the failure of Northern Rock and the damage that its failure might have done to the customers of the bank if the government had not stepped in to protect their savings. There has been a great deal written already on this topic, including a serious internal audit report by the FSA itself. A major concern for the Panel has always been the operation of the Financial Services Compensation



**Adam Phillips,  
Consumer Panel  
Vice-Chairman**

Scheme. Given the FSA's stated policy of running a "non-zero failure regime", we have been critical in the past of the low level of the compensation limits and the fact that co-insurance meant that, after the first £2,000, the saver would only get back 90% of their savings. We are pleased that co-insurance has now been abandoned and that the compensation levels are being reviewed. Nowadays a bank account and cash card are essential for everyday life and we continue to be concerned that the compensation scheme will not provide customers with sufficient protection. We hope that the discussions in the coming months will come up with a realistic and viable solution.

Reading the report you will see that the Panel has been critical of the performance of the FSA in some areas. Nevertheless, we continue to be pleased with the FSA's willingness to review areas where we believe it is not performing particularly effectively and also to consider the wider aspects of its responsibility as a regulator.

Finally, I would like to thank John Howard who has been Chairman of the Panel for the last three years and who retired at the end of March, which is the reason why I am writing this Foreword. Chairing the Panel is a more demanding task than may appear to someone who has not worked on the Panel. John led us through a challenging period both for the regulator and the Panel and he did so to good effect to the benefit of consumers. I would also like to thank my colleagues on the Panel for their diligence and commitment over the last year and, in particular, for their support during the interregnum between John's departure and David Lipsey, the new Chairman, taking on the role.

A handwritten signature in black ink that reads "Adam Phillips". The signature is written in a cursive style with a long, sweeping underline.

Adam Phillips

Vice-Chairman

June 2008



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# Chapter 1: Overview

- 1.1 This annual report reviews the work of the Financial Services Consumer Panel for the financial year from April 2007 to March 2008. John Howard was Chairman of the Panel for the whole of this period, but stepped down as Chairman on 31 March 2008.
- 1.2 The main role of the Consumer Panel is to advise and monitor the FSA from the point of view of consumers. Our annual report therefore is mainly focused on the Panel's work in this area.
- 1.3 We have looked at the policy development of the FSA on the basis of its consumer-focused objectives as follows:
  - a. Chapter 2 – FSA protecting consumers;
  - b. Chapter 3 – FSA promoting consumer understanding; and
  - c. Chapter 4 – FSA developing the right regulatory framework.
- 1.4 We have then reviewed the Panel's broader work which is focused beyond the FSA in Chapter 5, and future plans for the Panel in Chapter 6.
- 1.5 To begin the report, we have looked at the FSA's performance as part of our duty to monitor as well as advise the FSA on its policy development from the point of view of consumers. We have produced a chart assessing the effectiveness of the FSA for the third year now. We have this year divided the chart into two sections – the first concentrating on strategic areas, and the second on specific activities. We have also sought to identify priorities for action for the FSA within those areas, where appropriate, for next year.
- 1.6 We have judged the FSA's performance from the perspective of the Consumer Panel as an informed representative of individual consumers, and focused our assessment at the outcome for consumers. We understand the FSA's risk-based approach, but there will be times when we do not agree with its assessment of a particular risk, and may feel the analysis to be too inflexible or where insufficient account is taken of consumer interests. We have considered the constraints on the FSA in terms of its powers and resources, but we have not gone as far as recommending any specific reallocation of resources. The FSA is better placed than we are to decide whether that would be an appropriate response to our assessment. We have concentrated on the key policy areas that we have discussed with the FSA, and its actions over the time period of this report.
- 1.7 The range encompasses very strong; strong; acceptable; weak; and very weak.

## Panel view on FSA effectiveness

<i>Strategic areas</i>			
Subject	Score	Reasons	Our priorities for the FSA next year
<b>Protecting Consumers</b>			
Retail banking – prudential	Very weak	The Northern Rock crisis in the summer of 2007 exposed weaknesses in the prudential regulation of banks, particularly with regard to their liquidity. We are concerned that consumers cannot identify such risks for themselves and have to rely on the regulatory system. The FSA's audit has shown what went wrong from the FSA's point of view, and we will look closely at the results.	To ensure the prudential supervision of retail banking identifies the key potential risks and fully stress tests the system.
Retail banking – conduct of business	Acceptable	We were pleased that the FSA has recognised, and agreed to review, the potential regulatory weakness in leaving the conduct of retail banking business to the voluntary Banking Code, and wish to see action here as soon as possible.	We would like to see thorough scrutiny of the gaps in consumer protection which exist between the Banking Code and the FSA's principles. Action must also be taken to end the banks' ultimate veto on what goes in and stays out of the Banking Code.
Treating Customers Fairly	Strong	The FSA has increased the money and energy devoted to communicating the Treating Customers Fairly messages to small firms. The objective is recognised as a core means of fulfilling the FSA's consumer protection objective, and yet firms still need to take action to implement this fully.	The FSA must continue to press firms on TCF. It should also communicate with other bodies such as advice agencies about using TCF when considering firms' treatment of their customers.

Subject	Score	Reasons	Our priorities for the FSA next year
Enforcement	Strong	We believe there has been a sea change in approach to enforcement, and there has been significant enforcement action this year. We continue to press for more, so the industry is in no doubt about the FSA's determination to punish misdemeanours.	A more robust approach and more collaboration in combating financial crime.
Financial crime & intelligence	Acceptable	We welcome the FSA's increase in emphasis on this area, with the setting up of a Financial Crime & Intelligence Division with its own strategic aims and objectives.	Development of human sources of intelligence, rather than looking just at patterns of activity.
Regulation of mortgages	Acceptable	It was right that the FSA reviewed its regulation of mortgages since taking over in 2004. However, the review revealed problems that need to be followed up – for instance, consumers are not using the mortgage IDD to distinguish between advice and sales, and the industry is yet to fully incorporate Treating Customers Fairly.	Strong action taken against firms who do not apply the principles and rules correctly.
With profits	Weak	While we acknowledge that the FSA has taken significant steps to address some of the issues, we continue to believe that the FSA could do more to improve the governance and help consumers get access to helpful advice.	Meaningful outcomes from TCF initiatives, OMO review, and focus on governance.
PPI	Strong	The FSA has been good at pursuing this issue through to enforcement, and we are pleased that it has not waited for the outcome of the Competition Commission enquiry.	Press for better communication with consumers who have been mis-sold, so they can claim their money back, and continue to pursue other firms who have been mis-selling PPI.

Subject	Score	Reasons	Our priorities for the FSA next year
<b>Promoting consumer understanding</b>			
Financial capability	Very strong	The FSA has appointed a Director of Financial Capability and is developing a welcome new strategic approach. We were also very pleased with the FSA's positive approach to the Thoresen Money Guidance proposals.	To maintain momentum for next year.
<b>FSA creating the right regulatory framework</b>			
Retail Distribution Review	Strong	The FSA is tackling the difficult area of financial advice and how it is paid for, which is crucial for consumers. The initial proposals in the FSA discussion paper were overly complicated, but the FSA has actively listened to consultation feedback and we are encouraged by its latest thinking.	To ensure a customer-driven rather than industry-led approach to the market. To promote a market which is intuitive and simple to understand and where consumers have access at various levels to independent information/advice.
Regulation of small firms	Acceptable	We have always been concerned that small firms are rated as low risk separately, but collectively the number of consumers dealing with small firms means they represent a huge risk. We were therefore pleased that there has been some, albeit late, recognition by the FSA that more attention must be given to the regulation of small firms.	To implement the three-year plan for more effective supervision.

Subject	Score	Reasons	Our priorities for the FSA next year
FSA transparency	Weak	We have been urging the FSA for some years to be more transparent, particularly in highlighting firms which are not coming up to standard. We have not been able to support the FSA's appeal against the Information Commissioner's decision on two Freedom of Information decisions which would have given more information on poor performing firms. The FSA's Discussion Paper on transparency planned for the beginning of the new financial year will provide an opportunity for further debate.	A full assessment of the benefits to consumers and the industry of greater transparency from the FSA.
<b>Specific Activities</b>			
<b>Protecting Consumers</b>			
Retail banking – Compensation for consumers	Weak	The run on Northern Rock in September 2007 was partly caused by the limited compensation available. This is something which the Consumer Panel has highlighted from the inception of the FSA and the Financial Services Compensation Scheme (FSCS). We have consistently called for there to be a much higher, and regularly reviewed limit on compensation – if there has to be a limit at all – to maintain consumer confidence in major financial organisations.	To enhance and improve the cover provided to consumers by the compensation scheme.

Subject	Score	Reasons	Our priorities for the FSA next year
Retail banking – FSA communications with consumers during Northern Rock crisis	Very weak	We believe the lack of an effective, timely communications plan to address consumer needs and concerns had a serious impact on consumer confidence and contributed to the depth and severity of the crisis.	To review the FSA’s plan for crisis communications.
Retail banking – Unauthorised overdraft charges	Acceptable	We believe that the FSA waiver in respect of complaints handling on unauthorised overdraft charges is harmful to consumers. However we accept that this is necessary while the Office of Fair Trading (OFT) is in the lead and brings the case to court. If the FSA had decided to apply conduct of business rules to retail banking, we believe it would have been able to have brought about a swifter resolution for consumers, as was the case with mortgage exit fees, where the FSA did have the power to act.	Ensure banks are ready to act and communicate with consumers as soon as the court has ruled. To take action to end the anomaly where there are different definitions of what constitutes hardship, so these consumers can all be dealt with immediately.
Financial promotions	Acceptable	There has been more proactive and themed monitoring of financial promotions this year. We are still concerned that there is no public record of unsuitable promotions, or a system for the FSA to highlight the worst adverts, both to warn consumers and help the industry to police itself.	More use of additional tools, and the FSA’s transparency project allowing the publication of examples of bad practice and rankings on adverts to provide more consumer guidance.

Subject	Score	Reasons	Our priorities for the FSA next year
Past business reviews	Weak	When the FSA takes enforcement action and requires firms to write to consumers, we believe it does not ensure that the messages given by firms are clear enough – the very low response rates to letters about mis-selling requires investigation and analysis.	To review the effectiveness of past business reviews and take remedial action where necessary.
Passporting firms into UK	Weak	We have been increasingly concerned that the FSA is not making clear the difference in the level of consumer protection available for UK firms compared to those passported into the UK from other EU states.	To improve consumer communications on using passported firms.
Mortgages – Arrears	Weak	The FSA has been weak in promoting the TCF aspects of mortgage rules, which tell firms to work to avoid repossessions when people go into arrears. Even the latest FSA mortgage campaign does not give consumers help on this.	Promote TCF aspects of mortgage rules to consumers.
Mortgages – Exit fees	Strong	This is an area where the FSA took strong and clear action last year and has followed up to promote compliance. However, there are now concerns that exit fees have been replaced with a different means of charging consumers extra through fees at the beginning of the mortgage.	To investigate mortgage arrangement fees under Treating Customers Fairly.

Subject	Score	Reasons	Our priorities for the FSA next year
Mortgages – Affordability	Weak	The FSA undertook research which found some firms were not complying with the rules on mortgage affordability. We have been concerned that the FSA has not fully investigated the risks.	Follow up with firms on problems identified in the review and take strong enforcement action to deal with non compliance.
Investments – Reattribution of with-profits inherited estates	Acceptable	The FSA had changed the rules to allow for a Policyholder Advocate to be appointed, and in the first major appointment – for the policyholders of Norwich Union – more issues are being uncovered. We have been encouraged that, since taking over as Chief Executive of the FSA, Hector Sants has taken a personal interest in this area and the FSA has seemed to be listening more to policyholder concerns.	The FSA should revisit the rules on with-profits in the light of the first Policyholder Advocate experience
Pressure selling of investments	Strong	The FSA focused on an area of concern in small firms and undertook a specific project which highlighted problems and led to enforcement action.	To continue this exercise, using the results, where applicable, to take enforcement action.
Private Medical Insurance (PMI)	Weak	We disagreed with the FSA that PMI should be in the same simple level of regulation category as car and home insurance under new FSA rules, as we believe it is much more complex, and not always easy to switch provider. The FSA has agreed to review consumer detriment in this area when the new rules are in place.	Investigate potential consumer detriment when new rules are in place.

Subject	Score	Reasons	Our priorities for the FSA next year
<b>Promoting consumer understanding</b>			
FSA communication with consumers	Acceptable	The consumer section of the FSA website continues to improve, although we think the crisis communications need improvement (see communication over Northern Rock above).	Improve scenario planning for crisis communications planning.
Moneymadeclear	Strong	The FSA continues to develop a much more consumer friendly and accessible means of communicating key financial services concepts to consumers through the Moneymadeclear brand.	Maintain the momentum.
<b>Insurance</b>			
Consumer Contact Centre	Strong	The contact centre has been well briefed on key issues and provides an important resource for consumer enquiries.	Continue to support the Consumer Contact Centre.
<b>FSA creating the right regulatory framework</b>			
Disclosure	Acceptable	The FSA undertook comprehensive research on disclosure to establish what works and what does not with a resulting consultation paper published in February 2008. At the same time, European proposals on disclosure information for UCITS products mean that disclosure is an area undergoing changes and where the FSA is taking an active and constructive part.	To continue this active role and to examine disclosure objectives in more depth – eg research on effectiveness of disclosure to advisers and as a means of altering consumer behaviour in the medium to long term.

## Chapter 2: FSA protecting consumers

2.1 It has been a year of high drama for consumers of financial services. The ins and outs of financial services regulation have been thrust on to the front pages of national newspapers with the sub-prime problems in the US, the global credit crunch and Northern Rock creating the first run on a major UK bank in more than one hundred years.

2.2 Against this backdrop, the FSA has also had to carry on with 'business as usual'.

### ***Northern Rock and market instability***

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2.3 We have monitored the developments following the problems with sub-prime in the US and the subsequent crisis at Northern Rock. We were pleased that the FSA set up an immediate internal audit of its supervision arrangements leading up to this crisis, although we felt it should have appointed external auditors to the team to provide a different perspective on the investigation and increase credibility. Nevertheless, having had sight of the audit, we believe the FSA has been forthright in acknowledging its shortcomings.

2.4 We support the findings of the audit that the supervision of Northern Rock, in the period leading up to the 'run' on the bank, was inadequate. We also believe that the crisis raised issues about the FSA's supervisory processes. Northern Rock was supervised as a

retail bank and as the problems it faced in this instance were triggered by problems in the wholesale market, this appears to have presented a knowledge gap to those supervising the bank at the time. As the audit concludes, the failure of Northern Rock represents a failure in the application of the supervisory framework as much as the supervisory team involved with Northern Rock.

2.5 We felt that the FSA's communication with the public during the Northern Rock crisis, in conjunction with the Bank of England and the Treasury, could have been better. It seems the importance of communications that would address consumer concerns was not recognised. We believe that the lack of an effective, timely communications plan had a major impact on the length and severity of the situation. This allowed the FSA's agenda to be hijacked and has adversely affected the reputation of the Tripartite Authorities and that of the City.

2.6 Looking forward, we will also consider wider strategic issues for the FSA from the consumer standpoint. Consumers are not in a position to appreciate the risks in making deposits with different banks and building societies and so will always have to rely on the regulatory system. It has also become apparent that while the FSA says it does not operate a zero-failure regime, it would not be politically possible for some of the UK's larger financial institutions to be allowed to fail. We will be responding to

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1 Financial Stability and Depositor Protection: Strengthening the Framework – HMT, January 2008

the consultation<sup>1</sup> the Government has issued following up on the broad strategic issues raised by the Northern Rock crisis, which is due to close in April 2008.

- 2.7 We note the FSA Board's view from the audit that, 'even if supervision had been carried out at a level acceptable to the FSA, it was by no means the case that that would have changed the outcome.' This seems to suggest that the limits of what regulation can achieve are being tested in the present market conditions and that a bank failure in similar circumstances is possible. In those circumstances an effective and speedy compensation scheme is essential to maintain consumer confidence.
- 2.8 We feel our position on compensation levels has been vindicated by the experience of Northern Rock. The 'run' on the Rock was largely caused by the limited compensation available, and once reassurance on compensation levels was given, panic abated. We have consistently called for compensation levels to be much higher, if there has to be a limit at all, and for any limits to be regularly reviewed to maintain consumer confidence in major financial organisations.
- 2.9 In addition to the arrangements of the scheme itself, we believe the low consumer awareness of the compensation scheme parameters went a long way to contributing to the 'run' on Northern Rock. Providing consumers with the relevant information – displaying it in branches and on savings and bank statements – would have greatly reduced the level of confusion among consumers last September. We will respond to the consultation on compensation arrangements due from the FSA later in 2008.

Panel view on FSA effectiveness Retail banking - prudential	
<b>Very weak</b> – The Northern Rock crisis in the summer of 2007 exposed weaknesses in the prudential regulation of banks, particularly with regard to their liquidity. We are concerned that consumers cannot identify such risks for themselves and have to rely on the regulatory system. The FSA's audit has shown what went wrong from the FSA's point of view, and we will look closely at the results.	To ensure the prudential supervision of retail banking identifies the key potential risks and fully stress tests the system.

Panel view on FSA effectiveness Compensation for consumers	
<b>Weak</b> – The run on Northern Rock in September 2007 was partly caused by the limited compensation available. This is something which the Consumer Panel has highlighted from the inception of the FSA and the Financial Services Compensation Scheme (FSCS). We have consistently called for there to be a much higher, and regularly reviewed limit on compensation – if there has to be a limit at all – to maintain consumer confidence in major financial organisations.	<b>In future</b> , there needs to be enhancement and improvement of the cover provided to consumers by the compensation scheme.

Panel view on FSA effectiveness FSA communications with consumers during Northern Rock crisis	
<b>Very weak</b> – We believe the lack of an effective, timely communications plan to address consumer needs and concerns had a serious impact on consumer confidence and contributed to the depth and severity of the crisis.	<b>In future</b> the FSA should review its planning for crisis communications.

Panel view on FSA effectiveness Retail banking – conduct of business	
<b>Acceptable</b> – Acceptable – We were pleased that the FSA has recognised, and agreed to review, the potential regulatory weakness in leaving the conduct of retail banking business to the voluntary Banking Code, and wish to see action here as soon as possible.	<b>In future</b> , we would like to see thorough scrutiny of the gaps in consumer protection which exist between the Banking Code and the FSA’s principles. Action must also be taken to end the banks’ ultimate veto on what goes in and stays out of the Banking Code.

**Regulation of Retail Banking**

**FSA regulation of retail banking**

- 2.10 We wrote to the FSA in May 2007 to say it should take a more active role in the regulation of retail banking. In the Panel’s view it is no longer enough for the FSA to leave the principles of how banks run personal bank accounts and treat their customers to the voluntary Banking Code. At a very minimum we have told the FSA that we wish to see an end to the current situation which allows the banks the final say on what goes in and is kept out of the Banking Code. After all, banks do not get to decide how fairly they will treat their customers when they sell them an insurance product, a mortgage or an investment, as this is set by FSA regulation. So we question why should they get to dictate how fairly they treat consumers when it comes to current or savings accounts.
- 2.11 We were encouraged that, after an initial rejection of our views by the FSA, John Tiner used his final weeks as Chief Executive of the FSA to express a personal view that the FSA should regulate the conduct of business in retail banking. When Hector Sants took over as Chief Executive, he said he would look at this area. The FSA is currently conducting a review and we look forward to further progress on this.

