

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES



Annual Report 2008/09

Contents

<i>Foreword</i>	2
<i>Chapter 1: Overview of the year</i>	5
<i>Chapter 2: The year in detail</i>	7
<i>The consumer in the financial crisis</i>	7
<i>An effective retail market</i>	10
<i>An effective system of financial regulation</i>	13
<i>Communicating with consumers</i>	16
<i>Chapter 3: Future key priorities</i>	18
<i>Appendix 1: Panel responses to consultations</i>	20
<i>Appendix 2: Terms of reference of the Panel</i>	30
<i>Appendix 3: Who is on the Panel?</i>	31
<i>Appendix 4: The Panel's budget and expenditure</i>	34
<i>Appendix 5: Publications and press releases</i>	35
<i>Appendix 6: Panel members on other bodies</i>	38
<i>Appendix 7: Meetings with external bodies</i>	39

The past year has seen the most serious global financial crisis in almost a hundred years. Britain has entered the sharpest recession for the last 60 years and one which is likely to be the deepest since 1945. This has inevitably had a huge impact on the work of the Panel and on its priorities.

Lord Turner's report, published in March 2009, has provided a lucid explanation of the origins of the crisis and proposed actions which could, potentially, reduce the risk of a repeat. Others have also suggested ways in which the financial system could be made more stable in future. Inevitably, the focus of attention has been on preserving the stability of the financial system. Very little of the debate so far has been directed towards reviewing the protection of customers of the retail financial services system beyond trying to put in place levels of compensation which will minimise the chance of the repetition of a run on a retail bank.

There have been suggestions in the Turner Review and elsewhere that the FSA has been too focused on regulating conduct of business at the expense of prudential regulation. Yet underlying the crisis were poor lending practices, encouraging consumers to borrow money for home ownership. And it is the end customers who ultimately bear the cost of this disaster, whether directly because of the collapse in house prices leading to negative equity in their homes, and interest rates close to zero which hurts those relying on their savings, or indirectly through higher taxes to pay for bailing out the banks. It is important that in moving forward, the regulator keeps the needs of consumers at its heart.

The Panel wants future regulation to achieve better results for consumers. To this end, we have been reviewing the effectiveness of regulation of the retail sector covered by the FSA. We will be publishing a report which will focus on the actions necessary to improve the way regulation works for consumers. Our ultimate aim is to ensure that the public can trust the financial services industry to look after the best interests of their customers by treating them fairly. After all, rebuilding a solid and trusting relationship between the industry and its customers is in the interests of both.

In terms of the FSA's specific work over the past year, the FSA's termination of the Treating Customers Fairly Initiative at a time when it was clear that firms were not going to meet the FSA's deadline for embedding TCF caused us particular anxiety. We have noted the reorganisation of supervision and the creation of a new Conduct Risk department. This is aimed at helping the FSA to meet its aim of becoming more focused on appropriate outcomes for customers rather than management processes. We hope that the changes in the way companies are being supervised will have an obvious impact on the way retail customers are treated and we will be watching closely to see if this department is more effective than its predecessor.

An area which is particularly crucial for consumers at the moment is the FSA's regulation of mortgages and the treatment of consumers when they get into difficulty with their repayments. FSA rules on the treatment of people in such circumstances should help protect consumers in this first housing recession since the



**Adam Phillips,
Consumer Panel Chairman**

FSA took over regulation of mortgages. Actions such as the FSA publicly warning chief executives by letter and a Ministry of Justice Protocol sent to all judges dealing with repossession orders sent out the right signals. The FSA also needs to take timely and clearly visible steps to enforce the rules.

We are very pleased that the FSA has used its legal powers to take over the regulation of the banking code in relation to deposits. This is a step which the Panel has been pressing the FSA to take for several years. It is unfortunate that the closer supervision of behaviour by the banks resulting from this change will not cover consumer credit and bank charges because of the structure of the present legislation. We would like to see this addressed by new legislation in the near future.

The Panel welcomes the FSA's increased emphasis on enforcement and prosecution. We expect this to lead to more individuals being sanctioned in the future for breaches of key principles, not just fines to organisations. In our view fining organisations has a limited deterrent effect compared with sanctioning the individuals responsible for the actions of the organisation.

Over the last three years the FSA has been pursuing the Retail Distribution Review with the objective of repairing "a system which serves neither the producer of the services nor the consumer of the services" in the words of a former FSA chairman, Callum McCarthy. As readers of previous reports will know, we have actively supported this work and we hope that the FSA consultation paper that emerges in the summer of 2009 will meet the challenge he set. In particular, we want to see the elimination of sales bias, which means an adviser favouring one provider or product over another because of an incentive offered to the adviser, rather than because the product represents the best buy for the customer. We know eliminating this bias is a huge challenge for FSA and the industry, but unless it is overcome it is hard to see how customers will be willing to entrust their long term financial health to this industry.

Another major initiative by the FSA in recent years has been work aimed at improving the financial capability of people. The Panel has long called for the creation of a system to provide general financial advice which is not linked to particular product recommendations, to help consumers make better choices and to help the marketplace function better. We are very pleased that the Government has announced funding for the national rollout of the FSA's money guidance pathfinder project from 2010 which aims to do just this.

By its very nature, this report looks back at what has happened in the past, and yet this has been a year when changes have been made by the FSA which will have a significant impact on regulation. We believe that the FSA's emphasis on outcomes focussed regulation and enforcement as credible deterrence marks a cultural shift in the FSA's approach which can only be good for consumers. We look forward to seeing the results of this in the future.

I would like to close by thanking the members of the Panel for the work that they have done this year, much of it in their spare time under considerable time pressure. I would also like to thank Lord Lipsey for the effort he put into the role of chairman of the Panel. In the brief period that he was chairman he did a great deal to raise the visibility of the Panel and promote its policies.



Adam Phillips
Chairman
July 2009



The Panel in March 2009 from left to right:
Front row: Adam Phillips (Chairman)
Second row: Carol Stewart, Tony Hetherington, Nick Lord
Third row: David Metz, Stephen Crampton, Kay Blair, Caroline Gardner
Back row: Michael Chapman, Lindsey Rogerson, Jenny Hamilton

Chapter 1: Overview of the year

The Consumer Panel was set up principally to advise the FSA on its policies from the consumer perspective. We see FSA policy ideas which impact on consumers from the earliest stages – before formal consultations are published – and so have a unique opportunity to input the consumer perspective into FSA policies as they develop. We review proposed regulation and the actions of the regulator, to assess whether regulation makes it easier for consumers to engage with the financial services industry and helps people to get a fair deal.

The unfolding financial crisis during the year in question has presented significant challenges. Our views of the FSA's progress over the period are as follows:

FSA commitment to outcomes focused regulation

We fully support the FSA commitment to look more at outcomes – including those for consumers – in its supervision. In the past we have been concerned that the FSA is too slow to follow up on poor findings in thematic work and has not gathered evidence quickly enough. We have advised the FSA that scrutinising outcomes and acting appropriately will improve the consumer experience of financial services.

Treating Customers Fairly

The principle of Treating Customers Fairly must be central to the FSA's regulation of financial services firms. We thought the FSA missed an opportunity to establish a clear baseline by dropping the final assessment of whether firms had truly incorporated

TCF into their structure and operations in December 2008, before transferring TCF to supervision. We will continue to argue for demonstrably better consumer outcomes from the FSA's revised approach to TCF.

Mortgages

FSA regulation of mortgages in the current downturn has had a positive impact on the treatment of consumers going into arrears with FSA action improving the treatment of people in trouble with their mortgage. The Panel has told the FSA that this is a crucial time to ensure that principles are followed and rules are obeyed. We are pleased that the FSA has taken enforcement action against mortgage advisers who have acted inappropriately.

Regulation of retail banking

Thankfully, the FSA has finally recognised that the voluntary Banking Code has not been delivering good outcomes for consumers and that effective FSA regulation is needed. The FSA's Consultation Paper (08/19) on taking over regulation is just the beginning of the process. We will continue to engage in the debate as the new regulatory system develops ahead of implementation in November 2009, and beyond as the new system beds down.

Compensation for consumers

As was evident from the queues forming outside Northern Rock before its collapse, an adequate and robust compensation scheme is vital for consumer confidence. Since that time, the Tripartite Authorities

have been reviewing and developing the compensation system for retail deposits. However there are still problems and confusion – a theoretical £50,000 limit in place but in practice 100% government guarantee – with additional uncertainty over what brands to combine when working out the limit.

Retail Distribution Review

Although very pleased at the FSA decision to tackle the payment of commission and the structure of financial advice services, we remain concerned that the Retail Distribution Review will end up as a compromise which does not deliver the step change in the market which consumers deserve. In particular, the Panel is keen to ensure the abolition of sales, product and provider bias and the raising of professional standards across the board.

Payment protection insurance

The FSA has been slow to deal with problems in the sale of Payment Protection Insurance (PPI). Although it has imposed penalties on a number of firms, we continue to argue that it has so far tackled the symptoms rather than the cause. The Ombudsman Service has been so overwhelmed by complaints that they have raised concerns that the complaints they are dealing with may have wider implications for the PPI sector. We are keen to ensure that the lessons learned from the PPI debacle will prevent similar situations arising in the future.

