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Dear Ms Munn

The Role and Powers of the Consumer Advocate

This is the Financial Services Consumer Panel's response to the BIS Consultation Paper: A consultation on the role and powers of the Consumer Advocate.

The Consumer Panel is an independent statutory body established under the Financial Services and Markets Act 2000 to advise and monitor the Financial Services Authority on all its policies and activities, from an independent consumer point of view. We also review and comment on salient wider developments in financial services that fall within the remit of Government Departments or regulators other than the FSA.

The Panel read the consultation paper with interest, in particular the interaction between the Consumer Advocate's powers and the powers of collective action being proposed in the Financial Services Bill. From reading the consultation paper, the Panel understands that the Consumer Advocate's power to take collective action would exclude areas/issues within the scope of FSMA.

Overleaf, the Consumer Panel has provided responses to two questions posed in the paper: question 26 and 51. We would welcome further dialogue with the Department on the points we have raised within our response.

Yours sincerely

Adam Phillips
Chairman
Financial Services Consumer Panel

Financial Services Consumer Panel's response to BIS's consultation paper:

The Role and Powers of the Consumer Advocate

Question 26: *Do you agree that there should be no overlap in scope between the Government's proposals for collective actions in respect of financial services claims and the power proposed for the Consumer Advocate?*

The Consumer Panel agrees that there should be no overlap in scope between the proposals for collective actions in respect of financial services claims as outlined in the Financial Services Bill and the powers proposed for the Consumer Advocate.

Question 51: *Can you foresee any unintended consequences from granting this power to take collective actions?*

The Consumer Panel believes that to help consumer understanding and confidence in collective actions across all sectors, there should be no differences to the outcome consumers experience when action is taken on their behalf. The Panel very much supports an opt-out process, or at the very least leaving the decision to opt-in or opt-out to the discretion of the courts, as in line with the Financial Services Bill proposals.

The Panel would welcome clarification into areas which may bridge the Consumer Advocate's powers and those set out under the Financial Services Bill. For example what would happen if action was brought under a piece of non-FSMA legislation but the action covered a financial services product? The Panel is thinking about court judgements relating to either the Consumer Credit Act or the Unfair Terms in Consumer Contract Regulations. Would the Consumer Advocate use its own powers, or would it have to bring action on behalf of a class of customers under the powers proposed in the Financial Services Bill?