**Charges on unauthorised overdrafts**

- 2.12 We welcomed the test case brought by the Office of Fair Trading (OFT) on unauthorised overdraft charges to provide clarity for consumers. When this was announced in July 2007, the FSA issued a waiver to allow banks to suspend dealing with complaints about unauthorised overdrafts until the test case had been decided.
- 2.13 Although we understand why the FSA has put the waiver in place, we have always been concerned about how long it will last, especially if the case is subject to appeal. It has had the unfortunate effect of delaying consumers’ access to justice, while allowing the banks to continue taking money from accounts for what may turn out to be illegal charges. We have pointed out that the longer this goes on the more unfair the situation will become. We also told the FSA that we believed it needed to put a plan in place for how it expected the banks to behave towards their customers once the initial Court ruling had been made.

- 2.14 We have highlighted the fact that those in financial hardship are still supposed to be able to have their complaint considered, but financial hardship is being assessed differently by different banks. If the FSA had Conduct of Business principles in place for retail banking, as we have suggested, it would have been able to impose a single definition of 'financial hardship' on the banks which would of course end this anomaly in treatment for customers of different financial institutions.
- 2.15 We have pointed out that if the FSA was already fully regulating retail banking, the issue of bank charges could well have been dealt with much earlier under its principle of Treating Customers Fairly.
- 2.16 We were pleased that the FSA had issued a letter to chief executives of firms providing current-account services, setting out how banks need to improve their handling of complaints about unauthorised overdrafts. However, we said that the wide range of criticisms in the letter, especially in relation to closing the accounts of customers who complain, suggests that some banks are having difficulty making judgements about the fair treatment of customers.

Panel view on FSA effectiveness Unauthorised overdraft charges	
<p><b>Acceptable</b> – We believe that the FSA waiver in respect of complaints handling on unauthorised overdraft charges is harmful to consumers. However we accept that this is necessary while the Office of Fair Trading (OFT) is in the lead and brings the case to court. If the FSA had decided to apply conduct of business rules to retail banking, we believe it would have been able to have brought about a swifter resolution for consumers, as was the case with mortgage exit fees, where the FSA did have the power to act.</p>	<p><b>In future</b>, the FSA should ensure banks are ready to act and communicate with consumers as soon as the court has ruled. To take action to end the anomaly where there are different definitions of what constitutes hardship, so these consumers can all be dealt with immediately.</p>

### *Unclaimed assets scheme*

- 2.17 We have supported the Government's commitment to a proposed scheme, participation in which is voluntary for banks and building societies, to reinvest unclaimed assets in good causes. These assets are monies which have been left untouched in an account for so long as to be regarded as dormant. We have supported this on the basis that there would be sufficient safeguards, should the original deposit holder 'wake up' to the existence of the account. Banks and building societies will be allowed to transfer their liability (and associated assets) to repay these depositors to a new type of firm, a 'reclaim fund'. We are pleased with the intention that the FSA will be responsible for the authorisation and

prudential regulation of such a firm. The FSA intends to publish a consultation paper on how it will manage an appropriate and proportionate regime in the second half of 2008, subject to the progress of the relevant Bill through Parliament.

## ***FSA move to more Principles-Based Regulation***

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2.18 We have continued to support the FSA's move to more principles-based regulation. Provided that the FSA's move ultimately results in the right outcomes for consumers, we will continue to support it. However we have warned that this approach will require rigorous assessment and enforcement, particularly in the area of senior management responsibility. We will continue to watch developments closely in this crucial strategic area for the FSA.

### **The FSA's Principles for Businesses**

1. A firm must conduct its business with integrity.
2. A firm must conduct its business with due skill, care and diligence.
3. A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4. A firm must maintain adequate financial resources.
5. A firm must observe proper standards of market conduct.
6. A firm must pay due regard to the interests of its customers and treat them fairly.
7. A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8. A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9. A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgement.
10. A firm must arrange adequate protection for clients' assets when it is responsible for them.
11. A firm must deal with its regulators in an open co-operative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

## *Treating Customers Fairly*

2.19 Regulation on the basis of the principle of Treating Customers Fairly (TCF) should be fundamental to a fair system for all, and we remain committed to helping this to work. We have taken part in the FSA's TCF consultative group to keep in close touch with developments. We remain deeply disappointed with firms' progress, however. The March 2007 deadline was remarkable only for the number of firms that had still failed to make the necessary progress towards achieving a business model and ethos that embodied the need to deliver fair outcomes for their customers.

2.20 We believe that the FSA has made a big investment in communicating the messages to firms and has set out a clear set of expected outcomes to assist firms in setting up systems to ensure that they comply with TCF. However, when the progress against the outcomes was measured in November 2007, there was still a poor level of performance. We are getting to a stage where the FSA's flexible approach to making sure that firms are taking the necessary action in this area must have a limit. We would like to see decisive action being taken to enforce the TCF principle not only once the 2008 deadline has passed but more importantly before then, when the circumstances demand it.

### **The FSA's TCF outcomes**

Outcome 1: Consumers can be confident they are dealing with firms where the fair treatment of customers is central to the corporate culture.

Outcome 2: Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.

Outcome 3: Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.

Outcome 4: Where consumers receive advice, the advice is suitable and takes account of their circumstances.

Outcome 5: Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect.

Outcome 6: Consumers do not face unreasonable barriers after a sale imposed by firms to change product, switch provider, submit a claim or make a complaint.

2.21 The FSA's principles for business have been in place since 2001. We remain concerned that, even after six years, firms have not been able to incorporate TCF and to demonstrate it in their business outcomes. If this is an indication of firms' response to more principles-based regulation, the FSA may need to re-think its strategy.

Panel view on FSA effectiveness Treating Customers Fairly	
<b>Strong</b> – The FSA has increased the money and energy devoted to communicating the Treating Customers Fairly messages to small firms. The objective is recognised as a core means of fulfilling the FSA's consumer protection objective, and yet firms still need to take action to implement this fully.	<b>In future</b> , the FSA must continue to press firms on TCF. It should also communicate with other bodies such as advice agencies about using TCF when considering firms' treatment of their customers.

### Guidance and codes in principles-based regulation

2.22 The FSA had issued a discussion paper on proposals for confirmation of industry guidance, in the previous financial year. We had responded to this and expressed concern that industry guidance would not be subject to the same rigorous consultation requirements and checks and balances as the FSA's own guidance and rules, particularly regarding consumer consultation.

2.23 So we were pleased that this year the FSA accepted that our concerns needed to be addressed. In the resulting policy statement published in September 2007<sup>2</sup>, the FSA made a commitment to submit to the Consumer Panel all guidance (where confirmation has been

requested) that the FSA considers to have significant consumer impact, and to notify us of other pieces of guidance to give us the opportunity to review them if necessary. We are keen that the FSA encourages guidance providers to produce guidance that is more than simply a legal interpretation of the rules. We understand there is an opportunity for guidance providers to use the input of other consumer bodies but we are pleased the FSA has recommended that guidance providers also make use of our specialist perspective.

### Enforcement

2.24 We have been pleased to see the Enforcement Division increasing its action in the area of boiler room and broker mismanagement – closing down Pacific Continental, fining Square Mile Securities and Wills & Co, and expelling one broker completely for serious misconduct. We were also pleased to see significant enforcement follow-up to the small firms work on pressure selling, with the FSA giving strong messages that this action will not be tolerated.

Panel view on FSA effectiveness Enforcement	
<b>Strong</b> – We believe there has been a sea change in approach to enforcement, and there has been significant enforcement action this year. We continue to press for more, so the industry is in no doubt about the FSA's determination to punish misdemeanours.	<b>In future</b> , there should be a more robust approach and more collaboration in combating financial crime.

<sup>2</sup> Policy Statement 07/16 FSA Confirmation of Industry Guidance – feedback on DP06/5, September 2007

### *The importance of strong enforcement*

- 2.25 However, we continue to be concerned that enforcement seems not always to be regarded as a key component to be used proactively in the regulation of financial services. Rather it is something to be held in reserve as almost a last resort. The FSA has been describing itself as 'not enforcement led', which we have challenged.
- 2.26 We believe that enforcement should be used as a more effective threat, so that firms are seriously concerned that strong enforcement action may be taken against them if they contravene the rules or principles. We have welcomed the FSA's decision to drop the notion that it is not an enforcement-led regulator.
- 2.27 If compliance by firms is particularly poor it can have a damaging effect on consumer interests in general. The results of FSA thematic work and mystery shopping research show consistently low levels of compliance, including in the areas of quality of advice and sales of payment protection insurance. Research on the Key Features/Key Facts documents handed to customers showed only 15% of documentation as compliant and 35% assessed as poor and/or ineffective.
- 2.28 We have been concerned that there often seems to be a significant delay between the FSA's identification of poor market practice and regulatory action to deal with it. It seems that often the FSA's main response to low levels of compliance is to send a public letter to the chief executive officers of firms in that sector. Quite reasonably the FSA has given the sectors of the industry new to FSA regulation time to bring their business into line with regulatory requirements. Yet three years on there are still significant failings in both mortgage and insurance regulation. We do not think it acceptable for the FSA to continue to make allowances for firms that do not meet basic requirements.

### *Land banking and enforcement against financial crime*

- 2.29 The FSA has sometimes seemed slow to take action in developing areas of consumer detriment. An example of this is with land banking, where the FSA took time to react to warnings about the pitfalls for consumers. Concerns were first raised in 2001, but the FSA maintained that land banking did not fall within its regulatory remit. It only acted in 2006 after it reconsidered the definition of a collective investment scheme. As a result of the FSA taking so long to act, we believe that consumers lost millions of pounds. The situation was made worse as more companies jumped on the bandwagon between 2001 and 2006 as they realised that this was an area that was not being policed. The FSA should have proactively pursued some key companies, probably in coordination with other agencies, in what was a developing financial crime area, to protect consumers and prevent these and other businesses from growing.
- 2.30 In the future we expect the FSA to be more effective in its approach from the outset in tackling these kinds of issues and to anticipate the next move by offenders who operate unlawful financial schemes. In this context we were particularly pleased that the FSA adopted such an approach in the case of Universal Management Services. We congratulated the FSA team on this work and hope this strategy will be used more in the future.
- 2.31 We are pleased there is evidence of close working between the FSA's Enforcement and Financial Crime and Intelligence divisions, which should be important in the future in enabling the FSA to send clear messages to criminals that strong enforcement action will be taken.

### *Markets Tribunal and Fox Hayes*

- 2.32 We believe the FSA was right to press the Fox Hayes case all the way to the Financial

Services and Markets Tribunal. Indeed we were very disappointed that the Tribunal did not wholly support the FSA's opinion. It is a worrying development for the move towards more principles-based regulation that the Tribunal appeared to focus on the rules rather than principles in the case.

### *Financial crime & intelligence*

2.33 We are pleased that the FSA's Financial Crime & Intelligence Division, which was set up in January 2007, is now developing a clear strategy to monitor and use intelligence, and fight financial crime. The focus on outcomes provides a useful strategic direction for the Division. We appreciate that much of the Division's work in searching out financial crime, particularly in the wholesale area, will not become public. However the overall structure and emphasis on cooperation with other agencies, such as the police, other regulators and international organisations, seems to have set the Division up well to increase the FSA's effectiveness in this area.

Panel view on FSA effectiveness <b>Financial crime &amp; intelligence</b>	
<b>Acceptable</b> – We welcome the FSA's increase in emphasis on this area, with the setting up of a Financial Crime & Intelligence Division with its own strategic aims and objectives.	<b>In future</b> , the FSA should develop human sources of intelligence, rather than looking just at patterns of activity.

### *Past business reviews*

2.34 During this year, we have had an ongoing correspondence with the FSA about its approach to past business reviews. A past business review may take place when the FSA successfully pursues enforcement proceedings against a firm for non compliance in a retail

area such as mis-selling. There may be more people affected than have complained or been officially noted in the enforcement proceedings. The FSA can then instruct the firm to carry out a past business review, to see if there are other consumers who may have a claim for mis-selling but did not realise it.

2.35 We have been concerned about the poor response rates from consumers contacted in past business reviews, and asked to see some sample letters that had been written by firms. We have pointed out to the FSA that, given the way these letters were drafted, consumers could easily have seen them as 'sales materials' and so ignored them. We have advised the FSA that such letters should state explicitly at the start that the FSA had required the firm to review its past business. It should also say that recipients might have been mis-sold and so may be eligible for compensation. While we appreciate this may result in misguided claims, it seems the only way of making consumers aware of the seriousness of the communication.

2.36 We have also suggested that when final notices are published as a result of enforcement cases, consumer response rates to each past business review should be published to enable effective monitoring of these cases.

Panel view on FSA effectiveness <b>Past business reviews</b>	
<b>Weak</b> – When the FSA takes enforcement action and requires firms to write to consumers, we believe it does not ensure that the messages given by firms are clear enough – the very low response rates to letters about mis-selling requires investigation and analysis.	<b>In future</b> , the FSA should review the effectiveness of past business reviews and take remedial action where necessary.

## Financial Promotions

- 2.37 We are pleased that, as part of the FSA's implementation of more principles-based regulation in financial promotions, it has taken steps to enhance firms' understanding of how to comply with the regulations.
- 2.38 However, the Panel and FSA agreed that three main risks remain: potential consumer detriment caused by relying on unclear and unbalanced promotions; 'contagion' caused an individual firm pushing the boundaries and the breach being copied by other firms; and firms' lack of understanding of the new rules and the FSA's expectations for how they should be interpreted.
- 2.39 We have been concerned that there remains a significant level of non-compliance in the promotions on websites. An FSA review this year found that 25% of websites reviewed fell short of acceptable standards on financial promotions. We conceded that this is an improvement since the last review, and a proportion may have been relatively minor breaches, but nevertheless urged the FSA to work to improve this figure, as it was still too high.
- 2.40 We are pleased that the FSA plans to look more closely at promotions for lifetime mortgages and home reversion plans, which carry potentially high levels of risk. Also, we have asked the FSA to look to see if there are problems for consumers when financial promotions are not tailored to the specific audience, so that less sophisticated readers of one particular newspaper may be faced with a more complicated promotion than they may be reasonably expected to understand.

## Advice for consumers on financial promotions

- 2.41 At the time of publication of our last annual report, we added a footnote to the overall scoring of FSA effectiveness on financial promotions, to say that we were pleased with the recent progress in this area: we had hoped that the FSA was going to follow our advice and develop a system of regularly listing financial promotions which failed to meet the required standard. This is not so much to name and shame, as to help educate consumers and the industry, so they become aware that some adverts do not come up to the mark and understand why these adverts are misleading.
- 2.42 We were disappointed that progress was not after all made in this area over the last year. In fact we understand that the idea of a financial promotions register may not now be pursued. We will continue to press for this valuable idea to be taken up.

### Panel view on FSA effectiveness Financial promotions

**Acceptable** – There has been more proactive and themed monitoring of financial promotions this year. We are still concerned that there is no public record of unsuitable promotions, or a system for the FSA to highlight the worst ads, both to warn consumers and help the industry to police itself.

**In future**, there should be more use of additional tools, and the FSA's transparency project allowing the publication of examples of bad practice and rankings on ads to provide more consumer guidance.

## Passporting within the European Community

- 2.43 We have become increasingly concerned over the past year that consumers are being left unaware of the implications of the growing numbers of firms which are 'passporting' their financial services into the UK from elsewhere in the European Economic Area (EEA). The EEA comprises all the EU countries, plus Norway, Iceland and Liechtenstein – as countries which participate in the internal market while not assuming the full responsibilities of EU membership.
- 2.44 Passporting of certain financial services has been introduced to facilitate a single European market for financial services across the EEA. This means that once a firm has been authorised by its home member state, it may provide the services or perform the activities, for which it has been authorised, throughout the Community. Firms can provide cross-border services or establish a branch in another EEA state through the passporting procedure. All the firm needs to do is to notify its home state regulator of its intention to passport. This notice is then passed on to the other regulators in the countries where the firm wants to do business. The FSA, like the other regulators to whom a notice is sent, does not have the opportunity to 'approve' an incoming EEA firm before the granting of a passport.
- 2.45 The problem for consumers in the UK is that they may end up doing business with a company which is authorised to operate in the UK, but not under the FSA's rules. This may mean lower standards, poorer supervision and particularly different levels of support available for complaints and compensation should the business fail.
- 2.46 Although we appreciate the wider European agenda in creating a single market, we have urged the FSA to do as much as possible to ensure consumers understand that they may be dealing with a company which is not regulated according to the same principles for business as other firms that are regulated in the UK or other member states.
- 2.47 We have therefore written to the FSA, raising our concerns that consumer information on passported firms on the FSA's website, in particular the online Register, is insufficient in three areas:
- it is not clear enough that passported firms trading in the UK are not directly authorised by the FSA but are regulated by a regulator in another EEA country which may not apply the same standards as the FSA.
  - it is not clearly stated that passported EEA firms trading in the UK but not part of the UK Financial Ombudsman Service will be subject to a different complaints resolution system and in some circumstances no alternative dispute resolution service is provided by the home state regulator.
  - it is not clear that some passported EEA firms operating in the UK are not part of the UK Financial Services Compensation Scheme and consumers may get little or no compensation in the event of a company failure.
- 2.48 Although the FSA has recently added an explanatory paragraph about complaints and compensation arrangements to the front page of the Register, we still remain concerned that people are not reminded of these aspects when they look up specific firms. The FSA's Quarterly Consultation Paper which it issued in April 2008 proposes changes to the way that incoming EEA firms disclose the way they are regulated. We look forward to further dialogue with the FSA on this subject in the coming year.

Panel view on FSA effectiveness  
**Passporting firms into UK**

<p><b>Weak</b> – We have been increasingly concerned that the FSA is not making clear the difference in the level of consumer protection available for UK firms compared to those passported into the UK from other EU states.</p>	<p><b>In future</b>, the FSA should improve consumer communications on using passported firms.</p>
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### Mortgages

2.49 The regulation of mortgage sales and advice by the FSA since 2004 has undoubtedly been good for consumers, but there are still areas where firms need to improve their standards, and embrace the principle of treating customers fairly in their operations. This will be all the more crucial as the UK experiences a downturn in the economy in 2008 and so any problems that people may have with their mortgages are likely to become more exposed.

Panel view on FSA effectiveness  
**Regulation of mortgages**

<p><b>Acceptable</b> – It was right that the FSA reviewed its regulation of mortgages since taking over in 2004. However, the review revealed problems that need to be followed up – for instance, consumers are not using the mortgage IDD to distinguish between advice and sales, and the industry is yet to fully incorporate Treating Customers Fairly.</p>	<p><b>In future</b>, strong action should be taken against firms who do not apply the principles and rules correctly.</p>
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### Affordability

2.50 Irresponsible lending by major banks, especially in the US, has been pinpointed as the cause of the present crisis in financial markets. But poor lending has been a feature of the UK market too. We were as disappointed as the FSA in the findings of their Mortgage Quality of Advice review of intermediaries which took place in the Summer of 2007. The FSA found that too many firms were failing to meet the standards required, particularly in relation to assessment of affordability. We encouraged the FSA to give strong messages to the industry about the unacceptability of these results, both in its generic communications and in taking strong enforcement action against the leading offenders.

2.51 We were particularly concerned about these results as the economic downturn will mean increasing numbers of people finding their mortgages more difficult to afford. One of the priority risks identified in the FSA's Financial Risk Outlook for 2008<sup>3</sup> was that a significant minority of consumers could experience financial problems because of their high levels of borrowing. This problem will be exaggerated if there are large numbers of people who have not had the affordability of their mortgage properly assessed. It is now clear that responsible lending is not just important for individual consumers but to prevent a more widespread breakdown in the financial markets.

3 FSA Financial Risk Outlook 2008 – January 2008

Panel view on FSA effectiveness Mortgage affordability	
<b>Weak</b> – The FSA undertook research which found some firms were not complying with the rules on mortgage affordability. We have been concerned that the FSA has not fully investigated the risks.	<b>In future</b> , the FSA should follow up with firms on problems identified in the review and take strong enforcement action to deal with non compliance..