With profits

We have pressed for more to be done to treat customers fairly and ensure effective governance of the funds from the consumer perspective. We welcomed the Treasury Select Committee's interest this year, and submitted evidence on our concerns and suggestions for a better system, based on research the Panel has carried out.

Enforcement

The FSA has stepped up the number of enforcement actions over the past year and made a public commitment to implementing a system of credible deterrence. We support strong enforcement action by the FSA as it gives consumers the confidence that firms are brought to book if they do not treat customers fairly and play by the rules. It also sends strong and positive messages to the market. We have, therefore, welcomed the higher profile given to credible deterrence and wish to see this commitment continue in the coming year.

Transparency

We have insisted for some time that the FSA needs to be more transparent and have urged it to provide more feedback on firms' performance, to give consumers more information on which to base their decisions. We therefore welcomed the publication of the FSA Discussion Paper on this subject in 2008 when we focused in particular on the opportunities for the FSA to use transparency as a regulatory tool to highlight to consumers those firms that are behaving well (and by omission, badly) in areas such as financial promotions and Treating Customers Fairly.

A more detailed commentary about our work and opinions over the past year is set out in Chapter 2. In addition Appendix 1 gives the outline of points that we have raised in relation to specific consultations over the year.



Chapter 2: The year in detail

THE CONSUMER IN THE FINANCIAL CRISIS

The turmoil in the world's financial markets which started in 2007 has continued to dominate the past year. This crisis has had a dramatic impact on household wealth. Improving the effectiveness of prudential supervision and managing risks to the financial system has rightly dominated public discussion. Our role must be to ensure that any changes in consumer regulation that the FSA implements are likely to achieve their objectives; that existing consumer protection is maintained; and that changes which will help the market to work more effectively and become clearer and fairer for consumers continue to be made where a clear benefit can be demonstrated.

The financial services industry is complex: as the past couple of years have shown, it is often difficult for even professionals in the industry to understand the nature of risk, the interaction between markets and the detailed nature of products. The regulatory system, therefore, has a vital role in giving consumers confidence to engage effectively with the market, a prerequisite for the whole system to operate effectively.

Consumer confidence

Our work is dominated by the premise that consumers should have the confidence to participate in financial services. We believe that this objective requires the following from the regulatory system:

- effective regulation, with clear accountability from firms and individuals working in firms;

- strong regulatory action when firms don't play by the rules;
- straightforward, honest communication with consumers to help them; and
- a clear, simple and fast compensation scheme if firms do fail.

Achieving this will support consumer confidence and help to create a market which works for both firms and their customers.

Strong and effective regulation

At the beginning of the year, the FSA took practical action to improve its supervision structure and processes on the back of the frank internal audit report on failings in the regulation of Northern Rock. This led to the FSA's Supervisory Enhancement Programme. We are following the implementation of this closely to ensure there is an improvement in the quality of FSA supervision so that it delivers demonstrably better results for consumers.

In addition, we have stated that there needs to be a more effective working relationship between the Tripartite Authorities to prepare for and cope with any future crises in the financial markets. We have also argued that firms' stress testing should be more thorough, so they assess what may seem to be extreme scenarios.

We remain concerned that it is still difficult for the FSA to act when it believes that firms are pursuing a potentially dangerous business model. The Special Resolution Regime introduced in the 2009 Banking Act, in addition to its normal enforcement

procedures, gives the FSA some absolute powers. However, decisions on future risks will always be a matter of judgement. This makes the regulator's power to act uncertain and dependent on the theoretical arguments it is able to put forward, but this can and must be improved by increasing the expertise and commitment to act within the FSA.

At the very end of this financial year, the FSA's publication of *The Turner Review* and accompanying Discussion Paper set out the parameters for the next phase in development of a regulatory system that will be better able to cope with international market developments. We want to ensure that consumer interests are not downplayed in the focus on wholesale and prudential risks in this process. We will be engaging actively in the debate on the implications of *The Turner Review* over the coming year.

We will also be following closely the FSA's commitment to a greater role in the regulation of banking conduct of business from November 2009. We are also intent on ensuring this leads to the FSA taking a firm hand in delivering a fair deal for consumers in its day-to-day dealings with banks, particularly in these times of pressure on the banking system. We are expecting to see clear evidence that the supervision of conduct risk is working to identify and eliminate activities and practices which lead to the unfair treatment of customers.

- **100% compensation for consumers**

A key issue for the Panel this year has been the operation of the Financial Services Compensation Scheme. As a Panel we have always argued for unlimited cover for depositors, to ensure consumer confidence in the banking system should something go wrong. Full compensation should avoid any run on a retail bank – if an institution comes under pressure, depositors have no incentive to withdraw their money. The truth of this is evidenced by the fact that there have been no subsequent runs on other banks in difficulty since the introduction of the government action to guarantee depositors' money in UK banks. The result is that further measures to

shore up institutions have been more considered and orderly, as they have not taken place under the pressure of a run on the bank.

We have also pointed out that, although the new £50K compensation limit means that 98% of depositors are protected, this still means that only around two-thirds of the total amount deposited is safeguarded. This situation could result in further runs.

- **Moral hazard and consumers**

We think that the moral hazard argument – that consumers will not consider the risk of an institution failing if all their money is guaranteed – is unrealistic. To expect consumers to understand the risks institutions are taking when it is clear that many in the financial community have not understood them is not reasonable. The UK government has made it clear in the present crisis that it would in practice apply 100% protection to major UK institutions – and indeed it guaranteed savings in Icelandic banks this year. So there is now an apparent conflict between the public's expectations and the terms of the guarantee scheme. We believe it would make more sense to consumers for all to reap the benefits of a straightforward 100% compensation scheme.

- **Setting a limit of less than 100%**

We have also been vigorously engaged in debate on the repercussions of different levels of limits. We have said it is only logical for less risky bank deposit coverage to have the same, or better than other sector limits such as investments. Such a system should also serve to increase competition in the market, as investment product providers would need to work to show their own products are competitive and attractive alternatives to leaving the money in a bank account.

- **Large transactional amounts**

While there is still not a system for 100% compensation, we have argued there must be special arrangements to cover temporary high

balances where people would not have time to split their money between different institutions. Examples of when this might occur include the proceeds from the sale of property, inheritances, lottery winnings, sales of investments, redundancy payments, insurance payouts and court awards.

We were pleased that the FSA initiated consultation on this subject at the end of the financial year. We have pointed out that there will need to be a robust and comprehensive set of arrangements, to avoid the risk of introducing a further set of anomalies for consumers, and will continue to engage in this debate in the forthcoming year.

- ***Application of limits per brand or per authorised firm***

We have argued strongly that if a limit is to remain, it should apply to each brand, not to each authorised institution. Account facilities are often marketed by brand and are therefore chosen by brand. However, the deposit compensation limit is applied on a per bank (authorised firm) basis. Some banking groups have more than one authorised firm (eg Royal Bank of Scotland and NatWest) whereas others operate several brands within a single authorised firm (eg Halifax, Bank of Scotland, Birmingham Midshires all operate under one licence). In addition, HBOS along with some other banks, provide banking services to separate companies, so for instance the money in a Saga or AA account is included with an individual's HBOS compensation limit.

We believe that brand-linked compensation arrangements are more appropriate and would help consumers through the confusing maze of compensation arrangements and limits. In the event of brand merger, there can be clear communications to consumers so they can take a sensible decision about whether to move some of their money. Indeed the FSA has recognised this fact by changing the rules in the light of building society takeovers this year so that people can keep separate compensation cover for accounts in building societies that have had to be taken over for a transitional time period.

- ***Payment of compensation and access to banking facilities***

Consumers increasingly treat access to banking services as they do access to any other utility particularly as consumers are, in practice required to have a bank account in order to fully participate in modern society. If they are unable to access those services because of a bank failure then, however short that gap in access, it is likely to lead to problems. We have therefore said that any changes to the system in the event of a bank failing should ideally ensure that normal banking functions continue to operate without any cessation at all. Any delay in access will cause problems, particularly for those consumers who, for example, are paid weekly and rely on those funds to cover basic living expenses. The longer the wait before payment, the greater the difficulties those groups would inevitably find themselves in. We think the absolute maximum time for any set up of a compensation system for deposits should be one week.

- ***European measures on compensation limits***

While we welcomed European moves to set a minimum level of compensation which would give consumers in all Member states a base level of security we are concerned about the idea of setting an EU maximum limit on compensation, whether it be at €100,000 or any other figure.

- ***The functioning of the compensation scheme***

After the collapse of Northern Rock, a considerable amount of work has been put by the Financial Services Compensation Scheme in the last two years to ensure that it is able to deliver compensation swiftly and with the minimum of bureaucracy. We commend the way in which the scheme handled the aftermath of the collapse of the Icelandic banks as a step in the right direction towards our one-week payout target.

