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27 April 2012

Dear Professor Kay

Additional evidence to the Kay Review

This is the Financial Services Consumer Panel's response to the request for additional evidence to the Kay Review. We would like to provide additional evidence in relation to the concept of fiduciary duty, given that your interim report considers specifically whether this should be employed more widely in the investment chain.

As you will no doubt be aware, a draft Financial Services Bill is being considered by Parliament and is currently at Third Reading stage in the House of Commons. The concept of fiduciary duty has been debated at length during the development of the Bill and we believe this has relevance to your review.

Throughout the development of the Financial Services Bill the Panel, and a large number of other stakeholders, has been concerned that nothing has been included to tackle the asymmetry of knowledge prevalent in financial services – providers of financial services have a hugely disproportionate level of understanding when balanced against that of consumers. For this reason, the Panel originally proposed an amendment to the Bill which required that providers of financial services, including investment banks, insurance companies and financial advisers, to have a fiduciary duty towards their clients. Although the Government proposes to require firms to owe their customers an appropriate level of care and provide accurate and timely information, the Panel firmly believes these requirements do not go far enough and would fail to deliver the necessary change in consumer protection standards.

In light of our recommendation for a fiduciary duty principle to be included in the Bill, the concept was debated at length during the Public Bill Committee's consideration of the draft Financial Services Bill. The Government intention though, as outlined by The Financial Secretary to the Treasury Mark Hoban MP, is to set clear responsibilities for firms to protect their customers rather than rely on common law duties which, the Government feels, create complexity.

The Panel understands such concerns surrounding the concept of fiduciary duty. However, we strongly believe that the proposed consumer protection mechanisms need to be enhanced. We are therefore now proposing to introduce an amendment that would require financial services providers to have a duty of care towards their

clients. This would require providers to act honestly, fairly and professionally in the best interest of their customers, placing the following obligations on firms:

- no conflicts of interest;
- no profit at the expense of their customer without their knowledge and consent;
- undivided loyalty to their customer; and
- a duty of confidentiality;

The Panel believes requiring financial services providers to have a duty of care to their clients will help tackle consumer detriment by tackling opacity, complexity, asymmetry of information and above all preventing providers from unfairly profiting at their expense of their customer. This will also provide much needed reassurance in circumstances where the public's confidence in the effectiveness of regulation is extremely low.

I hope you find this information useful.

Yours sincerely,

Adam Phillips
Panel Chair