### Arrears

- 2.52 We have expressed to the FSA our concern that more should be done to promote the proper application of the FSA's rules when dealing with arrears. It seems that lawyers, consumer advisers and householders are largely unaware of the rules the FSA says must be followed before proceedings can start.
- 2.53 As this is the first time during an economic downturn that the FSA's rules for mortgages have been in place, there is more of a need for the FSA to point out that its rules say lenders must 'treat customers fairly' and in particular: make reasonable efforts to reach an agreement on repaying any arrears; adopt a reasonable approach to the timescale; not put excessive pressure on the customer; and repossess the property only where all other attempts to resolve the position have failed.
- 2.54 We have encouraged the FSA to provide information to lawyers and in particular the District Judges who will be hearing the repossession cases, to ensure that the rights of homeowners and the responsibilities of lenders are considered and supported in court.
- 2.55 We have also highlighted our understanding that in circumstances where a mortgage was mis-sold, the court can decide to stay

possession proceedings while the Financial Ombudsman Service decides on the case, which could be beneficial to borrowers in difficulties.

Panel view on FSA effectiveness Mortgage arrears	
<b>Weak</b> – The FSA has been weak in promoting the TCF aspects of mortgage rules, which tell firms to work to avoid repossessions when people go into arrears. Even the latest FSA mortgage campaign does not give consumers help on this.	<b>In future</b> , the FSA should promote TCF aspects of mortgage rules to consumers.

### Sub-prime mortgages

- 2.56 We have for some time advised the FSA that we were concerned about poor practice in the UK sub-prime sector and we therefore fully supported the FSA research into small firms selling sub-prime mortgages in 2007. This work started before events in the sub-prime market in the US were widely reported. The research showed poor levels of compliance, and we encouraged the FSA to make clear that action will be taken against the firms which do not comply. There were several issues which gave rise to concerns, including packaging up early repayment charges with other unsecured debt and other products, and increasing the amounts of loan required on remortgaging.
- 2.57 We were pleased that the FSA agreed that firms have had enough time to implement the requirements of its mortgage regime and so it will now take action rather than simply telling firms about the failings. We pointed out that, with a low number of small firm enforcement cases, there does not seem to be enough of a financial penalty involved where firms get things wrong.

2.58 We have also been concerned about the social impact in this market, with some of the most vulnerable consumers being targeted by some of the 'worst' intermediaries. This means that if the situation worsens there is likely to be a more significant impact on this sector first. The difficulty for the FSA is that many customers are happy that they have in fact got what they wanted – ie the ability to buy a home. However, repossession cases in this market will continue to be disproportionate to those in the prime market.

2.59 We were pleased that the FSA has announced a reinvigoration of its supervision of small firms at the beginning of 2008. This will incorporate mortgage intermediaries, where we were becoming increasingly concerned about the protection of consumers. We look forward to seeing improved supervision results during 2008.

### *Mortgage exit administration fees*

2.60 We were pleased that the FSA followed up on its strong action to control the increase in mortgage exit administration fees during the length of the mortgage, and ensure that firms commit to maintain the same level of exit fee for the life of any mortgage.

2.61 However, we have become more concerned that mortgage providers are replacing the previous exit fees with higher and higher initial administration fees when mortgages are set up. We have asked the FSA to investigate this. The FSA points out that it is not an economic regulator but we believe that unnecessarily high administration fee levels could be tackled under the principle of Treating Customers Fairly.

Panel view on FSA effectiveness Mortgage exit fees	
<b>Strong</b> – This is an area where the FSA took strong and clear action last year and has followed up to promote compliance. However, there are now concerns that exit fees have been replaced with a different means of charging consumers extra through fees at the beginning of the mortgage.	<b>In future</b> , the FSA should investigate mortgage arrangement fees under Treating Customers Fairly.

### *Information for consumers*

2.62 We approved of the FSA's consumer-facing research aimed at establishing whether the mortgage regulation requirements are delivering the intended consumer outcomes. A key finding was that the Key Facts Illustration (KFI) was being used by consumers as a post sale record and not, as intended, to shop around. It seems that consumers across the sub-prime and lifetime mortgage markets in particular do not consider the distinction between advice and information to be important. We urge the FSA to continue to carry out such research but to use the findings to inform and evaluate current policy objectives.

2.63 We urged the FSA not to drop the disclosure requirements on the basis of this research: we argued that the present disclosure regime had not been given long enough to be accepted and incorporated into consumers' buying behaviour. Also the implications of the difference between advice and information should be highlighted on the KFI – ie that it was only if consumers had received advice as opposed to information that they would be eligible to complain and gain compensation if something went wrong.

## Investments

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### With-profits funds

- 2.64 The operation of with-profits funds continues to be a major issue to a very large number of consumers who see poor returns for their investment alongside substantial returns to the company's shareholders. We published research on whether customers in closed life funds were treated fairly in September 2007<sup>4</sup>. This found that around 8 million people cannot get essential advice about whether they should keep or transfer out of their with-profits policies because they cannot afford to pay for fee-based advice, while commission-based advisers are reluctant to take them on for fear of future action by the FSA.
- 2.65 We asked the FSA and the industry to consider this and the other key findings from the research. We found consumers are disadvantaged by delays when they request information, incomprehensible documents and the lack of a truly independent voice to represent policyholders' interests in the management of funds. In addition, communications from with-profits companies often fail to set out options for policyholders clearly. There may be exit 'penalties'<sup>5</sup> and even when 'penalty-free' exit dates are available, companies often fail to communicate these effectively to policyholders. The FSA did highlight the need for firms to provide clear information about MVR and MVR-free dates in its Insurance Sector Briefing in May 2007, and we look forward to hearing the FSA's assessment of how things have changed as a result of that.
- 2.66 There is a particular concern that proprietary companies<sup>6</sup> running closed with-profit funds may not always act in the best interests of their policyholders. Since 2004 the FSA requires an independent voice to represent policyholders, such as a with-profits committee. However, our research showed that 60% of these committees have no independent members but use directors of the main board of the company or individuals closely associated with the company, for example non-executive directors and former directors. We said we would like to see these committees with a majority of members entirely independent of the board. This is particularly important as the research also caused us to question whether the with-profits fund is always being used in the best interests of policyholders.
- 2.67 We called on the FSA and industry to work together to provide some form of limited or focused advice on with-profits policies and advised that communications from companies should include all material facts written clearly so policyholders can understand and act on the information. We also suggested that a truly independent with-profits committee would be the right mechanism for proprietary companies to achieve fair representation of policyholders' interests. Those committees should encompass the whole of treating customers fairly principles for policy-holders and not just rely on the Principles and Practices of Financial Management (PPFM) document, which is written by the management of the company. We said the FSA should consider requiring companies to provide a simplified financial statement that sets out how it has used policyholder capital over the past year.

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4 'Are customers in closed life funds being treated fairly?' Report for the FSCP, prepared by The Pensions Institute, Cass Business School and IFF Research Ltd

5 The 'market value reduction' (MVR) reduces the 'face' value of the policy to the value of the 'asset share' where this is lower.

6 Companies with shareholders, as opposed to mutuals which are owned by members.

2.68 We acknowledge that the FSA has undertaken more work on with-profits over the past couple of years – particularly on the information that must be given to policyholders. It reviewed the quality of post-sale communications in the life sector and availability of ongoing advice to with-profits policyholders and has linked this to the Treating Customers Fairly outcomes.

2.69 The FSA also published a letter to chief executives of insurers that provide with-profits funds at the end of September 2007 on governance which we welcomed. However, we also said it could have gone further. The FSA's letter highlighted the need for firms to consider the principles of good regulation in relation to governance arrangements and the run off plans for closed funds, but we challenged the FSA's interpretation of the rules on independent representation of policyholders' interests as not being strong enough. We look forward to hearing more from the FSA in the coming year on the way firms publicise Open Market Options (OMOs) following thematic work by the FSA which is due to be published at the beginning of the financial year.

2.70 We continue to believe, however, that policyholders' understanding of their with-profits funds needs to improve and that they should receive fair treatment and good access to their funds. We will be watching closely to see how the FSA's various initiatives help deliver beneficial outcomes for consumers over the next year.

Panel view on FSA effectiveness With profits	
<b>Weak</b> – While we acknowledge that the FSA has taken significant steps to address some of the issues, we continue to believe that the FSA could do more to improve the governance and help consumers get access to helpful advice.	<b>In future</b> , we would like to see meaningful outcomes from TCF initiatives, OMO review, and focus on governance.

### *Reattribution of inherited estates*

2.71 The work of the first Policyholder Advocate – appointed to represent the interests of Norwich Union policyholders – has highlighted broader issues for the reattribution of inherited estates which the Panel has urged the FSA to consider fully. We were pleased that in response to the issues raised, the FSA has committed to consult in 2008 on whether mis-selling costs should be paid from a fund. We have expressed the strong view that the shareholders, not policyholders, should fund any mis-selling costs. We also agreed with the Policyholder Advocate questioning the basis of the calculation of how much may be due to policyholders and challenging some of the expenses – such as new business and shareholder tax – charged to the fund, although we are pleased that the FSA proposes greater scrutiny of these deductions.

2.72 We were pleased that the FSA acknowledged that there was a risk that a firm could set a high risk appetite requiring high capital reserves and then after the reattribution adopt a low risk appetite and pass the excess capital to shareholders, thus circumventing the reattribution. The FSA has said it expects firms to limit post reattribution distribution to shareholders to what would apply had

there been a continuation of the level of risk appetite that formed part of the reattribution proposals put to the Policyholder Advocate and the FSA<sup>7</sup>. This should allow the firm to amend its risk appetite in response to changing market conditions but not allow them to use it to disadvantage policyholders' interests.

- 2.73 We have welcomed an inquiry by the Treasury Select Committee due for the Spring of 2008 into the reattribution of inherited estates of with-profits funds as a result of the issues raised by the Norwich Union Policyholder Advocate, Clare Spottiswoode. Further debate on this issue is important as it will affect millions of policyholders, with large sums at stake. These are intrinsically complex products and the decisions taken with Norwich Union will influence the reattributions of other funds.

**Panel view on FSA effectiveness  
Reattribution of with-profits  
inherited estates**

<p><b>Acceptable</b> – The FSA had changed the rules to allow for a Policyholder Advocate to be appointed, and in the first major appointment – for the policyholders of Norwich Union – more issues are being uncovered. We have been encouraged that, since taking over as Chief Executive of the FSA, Hector Sants has taken a personal interest in this area and the FSA has seemed to be listening more to policyholder concerns.</p>	<p><b>In future</b>, the FSA should revisit the rules on with-profits in the light of the first Policyholder Advocate experience.</p>
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**Funds of Alternative Investment Funds**

- 2.74 We broadly supported proposals from the FSA which recognised developments in the investment market whereby an increasing number of retail investors are keen to take advantage of these new investment vehicles. However, we wanted the FSA to set parameters for the appropriate targeting of consumers by firms, given the nature of the funds.
- 2.75 We were also concerned about the availability of post sales advice for consumers, particularly from advisers who receive ongoing trail commission, as those advisers should have a continuing obligation to review regularly the suitability of these products for their clients. Also the Panel asked the FSA to monitor closely the sales of these products in the first 12 months and to react swiftly to any indications of mis-selling. We were worried that with higher risk products, consumers may focus on the potential rewards available without taking full account of the risks. We await feedback with interest.

**Investment Entities Listing Review**

- 2.76 We had criticised the FSA last year for its proposals to make changes to the way that investment companies could be listed which we felt would undermine consumer protection. We were pleased that the FSA decided to re-consult on the basis of a single listing regime for UK and overseas investment companies under the more stringent Chapter 15 requirements, and to prohibit their listing under the European minimum directive requirements of Chapter 14.

7 Public letter from the FSA to Clare Spottiswoode, Policyholder Advocate; and Mark Hodges, Chief Executive, Norwich Union Life; dated 6 December 2007.

2.77 We said that the FSA should not take away the detailed requirements to demonstrate sufficient experience on the part of investment managers as it is an important consumer protection, and we supported moves to allow more than one manager representative on the board of a listed closed-ended investment fund provided that the majority of the board, including the chairman, were independent. We also suggested higher levels of disclosure for investors, and particularly said there should be a requirement for disclosure of positions of 10% or more of the portfolio, as a 20% threshold would be too high.

## Insurance

### PPI – Payment Protection Insurance

2.78 Although the FSA has made strong statements to warn the industry about mis-selling of PPI, research published by the FSA in September 2007 showed that, while some progress had been made, there were a number of firms who were still failing to treat their customers fairly when selling this product. We said that this was not good enough – the industry has been warned about problems in the sale of PPI before, following previous FSA investigations. But some parts of the industry seem to continue to see PPI as an easy sale with big commissions producing substantial profits which outweigh the regulatory risks.

2.79 We welcomed the FSA’s message that it would take enforcement action, using mystery shopping results as well as other evidence, and seek to increase the size of fines. Since then we have seen some more significant fines, but would still expect to see major enforcement action in this area in 2008.

2.80 We have also asked the FSA to do more about past business reviews in this area. It seems that the FSA is concentrating on encouraging firms to make improvements for the future.

However, the FSA must also ensure that after enforcement action, firms are following up properly with consumers who may not have realised that they were mis-sold, and offering them the opportunity to remedy the situation.

Panel view on FSA effectiveness	
PPI	
<b>Strong</b> – The FSA has been good at pursuing this issue through to enforcement, and we are pleased that it has not waited for the outcome of the Competition Commission enquiry.	<b>In future</b> , the FSA should press for better communication with consumers who have been mis-sold, so they can claim their money back, and continue to pursue other firms who have been mis-selling PPI.

### Private Medical Insurance

2.81 Under the FSA’s new Insurance Conduct of Business Sourcebook, private medical insurance (PMI) will be in the same category as car and household insurance which are considered straightforward and easy for customers to understand. We disagreed with the FSA’s allocation of PMI to this category, as it can be much more complex, containing unfamiliar medical terms and concepts. In addition our own informal survey of PMI providers showed it is not always as easy to switch products as it is with other annually renewable policies. Consumers may, for example, face barriers to switching where a medical condition has arisen during the period of cover. We told the FSA that PMI products should be subject to the more detailed requirements about product disclosure and suitability, which other more complex insurance products such as PPI will still require, to give consumers a greater degree of protection.

2.82 We said that this is an area of potential consumer detriment – in the move to more principles-based regulation, the FSA must still maintain similar levels of consumer protection and keep rules where necessary. The FSA has agreed to look in particular at PMI in its post-implementation review to see whether this is the case.

Panel view on FSA effectiveness Private Medical Insurance (PMI)	
<b>Weak</b> – We disagreed with the FSA that PMI should be in the same simple level of regulation category as car and home insurance under new FSA rules, as we believe it is much more complex, and not always easy to switch provider. The FSA has agreed to review consumer detriment in this area when the new rules are in place.	The FSA should investigate potential consumer detriment when new rules are in place.

### *Insurance Conduct of Business review*

2.83 We also made comments about other aspects of the changes to the insurance conduct of business sourcebook. The FSA wants to remove rules and move towards more principles-based regulation<sup>8</sup>.

2.84 We were concerned that the FSA planned to remove the rules on disclosing inducements or commission on insurance. This was because the FSA had undertaken research which showed that consumers do not use information on commission in their buying decisions at the moment. However we felt this did not join up with the FSA's other work on financial capability which aims to

encourage consumers to use such information more in the future. We were pleased that as a result of the consultation<sup>9</sup>, the FSA no longer proposed to remove fee disclosure for 'other' products (such as motor and home insurance), so it would retain the rule for all sales.

2.85 We also raised concerns about excessive charges, but were assured by the FSA that the excessive charges would be in contravention of the standards expected of firms in Principle 6. We were pleased also that the FSA responded to our concerns and added new provisions in line with Principle 6 where firms should take reasonable steps to ensure a customer only buys a policy under which they are able to claim benefits.

2.86 We urged the FSA to ensure that firms had a responsibility to help consumers to understand what it is they need to disclose during the purchase process, and what is a material fact. The FSA has introduced guidance on material facts which suggests explaining the consequences of non-disclosure, or ensuring that the customer is asked clear questions about any matter that is material to the insurer. These measures should help to ensure correct levels of disclosure by consumers.

2.87 We encouraged the FSA to evaluate effectively the impact of the more principles-based policy once implemented, particularly to assess potential levels of consumer detriment. There was a possibility that some firms may use any ambiguity in the principles which could result in consumer detriment.

2.88 We particularly asked the FSA to look to see if issues arise over non-disclosure and ascertain if consumers are getting what they expected based on their disclosure documents. The consumer experience – expectations over claims etc – can have a

8 Consultation Paper 07/11 – Insurance selling and administration. Proposed amendments to the Insurance: Conduct of Business sourcebook. FSA June 2007.

9 Policy Statement 07/24 – Insurance selling and administration; Feedback on CP07/11 and final rules. FSA December 2007.

significant impact on operating costs. We look forward to seeing the results of the review that the FSA plans to undertake after these changes are implemented.

### *Travel insurance*

- 2.89 We have always maintained that bundled travel insurance – ie travel insurance sold by travel agents at the same time as a holiday – should be regulated by the FSA along with all other travel insurance. We were therefore delighted that the Government recognised this gap and has now given the FSA powers to regulate this area.
- 2.90 We have responded to the consultation issued by the FSA on the details of how they will regulate bundled travel insurance. We have asked the FSA to ensure that there are clear rules on eligibility, so customers do not sign up to insurance which they would not be able to use. Also, we have raised concerns about the boundaries, as the FSA must ensure that schools and charities organising trips are not caught up in the regulations.

### *SIPPS & Permitted Links for long term Insurance*

- 2.91 We broadly supported the proposals on changes to the rules on permitted links for unit-linked insurance and the rules for collective investment schemes. These had not been reviewed since the 1990s and did not reflect the subsequent changes in the market or in parallel regulatory arrangements for collective investment schemes, and also were causing market distortion. We saw that the changes reflected different market conditions whilst maintaining an appropriate level of consumer protection.

### *Equitable Life*

- 2.92 We continue to follow the debate on the regulatory issues coming out of the collapse of Equitable Life. We looked in detail at the findings of the European Parliament about Equitable Life, adopted in June 2007. We

thought that the report raised broader issues of consumer rights across Europe and the handling of consumer complaints about financial services in different member states, which we continue to follow up in our responses on the development of a European Market in financial services.

- 2.93 When the UK Parliamentary Ombudsman's report on Equitable Life is published we will look to see if that has further lessons to be learned on how the regulatory system can better protect consumers.

## *The FSA's wider powers*

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### *Unfair Contract Terms*

- 2.94 We believe that the FSA has very useful powers on behalf of consumers to challenge firms that use unfair terms in their standardised customer contracts, and if they think it is unfair can ask the firm to stop using it and to change it. Standardised customer contracts are those that haven't been individually negotiated between the firm and the customer. An example of good FSA work in this area was its work on mortgage exit administration fees. We are pleased that these powers will be similar in the transfer from work under the Unfair Terms in Consumer Contracts Regulations to the regulations implementing the Unfair Commercial Practices Directive.
- 2.95 We have raised concerns about consumers being properly signposted either the OFT (Office of Fair Trading) or the FSA when they have a complaint. This is also linked to concerns that much of the current FSA communication to consumers about unfair contracts is based on the FSA website and through Moneymadeclar materials, which may not reach the most vulnerable consumers. However we have been reassured by the FSA that it promotes the material through agencies such as Citizens Advice, and its work in this area is promoted as part of the National Strategy for Financial Capability which targets vulnerable consumers.

## Chapter 3: FSA promoting consumer understanding

3.1 We have welcomed the FSA taking an increasing role in financial capability over this year. There have been a number of positive developments in the promotion of consumer understanding from the FSA. The Government-backed Thoresen Review has also reached its conclusion with some significant implications for consumers, most of which hinge on the development of a national money guidance service in the UK.