AN EFFECTIVE RETAIL MARKET

The regulator has a vital policing role to play in the retail financial services market. This is a market which is led by the industry rather than the consumer, both for historical and structural reasons. The majority of people do not buy very often, and what they buy is often quite complex, not directly comparable and with quite long term and uncertain outcomes. This makes future success difficult to assess at the time of purchase. Products tend to be “sold to”, rather than “bought by”, consumers, with targets and sales based remuneration often causing bias and inappropriate consumer outcomes.

The Retail Distribution Review

The Consumer Panel has had a long-term goal to remove remuneration structures that encourage bias from financial services. So the Panel welcomed the initiation of the Retail Distribution Review (RDR) which it has largely supported.

We believe that the RDR has the potential to kick start a massive change by making financial advice and sales simpler and fairer for consumers. We support the general direction of the FSA’s proposals, which indicate a desire to move to a simpler landscape that is more intuitive for the consumer.

However, we have some important concerns. We want to see the following outcomes, in particular:

- The removal of bias towards the producer, product and sales in the way that advisers are paid. Sales incentives need to be tackled in all arenas so that customers are sold products that meet their needs rather than reward volume sales without regard to suitability or meeting clients’ needs.
- More clarity in separating independent advice from sales, so that it is perfectly clear to consumers what they are being offered. The notion of a halfway house compromise of ‘sales advice’ is particularly concerning.
- Reassurance over the level of intermediary fees. We know that consumers tend not to shop around much for advice and so there need to be

regulatory measures to reduce the potential for consumer exploitation and to encourage market forces to operate. We have not been convinced that the FSA applying Treating Customers Fairly principles to this will work on its own – the FSA must look at additional measures to ensure that consumers are not charged over the odds.

- The raising of professional advice standards further so that consumers perceive value in advice and are willing to pay for it. Any increase in minimum professional standards should be welcomed, but we have said there should be a clear timeframe commitment to the aspiration to raise the standards further to Level 5: in future, entry should be at graduate or equivalent level and the industry should accept that there is no professional group currently which requires less.
- As evidenced by the Panel’s research and pointed out in our response to the Discussion Paper on the RDR, consumers must have free access to generic financial advice. This is essential if the proposed RDR changes to the provision of advice are to work effectively. We have told the FSA that the new money guidance service designed to provide this, must be given enough resources to go beyond merely signposting consumers to another layer of advice. They should be able to recommend product types, from which consumers can go on to purchase particular products via focused advice from an independent financial planner or via a regulated sales process.
- We remain unconvinced that money guidance will give the level of detail and insight required for retirement planning, particularly for decisions on the new personal accounts. Our suggestions to the FSA have been that there should be more coordination with organisations such as PensionsForce and The Pensions Advisory Service, and that focused advice is an option within regulated advice, to cover some of the areas in which money guidance could not meet consumer needs.

The RDR is an ongoing process, with further consultation papers due to be published during 2009. We will continue to watch out for the industry trying to work around any new system to reintroduce bias in the market for consumers and will continue to engage in the debate as it develops in this crucial area. We are adamant that the RDR must not compromise, and must deliver a step change in a retail market that has failed customers.

Mortgages

Whatever the wider picture of global regulation and wholesale markets has been over the past year, we have concentrated on the impact on consumers dealing with financial services in their day-to-day lives. The way that firms have dealt with consumers' mortgages has been an area of continuing interest to us as a Panel.

- **Mortgage repossessions**

For some time, we have been drawing attention to potential problems with mortgage arrears related to the economic downturn. We highlighted the fact that the impact of the fall in house prices should be less than the last time UK house prices collapsed in the early 1990s. This is because the FSA is now regulating the sale of mortgages with tougher rules on affordability and the treatment of consumers who get into difficulties with their repayments. We also asked the FSA to provide courts and judges with information about the rules which the FSA expects firms to implement to avoid repossessions when mortgagees go into arrears.

In addition, we encouraged the Civil Justice Council to produce a Protocol for Judges on dealing with mortgage arrears which referred to the responsibilities of firms under FSA rules. The Protocol was introduced in November 2008 with almost immediate positive outcomes for consumers: the Ministry of Justice's records from October to December 2008 saw a fall of around 50% in the daily and weekly numbers of new mortgage repossession claims being issued in the courts, coinciding with the issue of the new protocol.

- **Mortgage arrears**

In addition, we have pressed the FSA to enforce its rules on mortgage arrears more effectively. There are specific rules in this area, in addition to the Treating Customers Fairly principle. We pointed out that it seemed the FSA had been weak in its supervision of the rules, especially of less scrupulous firms in the "sub prime" and self-certification markets. We also suggested to the FSA that it asked firms to prove that they were complying with the requirement that all lenders must have a written policy that sets out how they will deal fairly with any customer in arrears, as we did not think that all were doing so. We said it was appropriate that the regulator would want to see all of these policies to ensure that all lenders are responding appropriately to customers in financial difficulty. We were therefore pleased that the FSA issued a Dear CEO letter in November 2008 to remind mortgage providers of their responsibilities to ensure fair treatment of customers in arrears. We wait to see if this produces a change in behaviour from firms and will press the FSA to follow up to ensure better compliance in future.

- **Sale and rent back**

This is a market about which we have been expressing concerns for some time and we welcomed the decision to extend FSA regulation to the sale and rent back market, which is something that the Panel had been pressing for. We support the decision to introduce an interim regime to speed up the introduction of regulation. The FSA's commitment to warning messages about the potential pitfalls with these products on the Moneymadeclear website will be of some help in the meantime.

Payment protection insurance

The sale of Payment Protection Insurance (PPI) has been an ongoing source of consumer detriment which the FSA is at last taking steps to stem, although it still has some way to go. Finally, after a number of warnings to firms, the FSA banned single premium PPI from being sold with unsecured loans, and so stopped the most dangerous area of PPI sales.

The FSA has been taking regulatory action on PPI since it became responsible for insurance regulating in 2005 and there has been a marked increase in enforcement action in the last financial year, with ten firms being censured and the largest ever retail fine by the FSA being imposed for PPI mis-selling. However, mis-selling of PPI continues.

The Financial Ombudsman Service has written to the FSA to point out that the numbers of complaints that they are receiving suggest a wider regulatory failure. In addition, the Competition Commission reported in June 2008 on a range of problems in the PPI market and the need for regulatory action. We are concerned that the FSA has taken a very long time to tackle the problems in the way PPI is sold.

With profits funds

The structure and operation of with-profits funds continue to be an area of investment which is difficult for consumers to penetrate, and where there is a clear need for robust and effective regulation.

We submitted evidence at the beginning of this year to the Treasury Select Committee investigation on the use of inherited estates of with-profits funds. We highlighted our continuing concerns over the permitted uses of the fund as well as our concerns over governance. While we recognise that in the strict legal sense the inherited estate belongs to the firm, as does the with-profits fund, there is insufficient recognition that policyholders have contributed to the building of the inherited estate and as a result have a justified interest in how that estate is used and distributed. We also commented that, in order to ensure policyholders are treated fairly, the with-profits committees should be open about the reasons for their decisions and communicate more effectively with policyholders. There should be timely, effective and fair distribution of benefits once decisions have been made.

On the wider agenda, we called for a debate about the permitted uses of a fund than currently proposed by the FSA and a review of the current rules relating to the governance of with-profits funds.

Banking

Over the past few years we have made it clear that the current voluntary Banking Code covering retail banking conduct of business does not deliver service of the quality that consumers are entitled to expect. Given the extraordinarily important economic and social role of banking, it can no longer be accepted that the FSA should have such a hands-off role in the way banks deal with their retail customers. As a result, we have welcomed the FSA's decision to use its legal powers to regulate retail banking. We believe the success of the FSA's proposals will ultimately rest on two key elements – the FSA's use of principles-based regulation supported by appropriate guidance and effective interaction between the FSA and Office of Fair Trading (the OFT).

- **Relationship between the FSA and OFT**

Given that the OFT regulates unsecured lending under the Consumer Credit Act, there must be a pragmatic and effective working relationship between the FSA and the OFT, not just in terms of strategy and policy, but also at operational level if customers are to experience seamless regulation. We are disappointed that the opportunity presented by the Payment Services Directive to reshape the current piecemeal regulatory landscape has not been taken. We will monitor how the two regulators work together in future. There is obviously a real benefit for both the industry and consumers if consistent principles and rules are applied to all authorised firms, whether subject to FSA or OFT regulation. The FSA should press ahead quickly with any necessary legislative and other changes to ensure that procedures are in place for relevant information to be exchanged between the regulators.

- **FSA regulation**

We have identified serious gaps in consumer protection under the current Banking Code, gaps we believe can be addressed by FSA regulation of retail banking. However, the FSA needs to ensure that its principles-based approach does not result in a loss of any consumer protection already offered by the Banking Code and so must

retain those existing rules in the current Banking Code which provide effective protection. We have said in this instance that any guidance should be confirmed by the FSA after consultation with consumer groups. Although we have supported trade body moves to raise the standard of business, in our view the retail banking sector cannot be relied on to deliver what is needed in any less structured way. There is a real and urgent need for consumer confidence in the retail banking sector to be rebuilt following the damaging effect of widespread unfair treatment and mis-selling (payment protection insurance and bank charges being the most obvious examples), as well as the impact of the financial crisis.

- **Consumer information**

The best thing about the Banking Code is that it is readily and freely available to people in a recognisable and informative leaflet. Consumers will need to understand how the new regulatory framework will operate for them and the benefits it will bring. We would like to see a similar document based on the new regime, including information from any relevant industry guidance, being made available to consumers from November 2009. We have also told the FSA that the effectiveness of the new system will need to be assessed and we have said a post-implementation review of the new regime is essential.

Over the next year we will be giving further consideration to the issues that the FSA will need to be vigilant about, particularly as it takes over conduct of business regulation. One new emerging issue arises from the consolidation of bank ownership feeding through into the system. It will be a challenge to the FSA and OFT to ensure that the concentration of the market does not enable banks to use their greater power to the detriment of consumers.

- **Bank charges and the FSA waiver**

We have grown increasingly concerned about the FSA's waiver on the rules in dealing with complaints introduced in July 2007 pending the outcome of the OFT test case on unfair overdraft charges. We believe that the continuation of the waiver is not helping to achieve a resolution and are concerned about the impact the continued waiver has on consumers.

Ultimately consumers will pay the costs regardless of the outcome of the case, since banks will recoup the losses from their customers. Moreover, with so much public finance now in the banking system, consumers as taxpayers will also foot the bill. We believe it is now incumbent on the FSA to encourage an early resolution and to ensure that consumer detriment is minimised.

AN EFFECTIVE SYSTEM OF FINANCIAL REGULATION

FSA moving to outcome focus

We have argued for some time that FSA supervisors dealing with firms need to view things from a consumer perspective, rather than relying on their assessment of firms. We therefore welcomed the FSA's public commitment to focus on outcomes in its Business Plan for 2009/10. We have urged the FSA to ensure that it commits the resources to do the job properly and evaluates the process appropriately.

Treating Customers Fairly (TCF)

Of all the FSA's principles of good regulation, TCF goes to the heart of the Panel's values. We believe that, above all, 'Treating Customers Fairly' should be central to the FSA's retail agenda.

However, in abandoning the assessment programme before the final assessment was due, the FSA lost an important opportunity to identify and confront firms who failed to implement TCF effectively. Assessments against the first deadline in March 2008 deadline yielded poor results, with only 13% of relationship-managed firms having met the deadline.

The Panel can only assume that firms' performance against the December deadline would also have been poor. Throughout the programme firms and industry representatives reported good progress with TCF. This, compared with the FSA's assessment, illustrates a failure in understanding what the FSA expects of firms. It would seem that many firms are clinging to the view that 'of course I treat my customers fairly or else we would go out of business'. There are likely to be firms who were reporting compliance with the deadline who for example still had outstanding issues with PPI sales. That shows a clear failure to understand the objectives of TCF.

Despite the cancellation of the December assessment, we have supported the FSA's integration of TCF into the overall supervision process. We hope that, with the new outcome focus and support of the FSA's new Conduct Risk Division, the moving of TCF into mainstream supervision should work, as long as the focus on it is not diminished. We will be watching closely to see what happens.

Certainly there is still more to be done, and we have said that supervisors will need to challenge firms' senior management on the outcomes for consumers, not the firms' internal processes. The FSA's thematic work continues to find poor behaviour. We can only conclude that senior management in some firms, while accepting the principle, are failing to ensure the commitment is carried right through the company, to enable significant improvements in outcomes for consumers. This is possibly due to over-ambitious sales targets. The thematic work on PPI for instance, continues to find poor practice despite FSA calls for action in this area.

The Panel has been enthusiastic about TCF which, taken together with the Retail Distribution Review, offers a real opportunity to achieve change in the retail marketplace to the benefit of consumers. However we need to be convinced that real and effective change will happen.

Enforcement

The FSA has made strides this year with visible enforcement and has made a public commitment to ensuring a system of credible deterrence. This is just what the Panel has been calling for: so that firms and consumers feel that the regulator is on the case of those who break or stretch the rules. We have noticed the impact in the increase in numbers of cases coming through enforcement, and with particularly strong action on the sale of payment protection insurance (PPI). Again, we want to see this momentum continue, with real and positive change delivered for consumers.

- **Following through on thematic work**

However, we believe there is still some way to go in carrying this commitment to credible deterrence through to all areas of its regulation. We remain concerned that the FSA at times appears to accept low compliance by the industry, particularly when whole sectors are shown to have problems which are highlighted by thematic work. When there is evidence that standards are not improving after a reasonable time, as with the mortgage thematic work which reported in the summer of 2008, steps need to be taken to address low compliance through more transparent reporting of the findings of thematic work and more robust enforcement action. If strong action is not taken, there is a risk that the regulator will appear weak and ineffective and so reduce confidence in the whole system. We hope that the work that the FSA is doing to improve supervision of conduct of business will deliver results.



- **Principles-based regulation**

As the FSA moves towards more principles-based regulation we will monitor closely to ensure this does not result in more cases being settled without enforcement action, as compliance with a detailed rule is relatively straightforward to prove, whereas application of a principle requires more judgement and deliberation. The FSA needs to be seen to be delivering tough action against poorly performing firms. The principle of Treating Customers Fairly must be used in enforcement action, as unless firms can see that there will be sanctions, there will be no incentive to change behaviour.

- **Senior management responsibility**

The FSA has always maintained that it is for senior management to ensure that firms meet their regulatory obligations and yet there has not been much action on the principles of regulation as yet. The FSA has challenged senior management to ensure that their firms treat their customers fairly, so responsibility sits with them when there is a regulatory breach. However, we are concerned that the FSA has not taken full enforcement action against many individuals, and those where they have, have tended to be in organisations such as retailers and car sales where financial services is not the core business. We look forward to robust action by the FSA and seeing senior management in financial services firms being held publicly accountable in future.

Transparency

We are pleased that the FSA has begun to tackle the issue of transparency as a regulatory tool by issuing a Discussion Paper in 2008. However, we have registered concerns about the direction the policy may take under pressure from industry. We have urged the FSA to make absolutely clear in its feedback document on transparency in both content and style its continued support of this general principle. We believe it is important to set out that, while the benefits of disclosure may not be easy to quantify in absolute or monetary terms, there are significant benefits for consumers from effective disclosure.

We continue to press for the FSA to find some means of publishing information on companies that keep to the rules in such areas as financial promotions and treating their customers fairly. We acknowledge that the law that the FSA exists under – the Financial Services and Markets Act (FSMA) – restricts the FSA on ‘naming and shaming’. However, there seems little legally to stop the FSA ‘naming and faming’ by listing the best performing firms in certain areas. This would give firms an additional incentive to pursue fair treatment of their customers.

Consumer rights

We do not believe that ‘consumer responsibility’ is an issue requiring clarity or debate. We think the use of the term ‘consumer responsibility’ used in the Discussion Paper which the FSA published in December 2008 is misleading, contributing to confusion and fruitless debate. In addition we question the impetus behind issuing this DP, and the quality of the underpinning legal analysis. We are concerned that this document simply provides an opportunity for the industry to undermine existing consumers’ rights, particularly at a time when the industry itself needs to get its house in order and be seen to take responsibility for its actions. We are engaging in robust debate with the FSA prior to publishing our formal response.

Taking consumer issues to Europe

Over this year we have engaged in debate on some key aspects of the European framework for a single market in financial services. We are keen to ensure that the right framework is in place so that there can be significant benefits for consumers in terms of choice and competitive pricing. We have therefore written to and met with relevant decision makers in Europe including Commissioner Charlie McCreevy, senior commission officials and MEPs. We made points particularly in the following areas.

- **Alternate Dispute Resolution**

It is vitally important for an effective and efficient market that there is a clear and viable dispute resolution or compensation scheme in the event that something goes wrong. The European FIN-NET redress network is a good start but it urgently needs political support from the EU to strengthen it. There must be effective and independent redress schemes operating in all sectors and in all EU Member States so that consumers can buy financial products anywhere in Europe with confidence about redress.

- **Passporting**

We are extremely concerned about the manipulation of passporting arrangements by unscrupulous firms and we have expressed these concerns very strongly at the European level. There have been instances when individuals who are not permitted to operate or be employed in a financial services business in one Member State may nevertheless gain entry into the industry in another Member State. This means that such individuals can offer services cross-border to consumers, to the detriment of those consumers.

- **Consumer representation**

We have also been urging the EU to step up its efforts to enable consumer groups to input into EU policy development, at the strategic as well as the technical level. There has been good progress at the EU level with Commission initiatives to improve dialogue. What we want to see now is an EU obligation on national regulators to consult regularly with consumers, and we believe the Panel represents a good model that could be used widely in Europe.