### *Financial capability*

- 3.2 The FSA has crystallised its commitment to financial capability this year in the appointment of a first Director of Financial Capability – Chris Pond – and the consequent formation of a Directorate of people devoted to working on financial capability. We believe this shows further commitment and focus on financial capability ensuring that there is someone to champion financial capability at the highest levels in the FSA and helping to fulfil the FSA's objective of increasing consumer understanding.
- 3.3 We have supported the national strategy for financial capability, led by the FSA, which has a vision of better informed, educated and more confident citizens, able to take greater responsibility for their financial affairs and play a more active role in the market for financial services. The focus on nine areas of activity – in schools; further education; higher education; those 'not in education or employment' (NEET); new parents; workplace; online tools; the partnership development work; and the FSA's own consumer communications – has stimulated progress in all of these this year.
- 3.4 We advised the FSA that this strategy omitted the important group of elderly people and those approaching or in retirement. We were pleased that this year the FSA has sought to address this area and taken positive steps, including an advertising and PR campaign targeted at this group of people, and projects such as work with Age Concern Gateshead. The FSA will need to build on this work in the coming year.
- 3.5 The FSA has also set clear financial capability targets in its business plan – with an overall target of reaching 10 million consumers by 2011. We were pleased to note that in the FSA's 2008/9 Business Plan, the FSA intends to reach a further 3 million in addition to the 3 million already achieved. This is an ambitious but worthwhile target on which we will follow progress.
- 3.6 The FSA's overall planned expenditure and commitment to financial capability is substantial and to be applauded. We urge the FSA to ensure that these resources continue to be used effectively and that the FSA has the capacity to achieve its goals in the delivery of the National Strategy.

Panel view on FSA effectiveness  
**Financial capability**

<p><b>Very strong</b> – The FSA has appointed a Director of Financial Capability and is developing a welcome new strategic approach. We were also very pleased with the FSA's positive approach to the Thoresen Money Guidance proposals.</p>	<p>The FSA should maintain momentum for next year.</p>
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### Money Guidance

- 3.7 The need for some kind of money advice service for consumers has been a concern of the Consumer Panel for many years. We have therefore been extremely interested in the progress of the Thoresen Review of Generic Financial Advice, instigated by the Government at the beginning of 2007, with the aim of ensuring greater access to high quality affordable financial advice for those most vulnerable to the consequences of poor financial decision-making.
- 3.8 We had several meetings with Otto Thoresen during the course of his review, and made formal responses as part of the process. We particularly emphasised the need for clear branding of generic advice, with a body to set and police appropriate standards. We were also keen to ensure that the boundary between generic and regulated advice was arranged so that a person could move readily from personalised generic advice to the purchase of suitable products.
- 3.9 We welcomed the final report of the Thoresen Review, which was published in March 2008. Its key findings were that a national Money Guidance service should be governed by the principles of impartiality, supportiveness, crisis prevention and universality. It should be sales-free, and give information and guidance

on budgeting, saving and borrowing, protection, retirement planning, tax and welfare benefits, and jargon busting. It suggests the service should stop short of recommending specific products. It should be delivered through a partnership model, with a central body to direct the strategy, set standards and deliver some services, and be UK-wide and delivered using a multi-channel approach – telephone, face-to-face and web-based service. The report said that the FSA should take forward the national Money Guidance service project, with the costs equally split between the Government and the financial services industry. There should be a large scale pathfinder project for the recommendations about the service to be thoroughly developed and road-tested over the next two years.

- 3.10 We were pleased that the Thoresen report concurred with what the Consumer Panel has been arguing for some time – that the benefits of the new service to society and the financial services industry outweighed the costs. We believe that the more the industry and government are prepared to put in, the greater the returns will be. Many millions of people could be helped by such a service, as all too often they are reluctant to engage with the industry because they don't understand it and don't trust it. We have said that an impartial guidance service will provide people with a trusted gateway back into financial services.
- 3.11 The suggestion of the FSA to coordinate the Money Guidance pathfinder, and the agreement of the FSA to undertake such a project is good news for consumers. We have felt that there needed to be an organisation distinct from the financial services industry to emphasise the independence of the service, and the FSA is clearly well placed to do this.
- 3.12 During the coming year, we will look to the FSA also to ensure that the development of the Money Guidance pathfinder is linked to the FSA's work on the Retail Distribution Review.

There is clearly an important link here, which will not be easy but is crucial to get right – consumers must be clear on the distinction between money guidance and regulated financial advice, and the development of RDR is being built on money guidance, and so the foundations must be strong.

**FSA communication with consumers**

- 3.13 We have supported the continued development of the FSA’s Moneymadeclear brand this year, as it provides clear and straightforward information for consumers to help them to understand different aspects of financial services and make decisions based on knowledge of the facts.
- 3.14 The expansion of the Moneymadeclear website information to incorporate pensions and retirement options has been a welcome development, and the FSA’s complementary advertising campaigns particularly to promote information on insurance and pensions this year, have helped to expand interest in the FSA’s provision of information for consumers.
- 3.15 We were also pleased to see a radical approach being taken to the review of the FSA’s printed materials in the form of information booklets. Here, the FSA has built on the Moneymadeclear brand, and made the design much more straight talking, with significant consumer research to review design proposals and to produce a more effective set of information booklets.
- 3.16 We continue to have concerns about the FSA’s communication on individual firm activities, as we believe that it must consider doing more to warn consumers about firms which are not operating up to FSA standards. The FSA should make greater efforts to ensure consumers are warned not to rely on these firms in the same way as others which are adhering to the rules. We hope that this will be an area for further discussion during 2008, as the FSA is due to publish its discussion paper on Regulatory

Transparency in April 2008.

- 3.17 We have already mentioned in Chapter 2, in relation to Northern Rock, our concern about the FSA’s level of strategic planning for crisis communications. This should be considered on a broader level than just in relation to Northern Rock, and is something we shall be taking up with the FSA in the coming year.

Panel view on FSA effectiveness <b>FSA communication with consumers</b>	
<b>Acceptable</b> – The consumer section of the FSA website continues to improve, although we think the crisis communications need improvement (see communication over Northern Rock above).	<b>In future</b> , the FSA should improve scenario planning for crisis communications planning.

Panel view on FSA effectiveness <b>Moneymadeclear</b>	
<b>Strong</b> – The FSA continues to develop a much more consumer friendly and accessible means of communicating key financial services concepts to consumers through the Moneymadeclear brand.	The FSA should maintain the momentum.

Panel view on FSA effectiveness <b>Consumer Contact Centre</b>	
<b>Strong</b> – The contact centre has been well briefed on key issues and provides an important resource for consumer enquiries.	<b>In future</b> , the FSA should continue to support the Consumer Contact Centre.

# Chapter 4: FSA developing the right regulatory framework

4.1 The development of the right regulatory framework is crucial as the FSA moves towards more principles-based regulation. We work to advise the FSA on all aspects of its policy development which are likely to have a significant effect on the consumers of financial services.

## *The FSA's approach to regulation*

### *Risk-based regulation*

- 4.2 We continue to support both the FSA's overall approach to regulation and, with some exceptions, the way in which it aims to achieve its objectives. We agree that it is right to assess compliance on the evidence of outcomes rather than processes, although there is a real need for such an approach to be rigorously enforced and for senior management to be held accountable.
- 4.3 While we have no objection to the FSA's risk-based approach in itself, unsurprisingly we do not always agree with the FSA's assessment of a particular risk and there are areas of the regulator's work where we believe analysis to be too inflexible, or where insufficient account is taken of consumer interests. We will continue to raise these with the FSA executive and Board wherever necessary.
- 4.4 We have pointed out to the FSA that there are some areas where compliance by firms is particularly poor and that this can have a damaging effect on consumer interests. This

can easily be developed into a picture of industry having little regard for regulatory requirements, whether principles or rules, and conducting business in any way it wishes. This would be bad for consumers, bad for industry and bad for the FSA and it must change if the new more principles-based approach is to work.

### *Assessing the benefits of regulation*

- 4.5 We continue to be concerned that the FSA tends to take a narrow quantitative approach when assessing the benefits of regulation. Whilst we appreciate that benefits are difficult to measure, it is crucial that the FSA keeps working at this area as it has such a potential impact on the level of regulatory protection for consumers.
- 4.6 We raised concerns when the FSA undertook research on the uses of the price menu and IDD (Initial Disclosure Document). The FSA seemed to have measured only selected benefits of regulation and only those directly measurable in economic terms. They then used those results as the reason for dropping some key consumer protections, in the form of the price menu and IDD.
- 4.7 In addition we raised concerns about some FSA commissioned research on Reduction in Yield and Effects of Charges, as it did not attempt to forecast the effect of publicising this information on changing how people buy over time. The report estimated that only 10-

19% of consumers currently believe that charges are important and shop around on that basis, but the figure is perhaps not surprising as many consumers do not currently understand the impact of charges on investment yields. However, this information is precisely aimed to help consumers understand this very issue, so it should increase the number of consumers believing charges are important, and therefore shopping around on these criteria. We have told the FSA that the educational effect of providing this type of information should not be ignored, since it was one of the principal arguments for producing this type of information in the first place.

### *Reviewing firms' overall conduct of business*

4.8 During 2006 the FSA issued several consultation papers<sup>10</sup> on rule changes proposed both to help in the move to more principles-based regulation and to ensure that the UK system complied with the requirements of MiFID (Markets in Financial Instruments Directive). The debate continued into 2007, and the FSA then implemented changes to its Conduct of Business Sourcebook.

4.9 We welcomed the fact that the FSA successfully harmonised wherever possible, the regulatory regimes that apply to different financial services products. This has meant that the FSA applied MiFID requirements to non-MiFID business where appropriate to ensure consistency and standardisation in key areas. We feel this is important for consumers who do not generally distinguish between different regulatory regimes when considering investment options and who should be confident that the assumptions they make are transferable across markets.

4.10 Although we have supported the general need for uniformity at the interface between consumers and firms, there are occasions where the FSA's regulatory regime has provided consumers with better protection and so we have argued for those requirements to remain in place. For instance, we did not support the removal of detailed rules for dealing with breaches in financial promotions rules, as we were sceptical of the effectiveness of a principles-based regime in relation to financial promotions.

4.11 We also registered our concern about the MiFID requirements for projections which clearly give scope for firms to produce 'bespoke' projections and which could make it more difficult for consumers to compare products. There is a potential for projections – or the way in which they are presented – to mislead. We have encouraged the FSA to ensure that they carry out their commitment to monitor the behaviour of firms in this area as soon as the changes are in place, and to react swiftly and effectively to areas of detriment or likely detriment.

4.12 Overall, we have said that the importance of the FSA undertaking a post-implementation review in this area cannot be over emphasised. The sheer scale of the changes being made and their potential impact on consumers is significant. We would like to see early publication of the terms of the post-implementation review, including a comprehensive set of measures, objectives and timescale for completion. We have identified certain areas – such as the presentation of past performance, and the removal of the 'exclusion of liability' rules – where the review is particularly important and where we believe additional research might be justified. In addition we urged the FSA to take steps to identify and remedy any areas of

10 FSA Consultation Paper 06/19 – Reforming Conduct of Business Regulation October 2006; FSA Consultation Paper 06/20 – Financial promotion and other communications including draft Handbook text for NEWCOB 4 and 5

significant consumer detriment that emerge at an early stage, if necessary without waiting for the completion of the post implementation review. There is a real need for transparency here. Early publication of industry 'successes' and 'failures' under the new regime will help consumers and firms alike, at a time when there is almost bound to be a great deal of uncertainty and confusion.

## Setting the framework for advice

### **Retail Distribution Review**

- 4.13 In the last two annual reports, we have said that if there was one change in the financial services market place that could make a real difference to consumers, it would be to review the system whereby advisers are paid by commission. We have also pointed out that developing a new system of providing financial advice that addresses consumer need could be the most significant development in financial services regulation since the FSA was created. Each year thousands of consumers fall prey to a system of financial advice that has been responsible for the endowment scandal, pensions mis-selling and split caps. That is why we have said that the FSA's Retail Distribution Review is so important to consumers.
- 4.14 We did, therefore, applaud the FSA for undertaking the Retail Distribution Review aimed at looking at the whole way in which consumers take out investment products. However, we said that the model proposed in the original discussion paper<sup>11</sup> was over complicated and potentially confusing to consumers. We pointed out that a consumer focused model is needed which is intuitive and simple, and we outlined our simpler model, where there would be just three categories of people able to discuss financial products with consumers. They would be divided very clearly between those able to provide impartial advice and those who sell.

- 4.15 Our preferred model set out a simple three-tier marketplace of generic financial advisers, independent financial advisers and sales staff who would be described as such. We also said that 'Independent' must mean advice is fee only and based on a whole-of-market service. We agreed that Customer Agreed Remuneration (CAR) could provide a viable alternative to fees paid up front, although we had concerns about consumers' willingness to negotiate fees. We also queried the links which would remain between provider and distributor under CAR and would like to see a remuneration system which is free of provider, product and sales bias.
- 4.16 We pointed out that generic advisers would be important, both to recommend product types upon which independent financial advisers (IFAs) could give focused advice; and to issue portable fact finds, to be used by IFAs or sales staff. We therefore felt that primary advice, as defined in the FSA's discussion paper, would not be appropriate as there was a real risk of lower standards leading to mis-selling. We suggested that the system of professional financial qualifications should be simplified so that consumers can understand what their adviser is qualified to do, and that qualification standards should be increased over time. We also said we would like to see any changes brought about by the Retail Distribution Review, mirrored in the mortgage and insurance markets so that consumers would be able to access a similar advice system regardless of the financial product they were buying.
- 4.17 We have urged the FSA to make radical changes in this area to obtain a system that makes sense to consumers as well as to the industry. We look forward to further developments over the next year.

11 FSA Discussion Paper 07/1 – A Review of Retail Distribution, June 2007

Panel view on FSA effectiveness  
Retail Distribution Review

<p><b>Strong</b> – The FSA is tackling the difficult area of financial advice and how it is paid for, which is crucial for consumers. The initial proposals in the FSA discussion paper were overly complicated, but the FSA has actively listened to consultation feedback and we are encouraged by its latest thinking.</p>	<p>The FSA should ensure a customer-driven rather than industry-led approach to the market. To promote a market which is intuitive and simple to understand and where consumers have access at various levels to independent information/advice.</p>
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commonly used to describe a specific type of platform. Wraps tend to offer access to a range of asset types, while a fund supermarket tends to describe platforms that have a narrower focus. However, it is not clear whether this is a significant distinction, as many firms that started as fund supermarkets have expanded, or plan to expand, their product ranges and so become more like wraps.

4.20 We welcomed the FSA's discussion paper, as clearly the rapid development of this complex market poses considerable challenges for the FSA in developing an appropriate regulatory framework that correctly identifies and addresses risk. We are keen to see effective consumer protection, no matter the platform used, and we also want to ensure that the responsibilities of product providers, platform providers and distributors/advisers are assessed effectively in terms of Treating Customers Fairly.

**Platforms – wraps and fund supermarkets**

4.18 It is important that the FSA's regulation keeps pace with changes in the market, and the significant growth in the adoption and use of wraps and fund supermarkets by intermediaries is a case in point. We were pleased that the FSA issued a discussion paper<sup>12</sup> linked to the Retail Distribution Review on this subject.

4.19 Platforms are online services, used by intermediaries (and sometimes consumers directly) to view and administer their investment portfolios. As well as providing facilities for investments to be bought and sold, platforms are often used to aggregate, and arrange custody for, customers' assets. The terms wrap and platform are often used interchangeably but, as the market has developed, wrap has come to be more

4.21 We wanted to see a more comprehensive analysis of the wraps and platforms market, as we believe the key to identifying the potential benefits and detriments for consumers is in the scope and function of individual platforms, which in practice vary substantially. For instance, single provider platforms bring benefits in efficiency and net cost savings. However, it can also limit consumer choice of products and even choice of adviser – advisers using single provider platforms may well find it too expensive or inconvenient to take on clients with an existing portfolio outside the range of the platform. Conversely, some clients may find themselves tied in to platforms which suit their advisers but which do not meet their needs.

4.22 Platforms which, rather than being single provider based, offer a breadth of service like a full trading platform with additional technological benefits, would seem to be more

12 DP07/02 Platforms: the role of wraps and fund supermarkets – A Discussion Paper forming part of the Retail Distribution Review. FSA, June 2007.

of an aid to holistic financial planning, providing consumers with better access to services and products. Nevertheless there will be some consumers, perhaps with small and relatively inactive investment portfolios, for whom wraps and platforms will never be a cost efficient benefit at all. So it is vital that the FSA accurately identifies the regulatory risks in all types of wraps and platforms and develops an effective regulatory framework that will continue to address the issues arising from this rapidly changing marketplace.

## **Disclosure of information to consumers**

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### **Showing levels of risk**

- 4.23 We undertook consumer and industry research, published in July<sup>13</sup>, to restart the debate over whether a standardised approach to explaining the inherent risk of a product would be useful for consumers. The research found that while consumers did have an appetite for risk ratings they had some questions about how they could be made trustworthy. The financial advice community was more sceptical, doubting that a standardised approach would work across all products.
- 4.24 We concluded that there is a broad appetite for a standardised risk scale, but it will only be effective if it can also improve consumer understanding of risk since very few consumers have a clear idea of what risks actually are. Most see risk as the potential to lose money generally rather than making distinctions between risk to capital and risk to returns. It would seem that many consumers do not fully understand the nature of investment risk and believe that capital is safe in a low risk investment.

- 4.25 We followed up our research with trade associations – particularly the Association of British Insurers (ABI) and Investment Management Association (IMA). These trade associations were looking at alternative statistical measures, particularly the possibility of a layered approach to signpost investors and advisers to more detailed information. However, there is a lack of consensus in the industry about the best way to explain risk and there has been no evidence of subsequent progress.

### **Key Information Documents for UCITS**

- 4.26 Our work on the need to communicate different levels of risk to consumers returned in a different guise later in 2007 as a result of work in Europe to develop a successor to the Simplified Prospectus for UCITS (Undertakings for Collective Investment in Transferable Securities). The European Commission has recognised that the Simplified Prospectus has not done its job in providing potential investors with the key information they need before deciding whether to invest and particularly in comparing funds based in different jurisdictions. The Committee of European Securities Regulators (CESR) has been charged by the Commission with coming up with a viable alternative which should provide consumers and advisers with an indication of the level of risk in these products. It is likely that any information developed for UCITS would be applied to all other collective investment products and so would provide a general information base for consumers on investments.
- 4.27 CESR published a consultation paper<sup>14</sup> on the content and form of Key Investor Disclosure for UCITS based on the Commission's proposal for Key Information for Investors. We responded to

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13 Risk Ratings Research – FSCP and IFF Research, May 2007

14 CESR consultation on the content and form of Key Information Document disclosures for UCITS – CESR 07/669 – Committee of European Securities Regulators, October 2007

## Disclosure of advice services – Menu and IDD

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that consultation and said that CESR's proposals represented a significant step forward for European investors, given the low starting base. We were particularly pleased that they included a commitment to conduct consumer research into key aspects of the proposals. However, we asked for further qualitative research amongst both consumers and advisers to test a number of assumptions about the best way to meet consumers' needs for this information before quantitative work is undertaken.

4.28 In our response to CESR, we also emphasised the importance of information being concise, consistent, relevant, written in plain language and timely and meaningful: all work could be wasted if the final document is too long and complex, as potential investors will simply not read it. On the other hand, we recognised the problem in information being too simplistic to convey the complexities of risk. We told CESR that we were opposed to the use of a single synthetic risk indicator because of the danger of over-simplification.

4.29 CESR published feedback<sup>15</sup> to the consultation in February 2008 which showed widespread support for any document to be limited in length to two sides of A4, but there were mixed views on the different options for risk/reward disclosure ranging between improved narrative disclosure and a synthetic risk/reward indicator. CESR also agreed to suggestions that the KII should be changed to be called the Key Information Document or KID, in order to emphasise that the outcome would be a single document with a harmonised structure and content.