COMMUNICATING WITH CONSUMERS

We have consistently said that a key component for instilling consumer confidence is clear, accurate and honest communication with consumers. Communications must be disseminated effectively – providing public reassurance that the FSA is there as a strong and effective regulator, through to details of how to get the information or advice that people want, and down to the detail of information on specific products. A concern about ensuring effective communication with the public runs through our debates with the FSA.

Some specific issues have arisen this year as follows.

Getting the compensation message to consumers

The run on Northern Rock at the beginning of the current crisis showed how important it is to communicate clearly with consumers. Consumers must be made aware of the compensation arrangements as they apply to their own situation. We therefore encouraged the FSA to use its consultation paper on Compensation Scheme reform to put forward clear, concrete proposals. We suggested it set out an overall consumer strategy to cover both the launch of the new compensation arrangements and the continuing provision of information on an individual basis, from initial marketing to pre and post contractual requirements. We pointed out that these proposals must recognise that a 'one size fits all' strategy is not appropriate. It must also alert consumers to the different commercial arrangements that are in place between institutions promoting account facilities, such as that between The Post Office and Bank of Ireland. Consumers must be made aware of the banking institution that will hold the money and of any compensation arrangements, before any payment is made.

We have said that the requirements for adequate communications should be formalised – either in the Banking Code, or, as the FSA consults on taking on conduct of business regulation of retail banking, in the FSA Handbook. It should also form part of



the FSA consumer communications strategy through its Moneymadeclear website and its money guidance pathfinder project. This is an opportunity to raise confidence in the scheme and (potentially at least) enhance the reputation of the banking industry.

We were pleased that the FSA's consultation paper in January 2009 did contain proposals to raise awareness of the compensation scheme the part of the FSCS, to be carried out by both the FSA and the industry. It also included new rules to oblige firms to explain the position to their customers, and requirements for firms to carry information on the compensation arrangements on their printed material, including on bank statements.

Clear messages on investment advice

Clear communication about the cost of the investment and the cost of the investment advice is absolutely critical if the market is to work effectively and efficiently.

We were pleased therefore that the FSA has been carrying through its commitment to introduce guidance on a new style of Initial Disclosure Document (IDD) to replace the previous IDD and menu rules which had to be dropped due to European restrictions. However, the FSA needs to be realistic about the likely impact on individual consumer behaviour of IDD's taking account of the insights from behavioural economics. If IDD's fail to deliver the right results, including evidence that investors are using the document to help 'shop around' effectively, the FSA needs to be ready to take additional means to help the markets operate better for the benefit of consumers.

We have urged the FSA to undertake a post-implementation review early – at the end of 2009 – as it will be essential for the FSA to gauge the success of the new document as soon as possible. We also suggested that the FSA look to see if any particular 'bespoke' documents have proved more successful. It is necessary for the FSA to monitor closely the compliance by firms with the disclosure requirements, whether using the new integrated document, bespoke documents or the current IDD and menu.



Financial capability and money guidance

We have continued to watch with interest the FSA's work in tackling financial capability in general, and in particular the development of the money guidance service. The FSA has worked hard to improve its internet-based information on the Moneymadeclear website and its publications for consumers.

We have welcomed the development of the pathfinder project to test the provision of personalised impartial and clear money guidance to people in the UK. The service will be trialled during 2009 and we are pleased that in the Budget Statement in April 2009 the government announced that the roll-out of a national money guidance service would begin in 2010. We very much hope that the service will be able to provide the introductory support that people need to work out what they are doing with their money and what they need to do next.

We have urged the FSA to identify outcomes for the pathfinder project and to indicate how they will measure achievement. We look forward to engaging with the development of this project over the coming year.

Chapter 3: Future key priorities

Over the next year we will continue to remind the FSA that, with all its understandable focus on financial markets, looking at the prudential and systemic risks, it must not lose sight of its important role in protecting consumers.

Treating Customers Fairly

We believe that the FSA needs to follow through effectively on the implementation of the principle of Treating Customers Fairly by firms. This, after all, is fundamental to the protection of consumers. We aim to support the regulator in achieving a better world – one where the customers of financial services companies really are treated fairly; where they get a fair deal, fair prices and fair treatment when a problem occurs.

In particular, the Panel will be monitoring how the FSA supervises firms to check up on their commitments to treat customers fairly, and whether this will feed through to enforcement cases, rather than just urging firms to do better next time, which has tended to be the case in the past.

Outcomes-focused regulation

We were very pleased that the FSA announced a new focus on monitoring outcomes from 2009 onwards. We have been saying for some time that the FSA needs to look at the end result for consumers when making a judgement as to whether a firm is implementing the principles for businesses properly. We believe that measures such as mystery shopping are likely to give a better indication of the real treatment of consumers, rather than asking firms themselves for feedback on what guidance is given to their sales staff.

We will now look to ensure that the FSA is fully equipped to identify the problems with the right systems and processes and a focus on good outcomes. This will be dependent on getting the newly developed conduct risk framework right, and the supervision systems assessing the most appropriate issues. We shall be watching progress in this area with interest.

FSA effectiveness

The Panel welcomed FSA chairman Lord Turner's report at the end of March 2009, setting out a regulatory response to the global banking crisis. There is clearly a need to change the prudential supervision of banks and the regulation of the global financial system. However, we continue to question the effectiveness of the FSA's regulation of the sectors of the retail financial services business for which it is responsible in the interest of consumers. We intend to review the FSA's effectiveness as a regulator in the consumer interest over the coming year. We remain concerned that there continues to be mis-selling in areas such as PPI, and there are other areas where the FSA has expressed disappointment, but not acted strongly enough to really change the behaviour of firms overall. Examples of these are in mortgage advice and disclosure.

The past year has seen calls for improved governance in financial institutions. We support this move, and have called on the FSA to have at least one non-executive director with significant consumer credentials on to its board. We will continue to press for more effective consumer representation at this level.

Throughout the coming year, the Panel will continue to be proactive in identifying areas of consumer detriment where better regulation would achieve improved outcomes. We will also continue our role in advising, supporting and, where necessary, challenging the FSA in its delivery of effective regulation.

Retail Distribution Review

We are determined to see real and effective change from the FSA's Retail Distribution Review. In particular, we want it to achieve an end to the current consumer bias which results from commission and similar distortions (such as sales targets and bonuses) and a distinct raising of professional standards across the board. We believe that this is a major opportunity to set up a system which provides high quality professional advice to consumers on their investments and so improves the quality of financial services overall. We would also like to see serious consideration of a read-across from the investment sector to other areas of retail financial services, so that good practice arising from the RDR can be achieved in other areas.

Financial capability and money guidance

We regard the FSA's development of a network of money guidance support as fundamental to increasing financial capability in the UK. It is also key to supporting the new structure being proposed through the Retail Distribution Review. We therefore will continue to support and follow the important development of the FSA's financial capability programme over the coming year.

Retail banking regulation

As the FSA takes over the conduct of business in retail banking from the voluntary Banking Code in November 2009, we will aim to ensure that the new system makes retail banking clearer and fairer for consumers. We will also be assessing whether seamless regulation is achieved between the OFT and the FSA with their respective spheres of regulation.

European developments

As the European Commission continues to develop its plans to drive European recovery and complete the single market, the Panel will contribute to the debate from the consumer perspective, by responding to relevant consultations over the year. In addition, we will pursue a broader agenda to encourage the development of greater consumer financial services expertise at national level across the EU, in order to strengthen consumer input to EU policy development. We will also be particularly lobbying for progress on Alternative Dispute Resolution and better consumer protection regarding passported firms.



Appendix 1: Panel responses to consultations

This appendix lists all the consultations to which the Panel has formally responded over the past year. It highlights the potential consumer impact of each consultation and the main points of the Consumer Panel's response.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
Tripartite Consultation: Financial Stability and Depositor Protection – strengthening the framework	Proposals for strengthening the financial system; reducing the likelihood of banks failing; reducing the impact of failing banks; effective compensation arrangement; strengthening the Bank of England and improving coordination.	<ul style="list-style-type: none"> • There should ideally be no limits on payments by the compensation scheme. • If there is a limit, there should be a split system for deposits and transactional amounts. • There must be effective communication with consumers on parameters of the scheme. • Continuity of depositors' banking services must be maintained in event of failure.
DP08/1: A review of the Structure of the Listing Regime	Consideration of the structure of the listing regime as a whole, and in particular how it fits within the changing EU legislative structure.	<ul style="list-style-type: none"> • UK super-equivalent listing standards should be retained, so retail investors still have the high standard of investor protection and corporate governance associated with companies with full London listing. • Standards should be set by the FSA which has the statutory power to regulate the market and not by an Exchange. • Secondary Listing should not be opened to UK companies. If there needs to be a level playing field standards should be levelled up rather down to 'directive minimum'. • Need measures to increase overseas companies' compliance with Combined/Takeover Codes. • FSA should insist on clear labelling for all market participants and not place onus on investors to familiarise themselves with the Listing Regime.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
CP08/3: Simplifying disclosure: information about services and costs	Proposal to introduce a single disclosure document, also in guidance, to combine the information contained in the Menu and Initial Disclosure Document (IDD). This new document aims to provide key information in a more streamlined way to help consumers better understand the services offered by advisers.	<ul style="list-style-type: none"> • Support the proposal to introduce a new IDD style document to replace the existing IDD and menu guidance but not convinced this is the right model. • Need for a post-implementation review to assess the success of the new document and interim thematic work to check compliance with the disclosure requirements. • Strongly favours the use of FSA guidance rather than industry guidance in this case. • Would like to see the purpose and objectives of the document stated more clearly at the outset. • Important that consumers are encouraged to read the disclosure documentation.
Civil Justice Council CP on a Mortgage Arrears Protocol	A draft protocol intended to provide a clear structure to be followed in residential possession claims on the basis of mortgage arrears, encouraging more pre-action contact between the parties and enabling court time to be used effectively.	<ul style="list-style-type: none"> • The protocol should help the growing number of consumers who find themselves facing repossession proceedings. • The Mortgage Conduct of Business rules should be the prerequisite requirement for firms and the Protocol should act in addition to that requirement. • Should there be evidence of non-compliance with the protocol the firm needs to be made to re-follow the set procedure with the borrower.
CP08/4: Funds of Alternative Investment Funds – feedback on CP07/6 and further consultation	Sets out further progress on allowing UK retail consumers to invest in funds of hedge funds and other alternative investments authorised in the UK.	<ul style="list-style-type: none"> • Advisers receiving ongoing trail commission should have a continuing obligation to review regularly the suitability of Funds of Alternative Investments Funds for their clients. • FSA should monitor closely the sales of these products in the first 12 months and react swiftly to any indications of mis-selling. Not clear what remedial action can be taken in the event of an unsuitable purchase.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
CP08/7: Quarterly Consultation No 16	Sets out miscellaneous changes to the Handbook. Of particular interest to the Panel are proposed amendments to the rules governing statutory status disclosure and the use of the FSA logo.	<ul style="list-style-type: none"> • Supportive of the package of proposals – although concerns about how effectively the proposals relating to the clarification of the basis on which firms do business in the UK can be enforced. • Pleased to see the FSA introducing a prescriptive rule preventing firms from indicating that they are authorised by the FSA where this is not the case. • Would like to see the FSA doing more with regards to firms’ relationships with the Ombudsman and Compensation Schemes, although it is noted that the FSA is proposing guidance to remind firms of their obligations in this area. • Strongly recommend that the FSA register entry for each firm passporting in should include a factual statement that customers do not have access to the Ombudsman or to the Compensation Scheme – if relevant – as they are regulated by [named] regulator and not by the FSA.
CP08/6: Review of the Client Assets Sourcebook	To simplify the sourcebook structure following the MiFID (Markets in Financial Instruments Directive) implementation in November 2007.	<ul style="list-style-type: none"> • Supportive of the proposals. • Would like the FSA to undertake post-implementation work to assess whether the adoption of the MiFID standard across the Client Assets Sourcebook will not reduce the level of consumer protection afforded by the FSA’s requirements as a whole.
CP08/9: FSCS: EEA branches of UK insurers	To amend the scope of the Financial Services Compensation Scheme regarding business written through EEA branches of UK insurers.	<ul style="list-style-type: none"> • Supportive of all of the proposals.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
OFT Market Study into Sale and Rent back arrangements	A study of the sale and rent back market, the potential for consumer detriment, and whether or not it should be regulated.	<ul style="list-style-type: none"> • Supportive of regulation and by the FSA. • Consider it important that valuation of properties is conducted in a truly independent manner. • See it as essential that consumers are required to take independent legal advice before going ahead with the transaction. • Until which time as full regulation is introduced the market should be encouraged to press ahead with self-regulation.
CP08/11: With-profits funds – compensation and redress	Proposals that insurance companies will no longer be permitted to charge compensation for mis-selling to the inherited estates of with-profits funds.	<ul style="list-style-type: none"> • Supportive of the proposals to prevent proprietary firms running with-profits funds from charging payments for compensation and redress to their inherited estates. • Also supportive of the view that shareholders should bear the risk of management failures, such as the failings of systems and controls and that firms should at all times treat their policyholders fairly. • Disappointed that the FSA had not taken the opportunity to explain why it believed that the continuing rules on the permitted uses of the inherited estate remain appropriate. • Feel that a more robust governance structure would improve the transparency of administration of the principle of treating customers fairly, ensure that policyholders' interest are properly taken into account and help restore confidence in these products.
DP08/3: Transparency as a regulatory tool	Puts forward the feasibility for a framework to determine what further information the regulator might publish about firms and industry sectors.	<ul style="list-style-type: none"> • Concern at the extent to which the document provides evidence of the FSA's contention that it is an open and transparent regulator. • Support for the proposals on complaints data and own initiative variations of permission. • Concern that the financial promotions register is still being overlooked as felt it would add great value for consumers. • Concern at some of the assumptions made in the draft document about consumer understanding.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
CP08/10: Decision procedure and penalties manual and enforcement guide review 2008	Proposals to amend policies set out in the Decision Procedure and Penalties (DEPP) manual and Enforcement Guide (EG). Builds on existing statements about use of enforcement as a regulatory tool.	<ul style="list-style-type: none"> • Supportive of the majority of the proposals. • Believe the FSA should make clear that it will pass information when appropriate on to other agencies and will co-operate with criminal investigations and prosecutions.
FSA/Treasury Financial stability and depositor protection – further consultation	Updated proposals for reforms to strengthen the framework for financial stability and depositor protection, planned next steps, and further views on key outstanding issues.	<ul style="list-style-type: none"> • Would like to see unlimited compensation for all depositors without restriction on amount. • If a limit is to remain, it should apply to each brand, not to each authorised institution. • Would like to see an overall consumer strategy that covers both the launch of the new compensation arrangements and the continuing provision of information on an individual basis, from initial marketing to pre and post contractual requirements.
CP08/13: Disclosure of Liquidity Support	A proposal that financial institutions in receipt of liquidity support from a central bank will have a legitimate interest for delaying the public disclosure of such support.	<ul style="list-style-type: none"> • Concern about the length of the period proposed for which public disclosure could be delayed. The general interests of depositors and borrowers should warrant a shorter period in delaying disclosure.
OFT Irresponsible Lending Project Scoping paper	To scope project aimed at developing clear guidance on lending behaviours and practices which the OFT considers to be irresponsible.	<ul style="list-style-type: none"> • Welcomes the paper and its timing. • Scope of the project should be restricted as areas such as advertising and marketing; selling techniques; product design; and the use of credit scoring techniques could be adequately addressed within other existing OFT jurisdictions.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
OFT Personal Current Accounts Market Study & Consultation	Study of personal current accounts market in the UK.	<ul style="list-style-type: none"> • OFT should focus attention on the benefit of having fewer indebted consumers as a result of more transparent and fairer charging. • Concerned about the time the process is likely to take. • Concerned by the perceived lack of innovation in the personal current account market. • Providers' approach to disclosure should recognise the diversity of the consumer population.
CP08/14: Implementation of the Payment Services Directive	Proposals for Handbook changes that are required to implement aspects of the Payment Services Directive.	<ul style="list-style-type: none"> • Generally supportive. • Reservations about the proposed approach to reporting complaints data. • Concerns about the potential for mis-use of the FSA logo given the cross-border nature of financial services.
Competition Commission report on remedies for the PPI market	Proposed remedies designed to increase competition in the payment protection insurance (PPI) market.	<ul style="list-style-type: none"> • Particularly important are the prohibition on the sale of PPI by a distributor within 14 days of the credit sale; the prohibition on selling single-premium PPI policies; and the requirement to provide a personal PPI quote.
CP08/15: FSCS Review of Limits	Paper reviews the limits of compensation payable by the FSCS.	<ul style="list-style-type: none"> • There should be a protection limit of 100% of all deposits up to £1m. • Any limits to compensation need to be communicated effectively. • Panel favours a seamless change in regime or an immediate payout of compensation. • Any compensation limits to be applied to each brand, not to each authorised institution. • For home finance mediation the compensation limit to be 100 per cent of all losses, with no maximum. • Home finance lending and administration are regulated activities and it is inconsistent that they are not covered by the scheme when there is the potential for consumer detriment.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
Treasury Select Committee Inquiry into Banking Crisis	Seeking to identify lessons that can be learned from the banking crisis	<ul style="list-style-type: none"> • The position of savers has been overlooked in the crisis, particularly those who rely on their savings income to meet day-to-day living expenses. • The passporting arrangements make unrealistic assumptions about the nature of regulatory practice in Member States and encourage regulatory arbitrage. • Continuity of banking services is vital for consumers and central to the functioning of the economy. • If there are to be limits on compensation, this should be clearly explained and applied per brand, rather than per bank or banking licence.
Consultation on EU proposals for a consumer rights directive – BERR	Consultation on European plans to create a uniform set of consumer rights across Europe.	<ul style="list-style-type: none"> • Panel does not support a full harmonisation approach for the Consumer Rights Directive other than in the area of definitions, as believe the disadvantages far outweigh the advantages. • Strongly favour a minimum directive which would set a welcome and consistent basic level of consumer protection on which individual Member States could build, but still allowing scope for additional measures to address particular situations and developments at a sectoral and national level.
FOS: Publication of complaint data: next steps	Explains the relevant data which is available for publication and seeks comments on a number of issues concerning the way in which it might be published.	<ul style="list-style-type: none"> • Strongly support the intention of the Financial Ombudsman Service (FOS) to publish complaint data against individual firms, including the percentage of complaints upheld. • Believe that transparency is an important tool in empowering consumers to make better decisions and protect their interests. • Important that the data enables consumers to make useful comparisons between firms of different sizes or business types. • Would like to see information made available about firms that fail to pay FOS awards.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
CP08/19: Regulating retail banking conduct of business	A proposed new framework for regulating retail banking conduct of business within the FSA's remit.	<ul style="list-style-type: none"> • Supportive but would have liked to have seen the scope of the proposals extended to embrace all aspects of retail banking conducted by FSA authorised firms. • Success of the proposals will rest on two key elements, the interaction between the FSA and OFT and the content and status of industry guidance. • Would like to see a document – similar to the current Banking Code – based on the new regime, including information from any relevant industry guidance, being made available to consumers from November 2009.
European Commission consultation: Alternative Dispute Resolution (ADR) in financial services	To seek views on how ADR schemes in the area of financial services, providing consumers with individual redress, could be further improved.	<ul style="list-style-type: none"> • Should be a priority for action so that rights to provide financial services cross-border are accompanied by obligations and mechanisms to deal with complaints from consumers when problems arise. • Would like to see ADR schemes covering all financial services available in all Member States. • Would like a consistent standard of access, scope and ADR performance for consumers.
European Commission: Green Paper on Consumer Collective Redress	Sets out options on how to facilitate redress in situations where large numbers of consumers have been harmed by a single trader's practice which is in breach of consumer law.	<ul style="list-style-type: none"> • Panel would like to see the adoption of a mix of policy instruments to strengthen consumer redress and binding or non binding measures for a collective redress judicial procedure to exist in all Member States.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
Building personal accounts – securing a retirement income consultation from PADA (Personal Accounts Delivery Authority)	Covers issues such as the financial choices available to members of the personal accounts scheme, to be launched in 2012, as well as how the scheme will help members to access retirement products.	<ul style="list-style-type: none"> • Support measures which are intended to encourage greater saving for retirement. • Believe that if the annuitisation process is largely automated, an alternative advisory service should be offered to those feeling they need advice. • Would welcome further analysis and comparison of the costs and benefits of the options for accessing annuity providers for Personal Account holders. • Would like to see protection for the scheme’s members if they are to take out annuities in poor market conditions, which may affect the income levels the annuity can provide.
FOS: Annual Plan and Budget	The Financial Ombudsman Service’s workload forecasts and proposed budget for the financial year 2009/10. It also provides an update on progress with their longer-term corporate plan.	<ul style="list-style-type: none"> • Believe that it is crucial that the FOS has access to sufficient resources to provide a world class dispute resolution service. • Continually expanding the FOS budget is not the solution, particularly when the industry has suffered damage to its reputation and there is a need to rebuild confidence. The FSA needs to ensure that firms do comply with their existing regulatory obligations. • Expect the FSA to take regulatory action to resolve widespread consumer detriment where poor practice is common throughout the industry. • Welcome the moves to increased transparency and proposals for the publication of complaint data against individual firms.
CP08/25: The approved persons regime – significant influence function review	Proposes amendments to the FSA Handbook to extend the approved persons regime and sets out how the FSA is enhancing its scrutiny of senior management competence.	<ul style="list-style-type: none"> • Wants the FSA to ensure that it has sufficient resources to enforce the requirements of the extended approved persons regime swiftly and rigorously. • Will continue to take a close interest in the FSA’s enforcement work and especially the promise of more cases where individuals, especially those holding significant influence functions, are subject to enforcement action.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
CP08/20: Review of the prudential rules for personal investment firms	Proposed improvements to prudential requirements for Personal investment firms (PIFs) designed to help reduce the impact of market failures in the sector.	<ul style="list-style-type: none"> • Support moves to require PIFs to bear more of the cost of redress claims. • Important that consumers continue to have access to small independent advisers and that the costs of such a service are reasonable and affordable – concerned that any changes do not price some firms out of the market. • Ask that the FSA continue to monitor the provision of PII – concern that insurers can decide that they are no longer prepared to insure the risk but that consumers know nothing about this absence of cover when they are dealing with the firm.