4.30 We look forward to continuing a dialogue with CESR on this subject as they undertake market testing and further consultation with market participants during 2008.

4.31 The FSA's rules on the Initial Disclosure Document (IDD) and the Menu for packaged products were notified to the European Commission in January 2007 under Article 4 of MiFID (Markets in Financial Instruments Directive) as potentially going beyond MiFID provisions. The FSA then undertook research which found no consistent evidence that the Menu had achieved its original stated objectives of reducing commission levels, or increasing the share of advice paid for by fee and found only limited evidence that the Menu had reduced provider bias in sales.

4.32 We were disappointed that the FSA therefore decided to remove the Menu and IDD from the Article 4 exemptions and downgrade them to guidance only.

4.33 We told the FSA it had not looked widely enough at the benefits for four reasons:

- a. The documents have been in use for just two years, and this may not be enough time for consumer purchasing behaviour to change so significantly. The FSA itself has said it will take a generation to turn around financial capability.
- b. The format of the documents could have been improved to achieve the FSA objectives of changing behaviour.
- c. It is quite possible that consumers benefit indirectly from these documents. The information requirements may be important in terms of modifying adviser behaviour in the consumer's interest, and that results in greater consumer awareness and knowledge

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15 CESR's consultation on the content and form of Key Information Document disclosures for UCITS – Feedback Statement, February 2008

d. The FSA has only considered economic outcomes when deciding if these documents are useful in the context of MiFID. We believe that when measuring consumer benefits of regulation, a major measure should be consumer confidence, which may not be capable of quantification in pounds and pence.

4.34 We suggested that consumer benefits of regulation here should be considered in terms of whether consumers' understanding is increased. For example understanding of: how the advice is being paid for and how this payment compares with the rest of the market; the status of the person giving the advice; and the whole advice process and how it works. This information may not change consumer behaviour immediately. If the consumer has a better understanding of these things then this should lead to greater consumer confidence, which has a huge overall benefit to the financial services industry.

4.35 The FSA issued a consultation paper<sup>16</sup> in February 2008 on the future of this area of disclosure. It is now proposing to introduce in its guidance, the idea of a single disclosure document to combine the information contained in the Menu and IDD. The stated aim is to simplify investment disclosure and give firms discretion over how the information is presented while maintaining a responsibility to consumers. The FSA is also seeking views on whether it would be appropriate for the industry to develop guidance in this area. We will make a full response to this in the next financial year.

### *Disclosure of advice – suitability letters*

4.36 We were pleased that the FSA commissioned an independent study of the benefits of the requirement for firms to send a suitability letter to consumers when firms are recommending an investment product. This found a clear benefit in consumers being sent this letter as a clear and concise record of their personal investment decision. We believe that firms also benefit in having the suitability letter as a record of how and why products are sold.

4.37 So we welcomed the FSA's decision on the basis of the research to retain the suitability letter as a 'report' giving consumers a prompt written record of the recommendation they have been given and the reasons for it. This complies with MiFID requirements and is being incorporated in the FSA's new Conduct of Business Sourcebook.

### *Disclosure research*

4.38 We remain concerned that so much research evidence appears to suggest that disclosure has not, to date, altered consumer behaviour. While we acknowledge that this is a medium to long-term process, we are keen to widen the disclosure debate and explore whether there are other objectives that may be legitimately and effectively fulfilled by disclosure regimes and which achieve similar benefits for consumers – directly or indirectly. We have, for instance, in our response to CESR on Key Investor Information for UCITS<sup>17</sup>, asked for research into the importance of disclosure to advisers, and hence their relationships with their clients.

16 FSA Consultation Paper CP08/3: 'Simplifying Disclosure: Information about services and costs', February 2008

17 Consumer Panel response to CESR consultation paper on content and form of Key Investor Information disclosures for UCITS – 17 December 2007

Panel view on FSA effectiveness Disclosure	
<b>Acceptable</b> – The FSA undertook comprehensive research on disclosure to establish what works and what does not with a resulting consultation paper published in February 2008. At the same time, European proposals on disclosure information for UCITS products mean that disclosure is an area undergoing changes and where the FSA is taking an active and constructive part.	<b>In future</b> , the FSA should continue this active role and to examine disclosure objectives in more depth – eg research on effectiveness of disclosure to advisers and as a means of altering consumer behaviour in the medium to long term.

## Consumer complaints and compensation

### Assessment of consumer complaints

4.39 We have been urging the FSA for some time to make better use of the complaints data it receives from firms. The level and focus of complaints from consumers to firms should provide important indicators to supervisors of possible problem areas. We are pleased that the FSA has moved further in this area over the past year. It has developed and implemented a new business intelligence tool to analyse complaints data and relevant business volumes data, trained more staff to access this and also now receives more comprehensive data from the Financial Ombudsman Service.

4.40 We were pleased that now supervisory and relevant non-supervisory staff can obtain reports on complaints analysed in four different ways: across different groups of products e.g. banking, mortgages etc; for an individual firm – including trends since 2002; peer group analysis – enabling the user to select a peer group of firms for comparison; and business volume analysis – comparing complaints to the amount of business a firm does (e.g. number of bank accounts or number of policies written).

4.41 We have asked to see the evidence of how this works in practice from the supervisor point of view, as we think that this data is crucial in highlighting areas of consumer detriment. We look forward to hearing more about this in the next financial year.

### Financial Ombudsman Service dispute resolution

4.42 The FSA issued a consultation paper<sup>18</sup> jointly with the Financial Ombudsman Service in July 2007. It asked for views on two sets of proposals for the Dispute Resolution: Complaints sourcebook of the Financial Services Authority (FSA) Handbook (referred to as 'DISP'). The aim was to make the sourcebook clearer, shorter and easier to use, and make changes intended to benefit those who use the Financial Ombudsman Service. It covered the jurisdiction and operation of the Ombudsman Service; the scope of the Compulsory Jurisdiction (CJ), the Consumer Credit Jurisdiction (CCJ) and the Voluntary Jurisdiction (VJ) of the Ombudsman Service; and the complaints-handling procedures for businesses in the CJ, CCJ and VJ.

18 CP07/14 Dispute Resolution: the Complaints sourcebook – Further simplification and minor changes – FSA and Financial Ombudsman Service, July 2007

4.43 We welcomed the proposals which simplified or clarified procedures as they benefited both firms and consumers: we felt the proposed new wording made it clear that the FSA and the Ombudsman Service will be able to consider complaints and disputes involving firms (or former firms) that took place before responsibility for complaints was transferred to the Ombudsman Service; and there was clarification that ancillary banking services covered foreign currency exchange. We said that permitting those who have a right to benefit from insurance under an equitable assignment to complain to the Ombudsman Service, as well as the original purchaser, removed an illogical exclusion and broadens the category of policyholders able to access the Ombudsman Service. We were pleased with the clarification of the policy position on motor insurance claims by third parties and supported proposed guidance explaining how the Ombudsman Service could help consumers to identify the relevant respondent and on how the Ombudsman Service would deal with complaints from one complainant arising from connected circumstances against two or more firms. We supported the proposal to use telephone hearings in appropriate circumstances. The addition of a requirement to advise consumers of the existence of the Ombudsman Service in non final letters closed a loophole which had allowed firms to avoid mentioning the Ombudsman Service.

### *Financial Ombudsman Service policy developments*

4.44 We were pleased to hear that the Financial Ombudsman Service had reviewed the effectiveness of the wider implications process. This process enables the Ombudsman Service and the FSA and other relevant experts to consider if complaints being handled by the Ombudsman Service have wider implications for the regulatory system run by the FSA. The main conclusions of the review were that the process, although

powerful, was too rigid and could work better. The number of referrals had been disappointingly low, especially referrals from industry, even though all those who have been involved in the process have found it valuable and would like it used more.

4.45 We welcomed the Ombudsman Service's decision therefore to re-launch the process with much more emphasis on the range of options available to the Ombudsman/FSA/OFT. The re-launch also addresses a lack of clarity about how to make referrals and lines of communication. It is hoped that firms, consumers and representative bodies will now be encouraged to refer cases to the process. There are case studies shown on updated web pages, including mortgage exit fees and cheques payable to third parties, reflecting the flexibility of the approach by the Ombudsman/FSA/OFT.

### *Payment of Ombudsman Awards*

4.46 We have raised with the FSA our concern about the plight of consumers who quite properly and successfully pursue a complaint through the Ombudsman Service, and then the firm refuses to pay. We believe that any consumer who is awarded a sum of money by the Ombudsman is entitled to receive it, and to expect the regulator to ensure that he or she receives it without having to incur further time and expense in securing payment through the Courts. Although it may be a small number of consumers who are affected in this way, for those few it is important. Also the non payment has a wider impact, as it can have a detrimental effect on consumer confidence in both the industry and the regulator and undermines the effectiveness of the FSA as 'the UK's financial watchdog'. We have suggested that FSCS should take over responsibility for paying consumers, and in return would take over the right to claim payment from the firm concerned.

4.47 We have been to a certain extent reassured by the FSA on this issue. We have seen that the Ombudsman Service has recently updated its procedures and timeframes in circumstances where a firm has delayed or not paid an award and has produced a factsheet for consumers on what a 'final decision' by an ombudsman means. The FSA has pointed out that there are relatively small numbers of cases – around 150 per year in recent years – and the intervention of FSA supervisors has secured payment in the majority of these cases. The FSA has taken enforcement action to cancel the firm's permissions as a result of non-payment on a number of cases, and is currently preparing to fight a case at the Financial Services and Markets Tribunal in this area. This does provide a powerful and visible deterrent to non-payment, although this does not help the affected consumer.

4.48 We have however asked the FSA to make a plain language public statement of the FSA's commitment to pursue firms which refuse to pay, and believe that the FSA must pursue a zero failure system when it comes to the payment of Ombudsman awards.

### *Financial Ombudsman – filling gaps for EEA business*

4.49 In July 2007, the Financial Ombudsman Service issued a consultation<sup>19</sup> to address issues with Ombudsman Service coverage of activities which are directed at consumers in the UK by financial businesses from an establishment elsewhere in the European Economic Area (EEA).

4.50 The Ombudsman Service has received increasing numbers of complaints about investment products from product-providers based elsewhere in the EEA, and sold to UK

consumers by UK intermediaries. Complaints about the advice provided by the UK intermediaries were within the jurisdiction of the Financial Ombudsman Service, but complaints about the administration of the investment products by the product-provider were not. Even if the product-provider wanted the Ombudsman Service to deal with these complaints, it did not have the power to do so. With the implementation of the European Markets in Financial Instruments Directive (MiFID) from November 2007, this should increase the number of UK consumers who purchase investments from (or through) businesses based elsewhere in the EEA. As the rules stood before March 2008, complaints about these would not be covered by the Ombudsman Service's remit, and UK consumers who purchase investments from (or through) businesses based elsewhere in the EEA may not find ready access to an alternative ombudsman service (or other out-of-court redress scheme) in other EEA states.

4.51 We therefore welcomed the extension of the Financial Ombudsman Service's voluntary jurisdiction to cover all those activities that are directed at the UK from an establishment in the EEA and which are FSA-regulated activities, as defined at 1 July 2007, or would be if conducted from an establishment in the UK. We reiterated our previous response to the Commission's Green Paper on Retail Financial Services in the Single Market where we highlighted the Consumer Panel's concern that from a consumer perspective the current market and regulatory infrastructure was fundamentally flawed in respect of regulation and redress for cross border business and that consumer protection should be improved, including the provision of redress schemes. We were pleased that these proposals attempt to address these concerns but believe – and we

19 Voluntary jurisdiction: filling gaps for EEA business – Financial Ombudsman Service, July 2007

have recommended to the EU – that all other States should be required to have suitable Alternative Dispute Resolution schemes and that the present FINNET arrangements should be made compulsory.

### ***FSCS scope across EEA***

- 4.52 We have supported the FSA's plans to consult on an extension of the scope of the Financial Services Compensation Scheme (FSCS) so that it covers insurance business written from EEA branches of UK insurers, regardless of whether the policyholder is resident or the risk is situated in the UK or the EEA, as it seems there might be inconsistencies between the treatment of UK and EEA policyholders. We look forward to responding formally to this consultation later in 2008.
- 4.53 We also raised a concern that there is not an even system of compensation arrangements across Europe. The European Commission has found that, of the 27 EU member states, only 13 have insurance guarantee arrangements – not all of these cover both life and general insurance and the amount of compensation payable varies widely. This leads to an uneven degree of consumer protection across the EU, and is something which we have advised the Commission should be addressed as a matter of urgency.

### ***FSCS Funding Review***

- 4.54 The FSA issued a consultation reviewing the funding of the Financial Services Compensation Scheme<sup>20</sup> following discussions with an Industry Advisory Group which a Consumer Panel representative also participated in.

4.55 We believe that the Financial Services Compensation Scheme (FSCS) plays a vital part in protecting consumers by providing a fund of last resort. So we reiterated to the FSA our view that the principles under which the funding of FSCS should be considered are: the costs of the Scheme are shared proportionately amongst firms; the Scheme is easily accessible to consumers; claims on the Scheme are dealt with swiftly and fairly; and the Scheme is sustainable.

4.56 We supported the FSA taking positive steps to address its concerns about the current arrangements for funding the scheme, and in particular the possibility that in extremely adverse circumstances the FSCS might be unable to pay eligible claimants what they are legally entitled to under the scheme. We believe that such a situation would be unacceptable and would seriously damage consumer confidence in the financial services industry.

### ***Prudential and Wholesale issues affecting consumers***

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4.57 The Consumer Panel on the whole concentrates on the FSA's retail framework, as that is the area of regulation which has the most direct impact on the way that consumers access financial services. However, we also watch for prudential and market issues which may ultimately have a detrimental effect on consumers of financial services. Several issues fell into this category this year.

### ***Prudential requirements for Personal Investment Firms***

4.58 We agreed with the FSA that a review of the prudential rules for personal investment firms was both timely and appropriate. These are firms which broadly advise on or otherwise

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20 CP07/5\*\*\* Financial Services Compensation Scheme – Funding Review Including feedback on DP06/1 – FSA

manage investments for retail clients, and the main prudential requirements considered were those relating to financial resources and Professional Indemnity Insurance.

4.59 In our response to the FSA's Discussion Paper<sup>21</sup>, we recognised that the prudential requirements for these firms had become outdated and fragmented. We said that the current minimum capital resource requirements seemed too low in absolute terms and did not reflect the commitment consumers would expect from the owners of an investment firm. Indeed it seems that some 73% of smaller personal investment firms already hold capital resources greater than twice their 'own funds' requirement, so this indicates that any uplift in the minimum requirements would be consistent with current industry approach and would in addition provide greater comfort to consumers. We suggested that the new requirements needed to be sensible and proportionate, with a difficult balance to be struck between ensuring that small businesses are not 'priced out of the market' by regulatory requirements and the need for sufficient financial strength in that sector to ensure viability and sustainability. We also felt that firms should aim to meet the costs of compensation/redress to their clients when things go wrong, and greater capital resources should help to ensure this burden is met by the firm concerned and not by other businesses in the sector through the FSCS levies.

4.60 We were interested in proposals as part of the Retail Distribution Review that firms should gain some regulatory dividend for robust management and systems and controls within firms. This would be consistent with the FSA's risk-based approach. However, it is important that such a dividend does not allow individual firms to operate under the regulatory radar,

given the importance of personal investment firms to individual consumers and the collective risks posed by this sector of the advisory market.

### *Consumer interests in acquisitions*

4.61 We raised a concern that the FSA's implementation of the Acquisitions Directive would mean it would no longer have the power to take consumer protection concerns into account when assessing potential acquisitions for approval. Instead the new European Directive restricts the FSA to a prudential assessment only.

4.62 We raised this concern with the FSA and were reassured that many of the issues which could threaten the interests of consumers have their roots in prudential concerns, such as whether the potential acquirer had sufficient capital or would run an increased risk of money laundering occurring. The FSA said it would still retain its normal supervisory powers during any potential acquisition and would be able to monitor the treatment of consumers and act in their interests under their normal supervisory powers. We were therefore reassured that the FSA had considered the implications of the changes under the Acquisitions Directive and that consumers were unlikely to suffer an increased level of detriment because of the changes.

### *Market transparency*

4.63 We have raised concerns about the FSA's proposals for regulating Contracts for Difference<sup>22</sup>. The consultation relates to particular types of Contracts for Difference that are used as a derivative instrument for holding an economic interest in UK shares traded on a regulated or other prescribed

21 FSA Discussion Paper 07/4 Review of the Prudential Rules for Personal Investment Firms, July 2007

22 FSA Consultation Paper CP07/20\*\*\* – Disclosure of Contracts for Difference, November 2007

market. This is not an area that unsophisticated retail consumers will deal in, but they may be exposed to it through funds of hedge funds and other investment vehicles.

4.64 We have therefore responded to the consultation from the FSA and pointed out that investors may be disadvantaged by investing in a market where others may have better information, such as who holds significant undisclosed economic interests. It is essential that investors and their advisers have access to all the information they need in order to take informed decisions. So the existing disclosure regime should be enhanced to ensure that the disclosure of significant Contracts for Difference contracts takes place at the appropriate time. If this is not achieved, retail investors as well as other interested parties will suffer detriment in a market that fails to meet reasonable expectations of fairness and transparency. The Cost Benefit Analysis already undertaken by the FSA indicates that in real terms, any additional costs from this should be minimal, and yet the benefits of the new regime will be far more significant.

### Regulation of smaller firms

4.65 The regulation of smaller firms is an area which has always concerned the Panel. We think that, although individually these firms do not seem to have a high impact, the number of consumers being dealt with overall by these small firms is large. Also we have been concerned that thematic work by the FSA – particularly in the area of mortgages and treating customers fairly – has shown that there are problems with compliance in this sector.

4.66 We have therefore supported the FSA's new programme aiming to assess around 11,300 small retail intermediaries via a three-year regional assessment programme which started in March 2008. This will cover financial advisers, mortgage brokers and those general

insurance intermediaries selling higher-risk products. The contact is designed to gain an insight into the approach of a firm's management and to assess how this is affecting the firm's progress on Treating Customers Fairly. The results of the assessments will contribute to the FSA's risk-profiling of individual firms so they can target resources at the riskiest firms. We fully agree with the FSA's aim – it must create an environment for firms where understanding of compliance and good practice standards is widespread and firms are fully engaged in meeting those standards. We see the new measures as providing benefits to small firms' performance through increased contact and help from the FSA with a tough stance being taken against firms who do not engage with the FSA and are not committed to treating their customers fairly. These higher industry standards should lead to better consumer protection and increased confidence in the industry, which can only be good for consumers as a whole.

Panel view on FSA effectiveness Regulation of small firms	
<b>Acceptable</b> – We have always been concerned that small firms are rated as low risk separately, but collectively the number of consumers dealing with small firms means they represent a huge risk. We were therefore pleased that there has been some, albeit late, recognition by the FSA that more attention must be given to the regulation of small firms.	<b>In future</b> , the FSA should implement the three-year plan for more effective supervision.

## Pressure selling

4.67 We were pleased that as part of the FSA's themed work with smaller firms, a project on pressure selling has concluded with some high profile enforcement cases towards the end of the year. Tape-recorded conversations between the firms and their clients had formed an important part of the project and of the subsequent enforcement or supervisory action. As tapes were not always available, this has caused the FSA to review and improve the requirements relating to taping and retention of records by firms<sup>23</sup>.