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: Who is on the Panel?



Adam Phillips (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. He was appointed to the Panel in March 2004 and became Vice-Chairman in November 2005. Adam was appointed Acting Chairman in December 2008 and appointed Chairman in July 2009.

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

Kay Blair

A former business journalist, Kay now owns and manages the Edinburgh-based marketing and communications consultancy, Business Perceptions. She is also a non-executive director of NHS24, a non-executive member to the Court of St Andrews University and an independent council member of the Royal Pharmaceutical Society of Great Britain. Kay is also a former member of the Scottish Consumer Council and a past non-executive director of the Scottish Ambulance Service and the Scottish Legal Aid Board.

Attendance at Full Panel meetings – 11/11 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.

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

Stephen Crampton

Stephen is an independent EU and consumer affairs consultant with over 25 years of knowledge of consumer and regulatory issues at EU and UK level. Previously 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.

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 has 20 years experience of understanding consumer dynamics in the financial services arena.

Attendance at Full Panel meetings – 10/11 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 was formerly a Member, and Moderator, of the Council of Shared 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.

Attendance at Full Panel meetings – 9/11 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.

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

Lord Lipsey

David Lipsey joined the Financial Services Consumer Panel as Chairman in June 2008. His experience spans regulation (including at the Personal Investment Authority and the Advertising Standards Authority); journalism (as associate editor of the Times and deputy editor of the Sunday Correspondent, as editor of New Society magazine; and as political editor of The Economist); and public policy (as Chair of the Social Market Foundation think tank and as a member of three official government enquiries). David was a crossbench peer in the House of Lords during his period of Chairmanship of the Panel. He resigned from the Panel in December 2008.

Attendance at Full Panel meetings – 5/5 eligible to attend.





Nick Lord

Nick has over 25 years' experience advising consumers on money issues. His past roles include Head of Money issues at Citizens Advice and National lead Tutor for the Money Advice Trust. Nick continues to spend two days a week advising consumers. He is also a member of the Finance & Leasing Association Lending Code, the Solicitors Regulation Authority Financial Protection Committee and he chairs the Governance Board of the recently established Home Credit Comparative Website.

Attendance at Full Panel meetings - 10/11 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 University College, London 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 advisor 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 for the Sunday Herald and the National, 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.

Attendance at Full Panel meetings – 10/11 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.

Attendance at Full Panel meetings - 10/11 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 2009 was £415k. Actual expenditure for this period was £381k (see summary below).

	Budget April 2008–March 2009 (£000)	Actual April 2008–March 2009 (£000)	Actual April 2007–March 2008 (£000)
Panel members' fees ¹ and expenses	253	291	267
Fees	206	232	204
Travel & Expenses ²	47	59	63
Professional fees ²	164	83	102
Sundries ³	(1)	8	9
Total	415	381	378

- 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 (amount revised in June 2008)	£52,000 per annum
Panel Vice Chairman (amount revised as of October 2008)	£26,000 per annum
WG Chairs (amount revised in January 2009)	£22,000 per annum
Members whose minimum commitment is 45 days a year (amount revised in January 2009)	£18,000 per annum
Members whose minimum commitment is 30 days a year (amount revised in January 2009)	£13,000 per annum

- Professional fees includes research expenditure. This 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

Financial Stability and Depositor Protection

Response to Tripartite Authorities Consultation
April 2008

A review of the Structure of the Listing Regime

Response to DP08/1
April 2008

Simplifying Disclosure: Information about services and costs

Response to CP08/3**
May 2008

A Mortgage Arrears Pre-Action Protocol

Response to the Civil Justice Council consultation
May 2008

Quarterly Consultation No 16

Response to CP08/7*
May 2008

Funds of Alternative Investment Funds (FAIFs)

Response to CP08/4*
May 2008

Review of the Client Assets Sourcebook

Response to CP08/6**
June 2008

Financial Services Compensation Scheme: EEA Branches of UK Insurers

Response to CP08/9**
June 2008

Market study into sale and rent back

Response to OFT study
June 2008

With-profits funds – compensation and redress

Response to CP08/11***
August 2008

Building personal accounts: choosing a charging structure

Response to Personal Accounts Delivery Authority consultation
August 2008

Decision Procedure and Penalties Manual and Enforcement Guide Review

Response to CP08/10***
August 2008

Transparency as a Regulatory Tool

Response to DP08/3
August 2008

Financial Stability and Depositor Protection

Response to Tripartite Authorities Consultation
September 2008

Irresponsible Lending

Response to OFT consultation
October 2008

Personal current accounts

Response to OFT market study
October 2008

Implementation of Payment Services Directive

Response to CP08/14**

November 2008

Market Investigation into Payment Protection Insurance (PPI)