4.68 The Panel was pleased that the enforcement had demonstrated an appetite within the FSA for action against individuals as well as firms, although it was often difficult to obtain the necessary level of proof of personal responsibility and liability. Also we were pleased that the project team had sought to track the employment of particular individuals associated with pressure selling, including any involvement in setting up new firms. We encouraged the FSA to do more to raise consumers' potential resistance to high pressure selling, by providing examples of pressure selling techniques on the Moneymadeclear web pages. It was important to emphasise that it was not always just the well-off or gullible consumers who were affected.

4.69 We have urged the FSA to continue with their particular scrutiny of pressure selling and not regard it as a short term project. There is clearly a great deal to do in this area and consumers are continuing to suffer detriment as a result of high pressure selling practices.

Panel view on FSA effectiveness Pressure selling	
<b>Strong</b> – The FSA focused on an area of concern in small firms and undertook a specific project which highlighted problems and led to enforcement action.	<b>In future</b> , the FSA should continue this exercise, using the results, where applicable, to take enforcement action.

## FSA transparency

### Freedom of Information and the FSA

4.70 Although we appreciate that the FSA has done much to implement the requirements of the Freedom of Information Act into its procedures, we were disappointed that the FSA has taken a tough line on its interpretation, and has decided to appeal against two decisions by the Information Commissioner.

4.71 The first case was the so-called 'LAUTRO 12' case – with a request to give the names of the 12 endowment mortgage providers who misused LAUTRO projections in setting premiums and so gave customers unrealistically high maturity figures between 1988 and 1994. We particularly agreed with the Commissioner's reasoning that disclosure of information by the FSA about its knowledge of firms' activities may prompt firms to remedy situations more quickly to avoid further formal action. We further support the Commissioner's view that public confirmation from the FSA that no formal action had been taken would allow consumers the opportunity to ask why this was the case, leading potentially to a greater understanding of how the FSA carries out its duties.

23 PS08/1: Telephone Recording: recording of voice conversations and electronic communications, FSA March 2008.

- 4.72 The second appeal case against the release of names of firms which had performed poorly in an FSA mystery shopping exercise raised more complex issues for the Panel. We had some sympathy with the FSA view that disclosing the results of mystery shopping could be unjustifiably damaging for individual firms. Conversely, of course, there is the view that consumers should reasonably expect the FSA to make public any information it had, which included evidence of mis-selling by specific firms. We felt that where any instance of wrong-doing was shown to be an isolated case, this should minimise the impact of any potential reputational damage. We also felt that if the FSA's mystery shopping is needed to gain an overview of systemic compliance failures in the market without considering the performance of individual firms, it would be quite possible for the FSA to commission research on an anonymous basis, so it would not have the data on the names of firms mystery shopped. We have fully supported the FSA in its use of mystery shopping and would not want the FSA, if it loses the appeal, to use this as an excuse to limit its ability to use this important regulatory tool in future.
- 4.73 Overall these cases raise important issues over the FSA's policy on disclosure. The Panel would like to see the regulator committed to a formal policy of more openness rather than the disorderly publication of information under Freedom of Information Act applications. The FSA must ensure that its forthcoming Discussion Paper on transparency stimulates as wide a debate as possible over the publication of information, in order that a more considered and open approach can be adopted.
- 4.74 We have been in correspondence with the FSA this year about the way in which it seems to hide behind the legislation in FSMA<sup>24</sup> to prevent giving out even basic information to a complainant about whether they are dealing with their complaint or not. Although we have some sympathy for the FSA's concern that control over information it regarded as confidential would be lost once any disclosure had been made to a complainant, we regard this policy as unfair and untenable.
- 4.75 We are unhappy that the FSA has had a long-established policy of not disclosing whether or not it is investigating a firm. One reason given for this is the worry that an investigation could be mis- or over-interpreted by the public – believing there is 'no smoke without fire' – to the potential commercial detriment of the firm concerned. This is an issue that we will take up during the debate around the FSA's proposed Transparency discussion paper next year (see below).
- Transparency Discussion Paper***
- 4.76 We continue to urge the FSA to be more open and transparent, particularly in relation to its policing of financial promotions where we think the publication of a register of the best and worst advertisers would improve levels of compliance by firms and improve consumer awareness about what to look out for in financial advertising. We have been disappointed at the lack of progress this year.

24 Financial Services and Markets Act 2000

4.77 However we look forward to the FSA's discussion paper on transparency planned for later in 2008. It will cover issues around disclosure of information held by the FSA and potentially the Financial Ombudsman Service. We have said that in the paper, the FSA needs to be bold, and not hide behind the restrictions in FSMA. The FSA should also not consider reputational damage as a barrier to all disclosure of non compliance: for example, there are plenty of cases of companies who have been censured by the Advertising Standards Authority or the Food Standards Agency without confidence in the company collapsing. We would not want transparency to be considered purely in relation to naming and shaming – instead there should be a broader context of transparency, where consumers can have access to more information if they need it.

Panel view on FSA effectiveness FSA transparency	
<p><b>Weak</b> – We have been urging the FSA for some years to be more transparent, particularly in highlighting firms which are not coming up to standard. We have not been able to support the FSA's appeal against the Information Commissioner's decision on two Freedom of Information decisions which would have given more information on poor performing firms. The FSA's Discussion Paper on transparency planned for the beginning of the new financial year will provide an opportunity for further debate.</p>	<p><b>In future</b>, there should be a full assessment of the benefits to consumers and the industry of greater transparency from the FSA.</p>

# Chapter 5: Consumer Panel representing consumers

5.1 The main focus of the Consumer Panel's work is to advise and monitor the FSA from the point of view of consumers. However, we do also have the scope to look at the impact on consumers of activities outside but related to the FSA's remit.

## *Representation on government proposals*

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### *Regulation of pensions and personal accounts*

5.2 We have been engaged at various levels this year in the development of the regime for implementing the new personal accounts scheme which the Government is setting up to offer a simple low-cost pension to millions of employees across the UK from around 2012. Personal accounts will become an important part of the financial services landscape for consumers in the UK and as such, we have an interest in their development. We have nominated a member of the Consumer Panel to sit on the Consumer Representative Committee of the Personal Accounts Delivery Authority. We will respond to the personal accounts delivery authority consultation on proposals for a charging structure in the next financial year, and will continue to watch with interest and provide input as and when necessary.

### *Proposals for a UK recognised Covered Bonds Legislative Framework*

5.3 In October 2007, we responded to the Treasury's consultation on UCITS compliant covered bonds, as we were concerned that the original proposals did not provide sufficient safeguards as to the quality of underlying assets and would be likely to increase concentration risk for retail investors. The proposals seemed initially to have been developed to enable UK issuers to compete on a text book 'level playing field' in the EU. However, added to this, there seemed to have been a desire to 'second guess' where the market might develop in future and to extend the regulatory framework to cater for potential new developments. The unintended consequences of this unrealistic approach could have been an adverse impact on the quality and integrity of the UK covered bonds market, and the exposure of retail investors to a high concentration of risk in assets of lesser quality than they would expect when investing in a UCITS compliant covered bond. We were pleased that the Treasury listened to our and others' representations and decided to adopt a far more realistic approach that should provide better levels of consumer protection.

## *Responses to other reviews*

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### *Review of the Banking Code*

5.4 We responded to the independent review of the Banking Code undertaken by Mike Young with a 12-point plan to bring the Banking

Code back into line with consumer expectations and the rest of financial regulation. As well as incorporating an overarching principle of fairness, we suggested improvements to basic bank accounts and in the treatment of customers when closing accounts. We also suggested measures to prevent consumers inadvertently falling into more debt by stopping banks from sending out unsolicited credit card cheques or increasing credit limits without permission; specifying a longer notice period for charges; and requiring all statements to show clearly the rate of interest charged on accounts. In all we made 12 recommendations as to how the banks could improve their treatment of consumers.

- 5.5 We were disappointed that just four of our recommendations appear in the new Banking Code, announced in November 2007. We feel that the revised code does not go far enough to enable consumers to have confidence that banks will act in a way that treats customers fairly. We were particularly disappointed that the Code's sponsors rejected our call for interest rates to be printed on statements and that banks should remove the details of consumers experiencing financial difficulties from marketing mailing lists for loans and credit cards. We agreed to take part in consultation on how to incorporate an overarching principle of fairness into the Banking Code, but feel that the time has come for an end to a situation which allows banks to dictate to customers how fairly they will treat them.

## **European activities**

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### **Overall strategy**

- 5.6 As some 70% of all new regulatory initiatives in financial services now emanate from, or are directly linked to, policies arising from within the EU, their impact on UK consumers is evident. We have always engaged actively on

particular proposals as they come to the UK, but by the time new thinking is formulated into specific proposals, the opportunity to influence the overall direction of a new initiative is gone. We have entered the debate at the European stage previously, but over this year, the Panel has decided it would be constructive and appropriate to dedicate Panel resources not just to dealing with individual proposals but also to agreeing an overall strategy for engagement within Europe. This will also involve the maintenance of key relationships with European consumer groups, various EU bodies, MEPs and others involved in the development of policies in Europe. We need to play a greater and more direct role in representing the interests of UK consumers within the EU's policy-making areas as well as in the UK if we are to influence policy development at an early stage.

- 5.7 We have therefore agreed an overall European objective which is to influence the development of EU financial services policy-making so that it reflects the interests of UK consumers and ensures that UK consumers can, if they wish to do so, shop cross-border for financial services with full confidence about market supervision, enforcement, transparency, competition and redress.
- 5.8 Our strategy to achieve this will be through:
- Contributing actively and effectively to the consideration of new policy initiatives emanating from within the EU and ensuring so far as possible that the consumer voice is heard.
  - Responding to specific proposals from the perspective of UK consumers.
  - Establishing and maintaining working relationships with the Treasury; the FSA; the Commission; and EU Parliament and ensuring wherever possible that appropriate weight is given to the interests of UK consumers, while developing an understanding of the

objectives of EU policymakers and of the single market as a whole.

- Encouraging initiatives to strengthen effective consumer representation in financial services both at the EU level and within individual Member States.

5.9 We have already started moves in this area, with members of the Panel meeting the Which? representative on the Financial Services Consumer Group which is a sub-group of the European Consumer Consultative Group, the Commission's main forum for engaging with consumer organisations. The sub-group brings together representatives of consumer organisations from each of the Member States and those active at EU level, to discuss financial services policies and proposals of particular relevance to consumers. We also met with Mick McAteer, a member of the Commission's 'Forum of User Experts in the area of financial services' (FIN-USE) which advises on the consumer interest in banking, credit, insurance, personal pension, investment and payments.

5.10 Throughout the year our Chairman John Howard has been a member and attended the regular meetings of CESR's Market Participants Consultative Group, representing the consumer perspective on EU securities regulation.

### ***Commission Green Paper on Retail Financial Services in the Single Market***

5.11 The Panel responded to the European Commission's Green Paper on Retail Financial Services in the Single Market in July 2007. We strongly supported many of the proposals set out in the Green Paper, based on the concept of building a single market with consumers and firms able to engage with confidence in cross-border business.

5.12 However, we registered concern that from a consumer protection perspective, the current market and regulatory infrastructure is fundamentally flawed. It seems that the Commission's approach has been to make cross-border trade easier for firms, rather than more attractive to consumers. The whole structure of home/host regulation and redress appears to have been created to make life easier for firms to the disadvantage of consumers. At present a consumer is faced with understanding any one of 27 different regulatory regimes and systems of redress, while firms wishing to operate cross-border only need to worry about their own. As we have said, cross-border trade will only increase if consumers are relieved of the need to understand the complexities of regulation in other Member States and can rely on their own national regulation.

5.13 We have therefore strongly supported the objectives of FIN-NET, the EU network of alternative dispute resolution (ADR) bodies. We want to see effective and independent ADR schemes in all Member States, providing consumers with rapid and easily accessible dispute resolution.

5.14 Access to ADR is particularly important where consumers buy financial services from a provider based in another Member State, as shown in the case of Equitable Life where consumers in some other countries were unable to take their complaint to either their own national ADR body or to the UK's Financial Ombudsman Service.

5.15 Our preference is that firms should be required to belong to the ADR schemes of the Member States in which they offer services. At the very least, they should be required to participate in an ADR scheme in their own country. The Panel agrees with the European Parliament that there should be 'no mobility without responsibility'. The key issue is that

consumers must be able to access ADR through their own national scheme, and not have to deal with ADR bodies based in another country unless they wish to do so.

- 5.16 More generally we believe there is a fairly difficult balance to be struck in the use of different mechanisms in taking forward policy initiatives: the proposals should always be evidence-based and should include an analysis of how markets operate in different Member States. Overall, we have said that the degree of diversity in the types of consumers and the way different markets work across the EU calls for an approach based more on consistent standards and common procedures in areas such as product disclosure, rather than on maximum harmonisation.

### ***Commission Green Paper on the Review of the Consumer Acquis***

- 5.17 We responded to the European Commission's review of the body of European consumer legislation known as the Acquis, in May 2007. We pointed out that the Panel has consistently supported a high level of consumer protection and so would not in principle have any objection to an overarching 'consumer rights directive'. However, we pointed out that there will always be aspects of financial services that can only be regulated on a sectoral basis, and any developments in this area should not undermine the principles being developed in the Commission's Green Paper on Retail Financial Services in the Single Market.

### ***European consultations***

- 5.18 Much of the European legislation that we review has a direct impact on the way that the FSA regulated in the UK. So the views we have put forward are incorporated in those chapters relating to the work of the FSA and are not detailed in this separate Europe listing.

## ***Liaison with other bodies***

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### ***Consumer organisations***

- 5.19 We have had regular dialogue with a number of consumer organisations over the year, both to ensure that we keep in contact with wider consumer concerns, and to provide an interchange of ideas with other consumer organisations on developments in the regulation of financial services which will have a significant impact on consumers. So, for instance we have had a close dialogue with Which? over retail banking, the Retail Distribution Review and, in particular, with profits funds and reattribution; and with the National Consumer Council (NCC) as Northern Rock unfolded. We actively canvassed support for our proposals on the Retail Distribution Review with the NCC, the Northern Ireland, Welsh and Scottish Consumer Councils, Age Concern and with the UK Shareholders' Association.

### ***Trade Associations***

- 5.20 As well as interchange with the Financial Services Practitioner Panel and Smaller Businesses Practitioner Panel, we also exchange information and ideas with trade associations on particular issues. This year it has been particularly over the development of the FSA's Retail Distribution Review and Banking Reform in the wake of the liquidity crisis and the fallout at Northern Rock.
- 5.21 The full list of organisations we had meetings with over the course of the year is listed at Appendix 7.

## Chapter 6: Looking to the future

6.1 The Consumer Panel's work is heavily influenced by the requirement to advise the FSA on its agenda. Inevitably, many of the same issues continue from year to year. However, we also aim to pursue initiatives proactively where we feel that we may have different priorities from the FSA on important issues.

6.2 One of our overriding concerns over the coming year will be to make sure that, while recognising that efficient prudential regulation is important for all, the FSA's broader consumer agenda is not subsumed by a focus on changing economic conditions and recent turmoil in the markets.

### *Advising the FSA*

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#### *Move to more principles-based regulation and Treating Customers Fairly*

6.3 This is a major change which is transforming the way that firms are regulated. We continue to follow developments to ensure that customers will not lose out but gain in the outcome-focused new system, as we have been concerned at the slow rate of change of behaviour in firms.

#### *Consumer confidence in banking and compensation*

6.4 The 'credit crunch' and the crisis at Northern Rock have stimulated a number of initiatives led by the FSA, the Treasury and the Bank of England. The Consumer Panel has been and will continue to be particularly interested in consumer confidence in the banking system and whether consumers understand when their money is safe and not safe. We will therefore continue to take special interest in the debate on maintaining continuity of service and compensation arrangements for consumers.

#### *Retail Distribution Review*

6.5 This offers the opportunity to improve the quality and availability of advice consumers receive in future. We will continue to be involved in developments, and press the case for ending commission and separating advice from pure sales.

#### *Enforcement*

6.6 Much has been done in this area, but we expect to continue to be engaged with developments in enforcement since the ability of the FSA to enforce principles is central to the move to more principles-based regulation and ensuring that customers are treated fairly in a situation where many detailed rules have been withdrawn.

## ***Proactive work by the panel***

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### ***Regulation of retail banking***

- 6.7 Improving the effectiveness of the regulation of retail banking after the recent and rather disappointing revision of the Banking Code

### ***With-profits***

- 6.8 Improving the governance of with-profits funds in order to ensure that policyholders are treated fairly.

### ***Money Guidance and financial capability***

- 6.9 Under the old heading of generic advice, Money Guidance is a service for which the Consumer Panel has argued for a long time. At last the FSA will be undertaking a pathfinder project on Money Guidance. There is a need ensure that the work on financial capability and money guidance is effective and delivers real value to both consumers and the industry.

### ***Engaging with the development of European regulation***

- 6.10 Most new regulatory developments in financial services, and many new financial services and products, are coming from Europe. These developments are driven more by the needs of industry than of consumers and can involve weakening consumer protection. We will be engaging more actively with European consumer groups and institutions in order to represent the interests of UK consumers of financial services.

# Appendix 1: Comments on FSA's response to our last Annual Report

In this appendix, we review the key issues that we raised with the FSA in our 2006/07 annual report, how they responded formally in their annual report, and briefly what has happened since then. More details on the Panel's activities on key issues this year are given in the main chapters of this annual report.

<i>Panel said (in our annual report 2006/07)</i>	<i>FSA responded (in their annual report 2006/07)</i>	<i>Progress since April 2007</i>
<p><b>Retail distribution review</b></p> <p>The FSA has raised this issue and stimulated debate. This important review could be one of the most important things the FSA has done for retail consumers, but the challenge is still on for an outcome that results in material change for consumers.</p>	<p>We share the Panel's desire to tackle the root causes of the problems in the market for the retail distribution of savings and investment products and to improve outcomes for consumers. Our June 2007 Discussion Paper, will set out the ideas and seek feedback over the next six-months. We expect the review to lead to changes in market practices for remunerating advisers. We want to take a risk-based approach so that there are meaningful incentives for firms to adopt practices that deliver good consumer outcomes and meaningful disincentives for those that do not.</p>	<p>We continue to support the review. However, we thought that the model proposed in the Discussion paper was over-complicated and could confuse consumers. The FSA's Interim Report published in April 2008 picked up some of our suggestions, including using a simpler model; only allowing independent advice from professional advisers; and sales being clearly split from advice.</p>

<i>Panel said (in our annual report 2005/06)</i>	<i>FSA responded (in their annual report 2006/07)</i>	<i>Progress since April 2007</i>
<p><b>Treating customers fairly</b></p> <p>We strongly support the FSA's effort to put Treating Customers Fairly at the heart of its work. It is an ongoing process. There has been a good start, with useful case studies, but the FSA will need to tackle less clear cut issues in the future. We look forward to seeing better outcomes for consumers from the end of March 2007 when the FSA expects the principle of TCF to be implemented in firms.</p>	<p>Progress towards the targets set for the end of March 2007 has been mixed. We have been encouraged by the commitment of management to get to grips with the TCF principle but we agree with the Panel that this commitment is yet to translate to widespread improvements in behaviour at the interface with customers. This autumn we will publish our assessment of progress against our 6 TCF outcomes. By the end of December 2008 we expect all firms to be able to demonstrate that they are consistently treating their customers fairly, using TCF management information which we expect to be in place by end of March 2008. We will be increasing the resources we devote to supporting and testing firms in meeting these deadlines. We expect to see TCF translate directly into improved outcomes for consumers over the coming months.</p>	<p>We continue to support this work and to participate in the FSA's TCF consultative group. The FSA has said that firms failing to meet the March and December 2008 deadlines will face more regulatory intervention. We would like to see decisive action being taken to enforce the TCF principle not only once the 2008 deadline has passed, but also before then, when the circumstances demand it.</p>
<p><b>Financial promotions</b></p> <p>Panel research showed the FSA was only concentrating on major breaches of rules, and later FSA research also indicated this. Ignoring numerous minor breaches of the rules puts the regulatory framework at risk and could lead to consumers comparing products on an uneven basis.</p>	<p>We apply a risk-based approach to our supervision of financial promotions. This has included addressing lower risk breaches on a thematic basis across the investment, mortgage and insurance sectors. Our intervention has delivered significant improvements in the standard of promotions. While we are legally prevented from following a 'naming and shaming' model we are examining whether there should be a greater role for firm-specific regulatory disclosure to achieve greater transparency of our expectations and to assist the industry to raise its standards further.</p>	<p>Following the results of our research into the level of compliance of financial promotions, we still have concerns that there are too many minor and medium risk breaches which receive little public censure. Moreover, there is no warning to consumers to beware from the FSA. We believe the FSA should publish promotions and advertisements that do not reach the standard as soon as they are identified, as already happens with broadcast financial services advertising.</p>

*Panel said (in our annual report 2006/07)*

*FSA responded (in their annual report 2006/07)*

*Progress since April 2007*

**Home reversions**

The FSA did not include in its new regulation what we believe are key consumer protection measures for the selling of home reversion products.

When we published our final rules for the regulation of Home Reversions, we concluded that prohibiting non-advised sales of home reversion products couldn't be justified as:

- There was no evidence of significant consumer detriment.
- There are few non-advised sales as most firms are members of the trade body SHIP which requires members not to accept non-advised business.
- It would restrict consumer choice and create an unlevel playing field with lifetime mortgages, where non-advised sales are permitted.

Instead, we introduced measures to protect consumers from the risk of non advised buying of unsuitable products, and will review the quality of home reversion selling standards.

On property valuations, when firms made it clear that they would commission their own valuation rather than rely on a report commissioned by the consumer, we saw this could result in delay and additional cost for consumers. So our rules require the valuation to be carried out by a competent valuer who owes a duty of care to the consumer for the valuation and provides the consumer with access to an independent complaints procedure capable of providing a remedy binding on the valuer.

We continue to watch developments in this area as our initial concerns still remain.

<i>Panel said (in our annual report 2006/07)</i>	<i>FSA responded (in their annual report 2006/07)</i>	<i>Progress since April 2007</i>
<p><b>Home purchase plans</b></p> <p>The FSA has done good work in this area, although we are disappointed that it has not incorporated a cost comparator to enable shopping around.</p>	<p>Home purchase plans do not involve the provision of credit and so we do not consider it appropriate to require firms to quote an APR. Instead, firms have the option of including an APR equivalent. There is however a requirement on firms to quote two other important cost comparators to consumers: the total amount to be paid by the consumer under the plan; and the pound payable per pound provided under the plan. These are also required for mortgages – set out in a similar prescribed manner – so consumers can compare home purchase plans and also mortgages.</p>	<p>We continue to watch developments in this area as at the moment this market remains relatively small.</p>
<p><b>Closed with-profit funds</b></p> <p>The FSA has responded to our concerns and the wider consumer dissatisfaction. It has accepted that many policyholders do not understand these products, and is working on better communications for them, but we are still concerned about the treatment of closed funds investors.</p>	<p>We acknowledge the Panel’s concerns over the information provided to with profit policyholders after the point of sale. Our Business Plan 2007/08 committed to further work so that with-profit policyholders, in both open and closed funds, receive clear and accessible information. The review findings published in May 2007 concluded that some communications to policyholders did not meet the principles of treating customers fairly or paying due regard to the information needs of customers. There was also an issue with firms’ controls, which was highlighted in a Dear CEO letter in 2004. Supervisors will be challenging senior management of life insurers on the actions they are taking in response to these issues. We have also highlighted specific instances where insurers have responsibilities proactively to provide communications that are clear, fair and not misleading. Our research into the availability of ongoing advice showed that there is some reluctance from advisers to engage with with-profits policyholders.</p>	<p>Whilst the FSA has taken steps to address some of the concerns identified, we continue to believe that the FSA could do more to improve the governance of with-profits funds and help consumers get access to helpful advice. We would like to see meaningful outcomes from the TCF initiatives and the OMO review.</p>

<i>Panel said (in our annual report 2006/07)</i>	<i>FSA responded (in their annual report 2006/07)</i>	<i>Progress since April 2007</i>
<p><b>State second pension</b></p> <p>The FSA identified around 120,000 people who may have been mis-advised when they contracted out of the second state pension, but it is leaving the onus on consumers to work out if they are affected and whether they should initiate a complaint.</p>	<p>In May 2007 we concluded there was no evidence of widespread misselling of Appropriate Personal Pensions (APP) sold since 1988, although a small proportion of sales made (1.5% of policies) involved consumers who were above the age standards set by individual firms at the time and these consumers may be at particular risk of having been given inappropriate advice. We decided that the most proportionate response was to: publish a step-by-step guide for consumers explaining the issue, how to find out whether they are affected and, if so, how to complain; and continue to monitor the number of complaints received by the FOS in this area. In May 2007 we also updated our factsheet which helps consumers with their annual decision about whether to contract out of the additional state pension.</p>	<p>This issue is now closed.</p>
<p><b>Payment protection insurance</b></p> <p>The FSA has undertaken thematic work and carried through strong enforcement action, fining some major companies. It has put an end to 'nil refunds' clauses in policy documents.</p>	<p>We share the Panel's concerns about this market and we are currently undertaking one of our biggest exercises ever in the retail market to help to mitigate the risks to consumers. In January 2007 we announced a third extensive review of PPI sales. We are committed to ensuring that selling practices improve and those firms that fall short are identified and action is taken.</p> <p>To date, we have taken enforcement action against nine firms for breaches in relation to PPI sales. We have publicised the findings of our enforcement investigations to raise awareness in the market of the standards we expect.</p>	<p>Although progress has been made, FSA research has shown there are a number of firms who are still failing to treat their customers fairly when selling this product. In our view, the industry has been warned enough about problems in the sale of PPI. We would thus expect to see more significant enforcement action in this area in 2008.</p> <p>We also believe the FSA should do more about past business reviews on PPI.</p>

*Panel said (in our annual report 2006/07)*

*FSA responded (in their annual report 2006/07)*

*Progress since April 2007*

**Financial capability**

The FSA has worked hard in this area and committed a significant amount of money, although we remain concerned that there is less of a focus on older people.

We welcome the Panel's support for the National Strategy for Financial Capability. We recently met with the Panel to discuss their concern about the elderly being excluded from the Strategy, and explained the work the FSA is undertaking concerning older people

We have welcomed the FSA taking an increasing role in this area over the past year and the appointment of a first Director of Financial Capability. We are pleased with the outcome of the Thoresen Review and that it concurred with what the Consumer Panel has been arguing for some time – that the benefits of the new service to society and the financial services industry outweigh the costs. During the coming year, we will look to the FSA to ensure that the development of the Money Guidance path-finder is linked to the FSA's work on the Retail Distribution Review.

**More principles-based regulation**

We are concerned to ensure that any change in the way the FSA regulates produces better outcomes for consumers. Although the FSA emphasises that consumer protection and understanding will be critical under the more principles based regime, its own research shows potential consumer detriment.

As part of our move to more principles-based regulation we are committed to simplifying and shortening our Handbook. In changing these parts of the Handbook we have aimed, where possible, to move away from detailed, process-orientated rules and have relied more on high-level, outcome-focused principles and rules. We expect principles-based regulation to achieve benefits for consumers by encouraging the senior management of firms to focus on the Principles and by fostering a more innovative and competitive financial services industry.

On the whole we have supported the introduction of the new, shorter Handbook and we have no objection to the FSA's risk-based approach in itself. We do however wish to see how well the new regulatory regime works for consumers over time. We will continue to raise with the FSA areas of particular risk where we believe that insufficient account has been taken of consumer interests, or where we think a principles-based approach would not lead to the appropriate level of consumer protection.

*Panel said (in our annual report 2006/07)*

*FSA responded (in their annual report 2006/07)*

*Progress since April 2007*

**Industry guidance**

We are concerned that the FSA needs to ensure that its rules are not replaced with industry codes which have been developed without the public consultation and consumer input necessary to ensure consumer interests are upheld.

To help firms determine how best to meet our expectations under more principles-based regulation we see a greater role for sector-specific guidance and support provided by industry associations, professional bodies or groups of firms. We will respond more in the third quarter of 2007, but where guidance has an impact on consumers we will look at how industry bodies have considered consumer opinions in its development.

We were pleased that the FSA's approach to confirming industry guidance includes a commitment to submit to the Consumer Panel any guidance that the FSA considers to have significant consumer impact. Although there have been few such instances so far, we look forward to seeing how industry chooses to use the confirmation procedure and how effective confirmed guidance is in practice.

**Conduct of business simplification**

We support regular reviews of the FSA Handbook, but are watching this area carefully to ensure that the drive for simplification does not take away vital consumer protection.

We are making a series of changes to simplify our conduct of business regime for investment business and, at the same time, to implement the Markets in Financial Instruments Directive. Rather than reducing the level of protection for consumers this approach should lead to a greater alignment of business and regulatory objectives, which in turn should benefit consumers by creating a more competitive and innovative market place. We will carry out a post-implementation review of the new Conduct of Business sourcebook to assess whether the desired outcomes for both consumers and firms are being achieved in practice.

The importance of the post-implementation review cannot be over emphasised. We look forward to seeing the terms of the review, a comprehensive set of measures, objectives and timescale for completion. We have identified certain areas – such as the presentation of past performance – where we believe additional research might be justified.

<i>Panel said (in our annual report 2006/07)</i>	<i>FSA responded (in their annual report 2006/07)</i>	<i>Progress since April 2007</i>
<p><b>Costs and benefits of regulation</b></p> <p>The FSA undertook work on the costs of regulation, but we were disappointed with the lack of tangible outcomes from the benefits of regulation work.</p>	<p>Deloitte published their report on the costs of regulation in June 2006. Most of the rules identified as imposing the highest incremental costs were in the retail investment and pensions advice sector and related to point-of-sale disclosure.</p> <p>Measuring benefits directly is difficult in practice, so we worked with economic consultants, Oxera, to develop a framework for assessing them. We then followed up by commissioning research reports into three rules: the Menu, the suitability letter, and reduction in yield (RIY) effect of charges, the results of which are being published.</p>	<p>The FSA is now undertaking work on assessing the costs and benefits of a more principles-based regime. We look forward to reviewing the results of this work.</p>
<p><b>Training and competence</b></p> <p>We are concerned about the FSA's longer term aim of removing the Training and Competence Sourcebook altogether, as we believe that keeping some examination-related rules is essential to ensure appropriate levels of training and competence.</p>	<p>In February 2007 we published proposals for a new <i>Training and Competence Sourcebook</i>. It gives retail businesses greater flexibility to decide how to achieve the required competence standards. We are proposing to retain the sourcebook at this stage, but our longer-term aim is to remove it altogether and rely on high-level competence requirements. This will not happen until we are satisfied it can be done without reducing competence standards in the industry.</p>	<p>The Panel's concerns about the FSA's longer term aim of removing the T &amp; C sourcebook altogether were shared by a number of respondents to the FSA's consultation paper. There are links too between the training and competence regime and aspects of the Retail Distribution Review and we will continue to take an interest in this important area.</p>
<p><b>FSA's use of complaints data</b></p> <p>We have been impressed by recent investment in computer software which will enable greater use of complaints data.</p>	<p>We are aware of the Panel's interest in the publication of complaints data. We will consider whether it would be desirable to publish complaints data, including the associated costs and benefits, in the second part of this year.</p>	<p>In May 2008 the FSA published DP08/3 Transparency as a Regulatory Tool, which includes consideration of the publication of complaints data. The Panel will be responding to the Paper.</p>

**Panel said (in our annual report 2006/07)**

**FSA responded (in their annual report 2006/07)**

**Progress since April 2007**

**Approved persons**

We were concerned to learn that some firms were unclear about operational requirements and urged the FSA to ensure that clear and fully understood processes are in place before any simplification of the regime is taken forward.

CP06/15, which we published in August 2006, makes it clear that our approval process is in addition to, not a substitute for appropriate checks by employers. Our expectation is that senior managers assess, using a risk-based approach, which combination of checks including credit references, references from previous employers and criminal records checks are appropriate for a particular role.

The new regime came into force on 1 November 2007. The FSA has said that merging the customer functions will not reduce the scope of the Approved Persons Regime and that firms will still be required to ensure their employees have the necessary competence and specific product knowledge to perform their roles. In our response to CP06/15 we called for post-implementation research after twelve months. This would provide evidence of the effectiveness of the new regime and whether the FSA's expectations have been met.

**General insurance effectiveness review**

We have been supportive of the FSA's review and agreed it is important to assess whether the new rules are delivering the expected outcomes. We have raised concerns about some forthcoming proposals on cancellation rights, removal of the policy summary and the category for private medical insurance.

We welcome the Panel's support of our review of the effectiveness of our general insurance regime. Following discussions we have decided not to remove cancellation rights for non-distance sales to retail customers, as there seem to be no compliance cost savings and a risk of pressure-selling emerging. We acknowledge the Panel's concern over our proposals to remove detailed rules on product disclosure. We propose to replace the detailed rules on product disclosure with a high-level standard which will apply to all firms, all products and all customers requiring customers to be given appropriate information in good time and in a comprehensible form. We will look again at the protections around the sale of Private Medical Insurance (PMI) products again in our June Consultation Paper.

We were generally supportive of the outcome of the review although we still retain concerns about the potential for detriment in certain markets, notably PMI. We have raised these concerns with the FSA and look forward to the results of its post-implementation review of the new ICOBS sourcebook.

**Panel said (in our annual report 2006/07)**

**FSA responded (in their annual report 2006/07)**

**Progress since April 2007**

**Financial Ombudsman Service**

We have said that we would like to see the cost of FOS spread equitably with the greatest burden being placed on larger firms, so that smaller firms are not put under undue financial pressure by fees levied to meet the cost of the FOS.

Responses to a joint FSA/FOS discussion paper on the future funding structure of the FOS in May 2006 indicated broad support for increasing the importance of the case fee, as opposed to the levy, in financing the FOS, and for increasing the number of 'free' cases.

There have been a number of other policy developments over the last twelve months or so, including changes to the wider implications process and Lord Hunt of Wirral's independent Review of the Ombudsman Service. The Panel strongly supports the work of the Ombudsman and we will continue to take a close interest in the Ombudsman's work.

**Relations with the OFT**

We have been concerned to see that the two regulators work closely together as the involvement of two authorities can be confusing for consumers.

Over the last 12 months there has been a significant improvement in the way we work with the OFT at a strategic level and we have made a commitment to continue this collaboration to the benefit of consumers and markets. The National Audit Office (NAO) review of the FSA concluded that 'The FSA has good and improving working arrangements with the Office of Fair Trading' and said that the collaboration on payment protection insurance was 'a model for future successful joint working between the two organisations.'

We are also drafting a high-level statement that will set out the respective roles and responsibilities of the FSA and the OFT. We aim to publish this alongside the next Joint Action Plan update in June 2007.

We still have some concerns about the working arrangements in this regard, particularly in light of the potential for detriment. We will be particularly interested to see how the respective responsibilities for enforcing the consumer protection regulations under the soon to be implemented Unfair Commercial Practices Directive work out in practice.

<i>Panel said (in our annual report 2006/07)</i>	<i>FSA responded (in their annual report 2006/07)</i>	<i>Progress since April 2007</i>
<p><b>Banking code</b></p> <p>We have contributed to the three yearly review of the Banking Code with a ‘bankers’ dozen’ of comments and suggestions for change. We are concerned about the governance of the Banking Code and would prefer to see the independent reviewer being – at the very least – approved by the FSA and the FSA making the final decision upon changes to the Code.</p>	<p>The Banking Code (‘the code’) is the industry’s own code of conduct in the area of deposit-taking. Compliance with the code is monitored by the Banking Code Standards Board. The code is in the middle of its tri-ennial review. This, if monitored and enforced effectively, should go a long way to meeting the Panel’s concerns regarding the ‘unlevel playing field’ between banking and other regulated market sectors. In response to the Panel’s comments on the governance of the code, we are consulted by the code sponsors prior to the appointment of the independent reviewer. We expect the OFT would also have an interest in this appointment given the code’s coverage of consumer credit products.</p>	<p>We were disappointed that the changes to the Banking Code, announced in November 2007, did not go far enough to enable consumers to have confidence that banks will act in a way that treats customers fairly. We are still concerned that the banking industry is not being open enough to this concept.</p> <p>We have continued to raise with the FSA our view that it should take a more active role in the regulation of retail banking and look forward to the forthcoming results of its own review.</p>
<p><b>Regulation of small firms</b></p> <p>The results of the FSA’s Quality of Advice research has raised Panel concerns that the FSA may need to be doing more work in the area of small firms supervision.</p>	<p>Our risk-based approach enables us to supervise a large number of small firms effectively and assists us in taking appropriate action against firms who pose a significant risk to consumers. Our focus is on changing firms’ behaviour to benefit consumers. We are always looking to improve our effectiveness and we will continue to assess and, where necessary, revise our approach to make us more efficient and effective.</p>	<p>We have welcomed the FSA’s new strategy for small firms, which should provide benefits to small firms and lead to better consumer protection and increased confidence in the industry. We wish to see this delivering real consumer benefits, including in the area of TCF.</p>

*Panel said (in our annual report 2006/07)*

*FSA responded (in their annual report 2006/07)*

*Progress since April 2007*

**Enforcement**

The FSA has been active in a range of areas, including Payment Protection Insurance and 'boiler rooms', but we would like to see more evidence of a more proactive approach.

We recognise the importance of enforcement in moving towards more principles-based regulation and it continues to be an important tool in supporting our supervisory, thematic and market-monitoring activities. We use enforcement to bring about behavioural change in firms in those areas where the risks to our statutory objectives are highest, and particularly where the protection of consumers or the cleanliness of markets is an issue. We will take strong enforcement action to reinforce our message when behaviour and outcomes fall short of the Principles. We have achieved successful enforcement outcomes in the wholesale and retail markets for breaches of our high-level principles without reference to detailed rules. We expect this trend to continue. We are serious in our aim to engage senior management in respect of the regulatory conduct of their firms: we expect senior management to take responsibility for ensuring that risks are identified; that there are appropriate systems and controls in place to mitigate these risks; and that steps have been taken to ensure that they are effective. We propose to also consider whether the status, position or responsibilities of the individual are such as to make a breach more serious and whether the penalty should therefore be set at a higher level. One of the most effective methods we have to deal with the dangers posed by overseas boiler rooms is to raise awareness through consumer education and to issue warnings and alerts in relation to specific boiler room threats.

We are pleased that significant enforcement action has taken place this year particularly in the areas of boiler rooms and broker mis-management. We were also pleased to see enforcement follow-up to the small firms work on pressure selling. We remain concerned that the FSA appears to use enforcement action as a last resort rather than as a proactive regulatory tool.

We welcomed the FSA's decision to drop the notion that it is not an enforcement-led regulator.

We are concerned that there seems to be a significant delay between the FSA's identification of poor market practice and regulatory action to deal with it. Whilst it was reasonable for the FSA to give industry sectors new to FSA regulation time to bring their business into line with regulatory requirements, it is disappointing that almost three years on there are still significant failings in both mortgage and insurance regulation.

## Appendix 2: Terms of reference of the Panel

The FSA Board agreed the following revised terms of reference for the Consumer Panel on 15 March 2001.

1. The Financial Services Consumer Panel ('the Panel') is established by the Financial Services Authority (FSA) under the Financial Services and Markets Act to represent the interests of consumers. The Panel is independent of the FSA and can speak out publicly on issues where it considers this appropriate.
2. Panel members are appointed by the FSA in accordance with Nolan principles, in order to represent consumers, with HM Treasury's approval in the case of the Chairman. The FSA Board approves the Panel's annual budget and provides a dedicated Secretariat to support the Panel.