Response to Competition Consultation

December 2008

Retail Distribution Review Interim Report

Response to FS08/6

December 2008

Inquiry into Banking Crisis

Response to Treasury Select Committee Inquiry

January 2009

Financial Services Compensation Scheme:**Review of Limits**

Response to CP08/15***

January 2009

Consumer Rights Directive

Response to BERR Consultation

February 2009

Disclosure of Liquidity Support

Response to CP08/13*

February 2009

Regulating Retail Conduct of Business

Response to CP08/19**

February 2009

Alternative Dispute Resolution in the area of financial services

Response to DG Markt Consultation

February 2009

Consumer Collective Redress

Response to Commission Green Paper

February 2009

Financial Ombudsman Service Corporate Plan 2009/10

Response

March 2009

Building Personal Accounts, Securing a Retirement Plan

Response to Personal Accounts Delivery Authority Consultation

March 2009

Publication of complaint data next steps

Response to Financial Ombudsman Service consultation

March 2009

The Approved Persons Regime

Response to CP08/25**

March 2009

Press Releases

FSA right to appeal against Tribunal decision on Fox Hayes to defend consumers and principles based regulation

April 2008

Consumer Panel calls on banks to accept judicial decision on bank charges

April 2008

Consumer Panel welcomes progress on FSA Retail Distribution Review

April 2008

FSA still not setting clear enough standards for financial advertising

May 2008

Consumer Panel response to Competition Commission on PPI

June 2008

TSC report on regulation of with-profits' inherited estates – Consumer Panel response

June 2008

Financial Services Consumer Panel Annual Report published

June 2008

OFT report on personal current accounts – response from Financial Services Consumer Panel

July 2008

Banking compensation reforms must make sense to consumers

September 2008

FSA's Retail Distribution Review must deliver better systems for consumers and industry

September 2008

FSA considers regulation of retail banking at last

November 2008

Treating Customers Fairly must remain core to FSA regulation says Consumer Panel

November 2008

Retail Distribution Review leaves questions to be answered – says Consumer Panel

November 2008

FSA assaults consumer rights

December 2008

FSA Board needs greater consumer representation

January 2009

FSA focus on outcomes is long overdue – Consumer Panel

March 2009

Turner Review must not unbalance FSA

March 2009

Appendix 6: Panel members on other bodies

Panel members as consumer representatives on FSA bodies

FSA RDR Regulatory Barriers & Enablers Industry Group – David Metz

Treating Customers Fairly Consultative Group – David Metz

FSA European and International Roundtable Group – Stephen Crampton

FSA Asset Management Forum – Carol Stewart

FSA Quality of Advice Group – Adam Phillips

FSA Professional Standards Advisory Group – Carol Stewart

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

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

FOS Committee – Complaints Data Publication Group – Tony Hetherington

FOS Committee – Accessibility & Transparency Group – Tony Hetherington

Scottish Parliament – Cross Parliamentary Cross Party Group on Tackling Debt – Mike Chapman

Financial Health Forum – Adam Phillips

Retail Financial Services Forum – Adam Phillips

Appendix 7: Meetings with external bodies

Aegon	Financial Services Smaller Businesses Practitioner Panel (FSSBPP)
Age Concern	Financial Services Practitioner Panel (FSPP)
Association of British Insurers (ABI)	Help The Aged
Association of Independent Financial Advisers (AIFA)	Her Majesty's Treasury
Association of Investment Companies (AIC)	Hull University
Banking Code Standards Board (BCSB)	Institute of Economic Affairs
Department for Business Enterprise and Regulatory Reform (BERR)	John Purvis (MEP)
British Bankers' Association (BBA)	Lord Hunt of Wirral
Barclays	Norwich Union
European Consumers' Organisation (BEUC)	OFCOM
Committee of European Securities Regulators (CESR)	Office of Fair Trading (OFT)
Chartered Insurance Institute (CII)	Payments Council
Citizens Advice Bureau (CAB)	Personal Accounts Delivery Authority
Commissioner McCreevy	Peter Skinner (MEP)
Consumer Focus	Prudential
Council of Mortgage Lenders (CML)	Safe Home Income Plans (SHIP)
Centre for Study of Financial Innovation	UK Permanent Representation to the EU (UKREP)
DG Markt	UK Shareholders' Association
Dianna Wallis (MEP)	Which?
Financial Inclusion Taskforce	
Financial Ombudsman Service (FOS)	
Financial Services Compensation Scheme (FSCS)	

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

Autorité des marchés financiers (AMF) Investors
Consultative Committee – May 2008

UK Shareholders Association Annual Conference –
May 2008

FSA Enforcement Conference – June 2008

Northern Association of Building Societies
Conference – October 2008

Financial Lawyers' Association Conference on
Treating Customers Fairly – October 2008

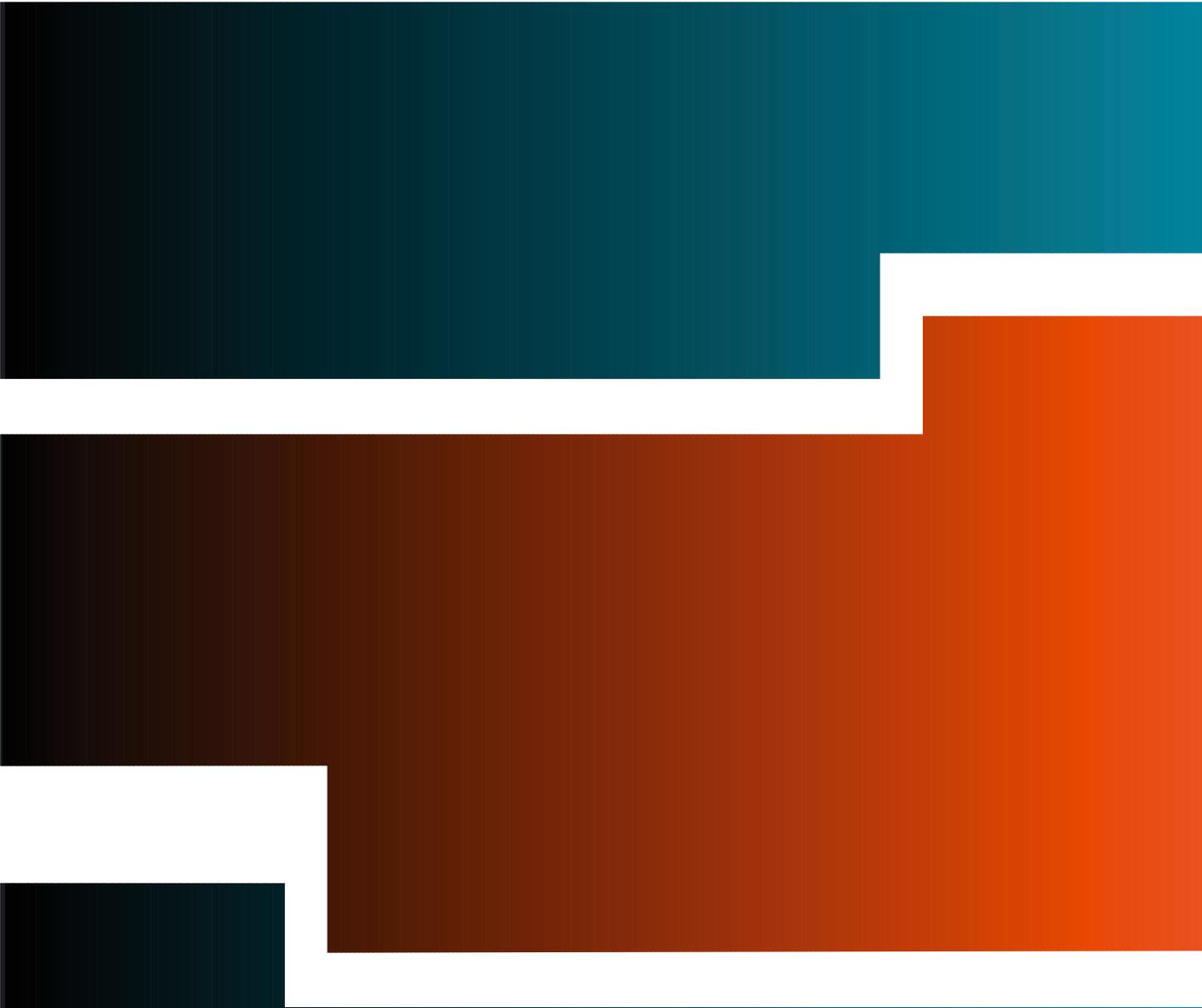
FSA RDR Conference – November 2008

FSA 2009 Overseas Regulators Conference –
December 2008

FSA Retail Banking Roadshow – December 2008

BBA RDR seminar – March 2009

BBC G20 Business Breakfast – March 2009



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