### Scope

3. The main purpose of the Panel is to provide advice to the FSA. As such it does not carry out responsibilities on behalf of the FSA. For example, the Panel does not undertake consumer education, nor does the Panel take up individual consumer complaints.
4. The emphasis of the Panel's work is on activities that are regulated by the FSA, although it may also look at the impact on consumers of activities outside but related to the FSA's remit.
5. The Panel will have regard to the interests of all groups of consumers including those who are particularly disadvantaged in the context of financial services, including consumers who have little or no access to financial services.

### Purpose

6. The Panel will:
  - a) represent the interests of consumers by advising, commenting and making recommendations on existing and developing FSA policy and practices as appropriate;
  - b) speak on behalf of consumers by reviewing, monitoring and reporting to the FSA on the effectiveness of FSA's policies and practices in pursuing its duties;
  - c) keep under review and influence actual and potential developments in financial services to enable it to fulfil (a) and (b) effectively.
7. In addition, it can advise the Government on the scope of financial services regulation.
8. The Panel can consider other matters that assist it in carrying out its primary functions.

### Accountability

9. The Panel shall publish an Annual Report on its work and expenditure.
10. The Panel can speak out publicly when it wishes to draw attention to matters in the public interest and when it disagrees with the FSA.



## Appendix 3: Members of the Panel

### *John Howard (Chairman)*

John is a journalist and broadcaster with extensive experience of consumer issues having been the principle presenter of the daily consumer news programme on BBCRadio 4 'You and Yours', and numerous other financial programmes on radio and TV. He is also a qualified solicitor. He was a member of the Mortgage Code Compliance Board until its activities were taken over by the FSA in November 2004. John has also been a member of the council of Energywatch since April 2005. He was appointed to the panel in October 2000 and became Chairman in October 2005.



Attendance at Full Panel meetings – 11/11 eligible to attend

### *Adam Phillips (Vice Chairman)*

Adam has extensive experience of market research, including research into consumer financial products. He is Managing Director of Real Research, his own market research consultancy, and is a Council Member of ESOMAR (the world association of market research professionals), also chairing ESOMAR's Professional Standards Committee. Adam was appointed to the Panel in March 2004 and became Vice-Chairman in November 2005; since 2004, he has also been a member of the Press Complaints Commission.



Attendance at Full Panel meetings – 10/11 eligible to attend

### *Kay Blair*

Kay has been a member of the Scottish Consumer Council since 2003, and has been a non-executive director of the Scottish Ambulance Service and Scottish Legal Aid Board. Since 1982, Ms Blair has owned and managed her own management consultancy, Business Perceptions Ltd. She combines business development with journalism, and has written for a variety of publications including the Scotsman and Scottish Business Insider. Currently she focuses on internal communications for financial services companies. She was appointed to the Panel in September 2006.



Attendance at Full Panel meetings – 10/11 eligible to attend

### **Michael Chapman**

Michael runs his own advisory consultancy specialising in financial capability, financial inclusion and community regeneration.

Previously he has been Director of the Scarman Trust in Scotland, an associate director of the Centre for Research into Socially Inclusive Services at Heriot Watt University, Financial Inclusion Officer for the City of Edinburgh, and Research Officer at the Scottish office. He was appointed to the Panel in January 2007.

Attendance at Full Panel meetings – 11/11 eligible to attend



### **Stephen Crampton**

Stephen is an independent EU and consumer affairs consultant with 24 years of knowledge of consumer and regulatory issues at EU and UK level. Until recently he was EU Advisor at Which? And so responsible for developing their European strategy and for policy research on EU issues. Previous to that he was director of the Consumers in Europe Group and also held various roles at the National Council for Voluntary Organisations. He was appointed to the Panel in September 2006.

Attendance at Full Panel meetings – 11/11 eligible to attend



### **Caroline Gardner**

Caroline is a Director of Deloitte's Financial Services Advisory Team leading strategic, marketing and consumer projects across a wide range of financial services markets. She has provided advice to the government, trade and consumer bodies and to financial services providers and distributors. Caroline recently sat on the Institute of Actuaries' Equity Release Working Party. Caroline has 20 years experience of understanding consumer dynamics in the financial services arena. She was appointed to the Panel in July 2005.

Attendance at Full Panel meetings – 11/11 eligible to attend.



### **Jenny Hamilton**

Jenny is a Law Professor at Strathclyde University with financial services regulation as one of her primary areas of teaching responsibility.

She has published a number of books, articles and other papers on legal aspects of consumer and financial services regulation. She is a Council Member of the Share Interest Society Ltd – a co-operative lending society that aims to reduce poverty in the world by providing fair and just financial services.

She has been a member of the Scottish Consumer Council, and was Chair of their Legal Advisory Group from 2001-03. She was appointed to the Panel in January 2007.

Attendance at Full Panel meetings – 11/11 eligible to attend



### **Tony Hetherington**

Tony Hetherington has been a financial journalist since 1982. His weekly column responding to readers' letters on financial matters appears in the Mail on Sunday.

He also writes a syndicated weekly advice column which appears in local and regional newspapers. He was appointed to the Panel in January 2005.

Attendance at Full Panel meetings – 11/11 eligible to attend



### **Nick Lord**

Nick is a consultant in personal finance issues, working with a range of organisations, including Citizens Advice, the Finance and Leasing Association Lending Code Group, and various government departments.

Nick has worked in the consumer advice and advocacy sector since 1983. Much of this time has been within the Citizens Advice Service, both as an adviser and manager, and in senior money advice roles at national level. He has also served as a public interest director of the Mortgage Code Compliance Board. He was appointed to the Panel in January 2005.

Attendance at Full Panel meetings – 9/11 eligible to attend



### **David Metz**

David Metz had a career first as a research scientist and then as a senior civil servant in a number of Whitehall departments where his responsibilities included regulation and consumer protection. He is currently a visiting professor at the Centre on Ageing & Public Health at the London School of Hygiene & Tropical Medicine, and is co-author of the book 'Older, Richer, Fitter: identifying the customer needs of Britain's ageing population' published by Age Concern Books. David is a non-executive director of Camden Primary Care Trust and a volunteer benefits adviser for Age Concern Islington.



Attendance at Full Panel meetings – 11/11 eligible to attend

### **Lindsey Rogerson**

Lindsey is a freelance financial journalist, and currently writes the weekly financial healthcheck column in Scotland on Sunday, as well as contributing to numerous other publications and websites. She was chosen as European Private Equity Journalist of the Year 2005/6. Previously she has been Personal Finance Editor of The Scotsman and editor of Private Banker International. She was appointed to the Panel in September 2006.



Attendance at Full Panel meetings – 11/11 eligible to attend

### **Carol Stewart**

Carol Stewart is currently a generalist adviser with Citizens Advice. Prior to this she spent over 20 years working in investment banking, most recently with UBS where she held a senior position in the Legal and Compliance area. She was appointed to the Panel in June 2004.



Attendance at Full Panel meetings – 11 /11 eligible to attend

## Appendix 4: The Panel's budget and expenditure

The FSA's Board agrees a budget for Panel members' fees, expenses and any work we commission; and we are supported by a Secretariat of FSA staff.

Our budget (excluding FSA staff costs) for the year ending 31 March 2008 was £443k. Actual expenditure for this period was £378k (see summary below).

	Budget April 2007–March 2008 (£000)	Actual April 2007–March 2008 (£000)	Actual April 2006–March 2007 (£000)
Panel members' fees <sup>1</sup> and expenses	247	267	234
Fees	201	204	192
Expenses <sup>2</sup>	46	63	42
Professional fees	177	102	104
Research <sup>3</sup>	160	97	98
Other	17	5	6
Sundries <sup>4</sup>	19	9	24
<b>Total</b>	<b>443</b>	<b>378</b>	<b>362</b>

- The fees are exclusive of employers' National Insurance contributions paid by the FSA. The fees payable to Panel members during the year from 1 April 2007 to 31 March 2008 were as follows:
 

Panel Chairman	£41,400 per annum
Panel Vice Chairman	£20,700 per annum
Members whose minimum commitment is 35 days a year	£14,490 per annum
Members whose minimum commitment is 30 days a year	£12,420 per annum
Members whose minimum commitment is 25 days a year	£10,350 per annum
- Expenses in the year to March 2008 were higher than budgeted as recently recruited Panel members had further distances to travel to meetings than previous members, with a consequent impact on travel and hotel expenses.
- Research expenditure was lower than budgeted for as it was decided not to proceed with some research which had been planned.
- Includes costs of non-FSA meeting venues/ facilities and other miscellaneous expenditure.

# Appendix 5: Publications and press releases

## **Public responses/public statements**

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### **Clarification of the definitions concerning eligible assets for investments by UCITS**

Response to CESR Consultation 07/045  
April 2007

### **Financial Capability : The Government's Long-Term Approach**

Response to HMT  
April 2007

### **Green Paper on the Review of the Consumer Acquis**

Response to European Commission  
May 2007

### **Training and Competence Sourcebook**

Response to CP07/04\*\*\*  
May 2007

### **Questionnaire on the simplified prospectus for retail investors**

Response to CESR Questionnaire  
May 2007

### **Permitted Links for Long Term Insurance Business**

Response to CP07/7\*\*  
June 2007

### **Quarterly Consultation No 12**

Response to CP07/8\*  
June 2007

### **Possible adjustments to UCITS Directive**

Response to DG Markt Services  
Discussion Documents  
June 2007

### **Financial Services Compensation Scheme – Funding Review**

Response to CP07/5\*\*\* including  
feedback on DP06/1  
June 2007

### **Credit Union Debts in Protected Trust Deeds**

Response to The Accountant in Bankruptcy  
& Agency Chief Executive  
June 2007

### **A UK Unclaimed Assets Scheme**

Response to HMT  
June 2007

### **Funds of Alternative Investment Funds (FAIFs)**

Response to CP07/6\*\*\*  
July 2007

### **ABI Life & Pension Fund Sectors**

Response to ABI  
July 2007

**Green Paper on Retail Financial Services  
in the Single Market**

Response to European Commission  
July 2007

**Conduct of Business Regime :  
Non-MiFID deferred matters**

Response to CP07/09\*\*  
August 2007

**Better Regulation Measures for the Asset  
Management Sector**

Response to HMT  
August 2007

**Trading of MTF Shares : Impact of proposed  
stamp duty changes**

Response to DP07/3  
September 2007

**Integrated Regulatory Reporting : Changes  
to Reporting Requirements Affecting  
Most Firms**

Response to CP07/17\*  
September 2007

**Consequential Handbook amendments  
(arising from implementation of MiFID  
and creation of NEWCOB)**

Response to CP07/16\*\*  
September 2007

**Investment Entities Listing Review**

Response to CP07/12\*\*  
September 2007

**Insurance Selling and Administration**

Response to CP07/11\*\*\*  
September 2007

**Platforms : The Role of Wraps  
and Fund Supermarkets**

Response to CP07/2  
October 2007

**Proposals for a UK Recognised Covered  
Bonds Legislative Framework**

Response to HMT  
October 2007

**Dispute Resolution : The Complaints  
Sourcebook – Further simplification  
and minor changes**

Response to CP07/14\*\*  
November 2007

**Insurance Contract Law :  
Misrepresentation, Non-disclosure and  
Breach of Warranty by the Insured**

Response to Law Commission  
November 2007

**Voluntary jurisdiction : filling the gaps  
for EEA business**

Response to FOS  
November 2007

**Banking Code Review 2007**

Response to Independent Banking  
Code Reviewer  
November 2007

**Quarterly Consultation Paper –  
Chapter 4 & 7**

Response to CP07/18  
December 2007

**A Review of Retail Distribution**

Response to DP07/1  
December 2007

**Content and form of Key Investor  
Information disclosures for UCITS**

Response to CESR  
December 2007

**Banking Reform : Protecting Depositors**

Response to HMT  
December 2007

**Review of the Prudential Rules for Personal Investment Firms**

Response to DP07/4  
January 2008

**Regulation of Modified Credit Agreements**

Response to HMT/BERR  
January 2008

**The Hunt Review : Independent Review of the Financial Ombudsman Service**

Response to Lord Hunt  
January 2008

**Call for Evidence : Need for a coherent approach to product transparency and distribution requirements for “substitute” retail investment products**

Response to DG Markt  
January 2008

**UK Discussion Paper on Commission’s Review of the Financial Regulatory Framework for Commodity and Exotic Derivatives**

Response to HMT  
January 2008

**Quarterly Consultation No 15 – Chapter 7**

Response to CP08/1\*  
January 2008

**Disclosure of Contracts for Difference**

Response to CP07/20\*\*\*  
February 2008

**National Payments Plan Consultation**

The Payments Council  
February 2008

**Quarterly Consultation No 15 – Chapter 8**

Response to CP08/1\*  
February 2008

**Implementation of the Payment Service Directive**

Response to HMT  
March 2008

**Regulating Connected Travel Insurance**

CP07/22\*\*  
March 2008

***Press Releases***

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**Consumer Panel gives cautious welcome to FSA revision of plans for listing rules for offshore firms**

April 2007

**Research shows consumers need a better understanding of the risks to their money in financial savings and investment**

May 2007

**Contracting out of the additional state pension – higher risk consumers need to know their potential loss**

May 2007

**Consumer Panel challenges the FSA to end commission bias**

June 2007

**Consumer Panel to pursue regulatory issues from European Parliament report on Equitable Life**

June 2007

**Consumer Panel questions FSA on balance of benefits compared to costs of regulation**

June 2007

**Consumer Panel welcomes Retail Distribution Review, but still believes FSA may need to end commission**

June 2007

**Consumer Panel welcomes FSA publication on study of benefits of suitability letters for consumers**

June 2007

**Consumer Panel welcomes the appointment of Hector Sants as Chief Executive of the FSA**

July 2007

**Consumer Panel welcomes test case on overdraft charges; but banks need to take action now to address FSA criticisms of complaints handling**

July 2007

**EU is making life easier for firms at the expense of customers says Financial Services Consumer Panel**

July 2007

**FSA to consult Consumer Panel before confirmation of industry guidance**

September 2007

**8 million policyholders unable to get advice on their closed funds says research from Consumer Panel**

September 2007

**FSA's latest findings on PPI show consumers still not getting fair treatment on payment protection insurance**

September 2007

**FSA action on with-profits welcome but could go further – Consumer Panel**

September 2007

**FSA announcement on compensation scheme welcomed by Consumer Panel**

October 2007

**Generic advice is crucial to the restructuring of financial advice in the UK says Consumer Panel**

October 2007

**Treating Customers Fairly must get through to customers says Consumer Panel**

October 2007

**Consumer Panel reaction to FSA's waiver on handling of complaints about unauthorised overdraft charges**

November 2007

**Banking Code Review does not go far enough says Consumer Panel**

November 2007

**FSA must do more to ensure Treating Customers Fairly for reattribution of inherited estates says Consumer Panel**

December 2007

**Consumer Panel responds to Retail Distribution Review**

December 2007

**Consumer Panel disagrees with FSA assessment of the risks for consumers buying private medical insurance**

December 2007

**Consumers resigned to getting poor advice says Panel research**

January 2008

**Home repossessions must take account of FSA rules says Consumer Panel**

February 2008

**Consumer Panel welcomes Treasury Select Committee investigation into re-attribution of inherited estates of with-profit funds**

February 2008

**Thoresen report recognises wider benefits to consumers of money guidance**

March 2008

## Appendix 6: Panel members on other bodies

### *Panel members as consumer representatives on FSA bodies*

**Treating Customers Fairly Consultative Group** – David Metz

**FSA Consumer Purchase Outcomes Group** – Adam Phillips

**FSA European and International Roundtable Group** – Stephen Crampton

**FSA Asset Management Forum** – Carol Stewart

**FSA FSCS Funding Review** – Tony Hetherington

**FSA Quality of Advice Group** – Adam Phillips

**FSA RDR Incentives Industry Group** – John Howard

**FSA RDR Consumer Access Group** – Adam Phillips

**FSA RDR Sustainability Industry Group** – Caroline Gardner

**FSA RDR Regulatory Barriers & Enablers Industry Group** – David Metz

### *Panel members as consumer representatives on bodies related to the Panel's work*

**Observer to Financial Services Skills Council Board** – Carol Stewart

**EU Simplified Prospectus Group** – Carol Stewart

**FSA/OFT Action Plan Consultative Group** – Nick Lord

**CESR Market Participants Consultative Group** – John Howard

**Retail Financial Services Group** – John Howard

**Banking Code Review Group** – Lindsey Rogerson

**Payments Council Forum** – Lindsey Rogerson

**Personal Accounts Delivery Authority (PADA) Group** – Caroline Gardner

**NIACE Personal Economics Group** – Mike Chapman

## Appendix 7: Meetings with external bodies

Association of British Insurers (ABI)  
Association of District Judges  
Association of Independent Financial Advisers (AIFA)  
Aviva  
Banking Code Standards Board (BCSB)  
British Bankers Association (BBA)  
CESR  
CII  
Debt Advice  
DG Markt  
Financial Ombudsman Service (FOS)  
Financial Services Compensation Scheme (FSCS)  
Financial Services Practitioner Panel (FSPP)  
Financial Services Research Forum (FSRF)  
HBOS  
Help The Aged  
Her Majesty's Treasury  
HSBC  
Investment Management Association (IMA)  
London Consultants Association  
Lord Hunt of Wirral (for the review of FOS)  
National Audit Office (NAO)

National Consumer Council (NCC)  
National Savings & Investments (NS&I)  
Office of Fair Trading (OFT)  
Office of the Policyholder Advocate  
Standard Life  
Towry Law  
UK Shareholders Association (UKSA)  
Which?

***In November 2007 the Financial Services Consumer Panel co-hosted with the Financial Services Research Forum a Seminar on Financial Services Distribution, Fair Treatment For All, and the following organisations attended:***

Abbey National  
Able Communications  
Aegon UK  
AFS  
AIFA  
Alliance & Leicester  
Barclaycard  
BSA  
Citizens Advice

Department of Trade and Industry (DTI)  
Department for Work and Pensions (DWP)  
Ecclesiastical  
Ernst & Young  
Financial Ombudsman Scheme (FOS)  
GE Money  
HBOS  
HSBC  
Her Majesty's Treasury (HMT)  
IFS Learning  
Insight Investment  
Kensington Financial Services  
Lazard Bros  
Lloyds TSB  
Liverpool Victoria  
Mazars  
M & S Money  
Financial Inclusion Centre  
Money Advice Trust  
Nationwide  
NFU Mutual  
National Savings & Investments (NS&I)  
Northern Rock  
N&PBS  
Nottingham University Business School  
Prudential  
Royal Bank of Scotland  
Resolution plc  
Royal Mail

Standard Life  
Swiss Re  
University of Nottingham

***Events at which the Chairman or Vice Chairman of the Financial Services Consumer Panel have spoken:***

FSA Launch on More Principles Based Regulation – April 2007  
CII Graduation Ceremony – May 2007  
Treasury Select Committee – May 2007  
Building Societies Association Conference – May 2007  
FSA Financial Promotions Conference – June 2007  
FSA Retail Distribution Conference – June 2007  
FSA Annual Public Meeting – July 2007  
FSA TCF Conference – November 2007  
BBA TCF Briefing – November 2007  
NCC/SRA Roundtable Briefing – December 2007  
BBA RDR Seminar – December 2007  
FSA Retail Firms Division Conference – February 2008  
Friends Provident Conference – February 2008  
CML Seminar on Complaint Handlers for Lenders – March 2008



## *Financial Services Consumer Panel*

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25 The North Colonnade  
Canary Wharf, London E14 5HS

Tel: +44 (0) 20 7066 9346  
Fax: +44 (0) 20 7066 9728  
e-mail: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)  
Website: <http://www.fs-cp.org.uk>