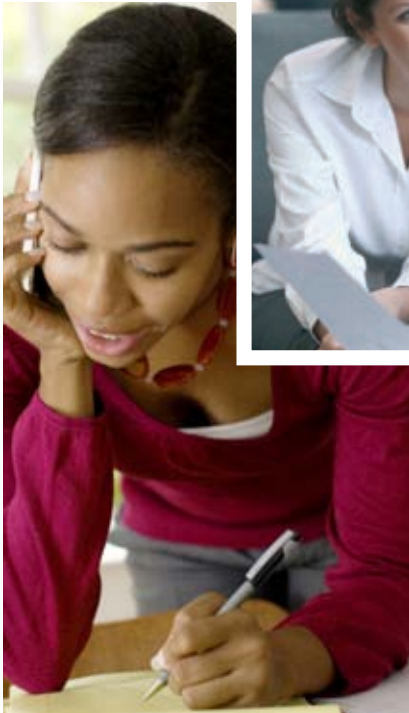


Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES



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**Adam Phillips,
Consumer Panel Chairman**

The past year has seen a step change in the FSA's approach to dealing with consumer protection. Hector Sants' speech in March 2009, committing the FSA to an outcomes-focused approach to regulation, signalled that the FSA had finally accepted that there needed to be more intervention from the

regulator at the interface between a firm and its customers. Publishing a set of principles and rules, without supervising their detailed implementation in the organisation and without checking the outcome for the customer, is not sufficient to ensure that all firms will treat their customers fairly. The creation of the Conduct Risk division and the introduction by the FSA of processes for ensuring that firms conform to the conduct of business principles and rules have given the FSA the necessary tools to regulate outcomes.

I trust that in the coming year users of financial services will see the benefits of this approach and, in due course, we will see a decline in the levels of complaints about systematic failures in business conduct which go to the Ombudsman. The fact that the FSA has taken over responsibility for regulating retail banking conduct from November 1 last year provides an excellent opportunity to demonstrate the effectiveness of this new approach.

The Panel has welcomed the FSA's more active approach to enforcement in the last year, although much of this has been directed at insider dealing. We were also pleased to see effective action being taken against mortgage providers who were failing to follow the rules on dealing with customers in arrears, but we are still waiting for enforcement action against any individuals in the large banks who were responsible for systematic mis-selling of payment protection insurance.

The steps that have been taken in the last year to increase transparency through the publication of complaints data and the clause in the Financial Services Bill allowing publication of decision notices revealing the identity of companies subject to enforcement action earlier on in the process are important and welcome. However, the Panel was disappointed that its proposed amendment to the Financial Services Bill, to enable the FSA to publish information about companies when relevant to its consumer protection objective, did not get through the wash-up process at the end of the last Parliament. The present legal restrictions on the FSA which seriously restrict its ability to use information about named companies in pursuit of its consumer protection objective remain a source of concern to the Panel.

The Panel continues to support the FSA's important work on progressing the Retail Distribution Review and the Mortgage Market Review although, in both cases, there still remain some significant points of detail to be resolved and, in the case of the Retail Distribution Review a limited amount of time in which to do so, given the deadline of 2012 for introducing the changes.

I remain unhappy about the slow rate of progress on resolving the problems created by the mis-selling of PPI. It is vital for the FSA that its Conduct Risk Division ensures that a similar problem of this scale cannot happen again.

I would like to end by thanking my colleagues for their support and hard work in what has been a very busy year, and to acknowledge the excellent contribution from Professor Jenny Hamilton who left the Panel in June and Mike Chapman who left in December. Finally, I would like to thank Hector Sants, on behalf of the Panel, for the changes he has brought about in his time as chief executive and to wish him well in his future career.

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

Adam Phillips
Chairman
June 2010

The Panel in March 2010 from left to right:

Front row: Kay Blair, Adam Phillips (Chairman)

Second row: Tony Hetherington, Caroline Gardner, Bill Martin

Fourth row: Stephen Crampton, Claire Whyley, Mike Dailly, David Metz

Back row: Nick Lord, Lindsey Rogerson, Carol Stewart



Chapter 1: Introduction

This report sets out the work and opinions of the Financial Services Consumer Panel (the Panel) for the financial year of 1 April 2009 to 31 March 2010. The Panel's role is primarily to monitor and advise the FSA on its overall policies from the consumer perspective¹.

Over the past year, attention has moved beyond the immediate short term measures needed to shore up the financial system in the wake of the recent financial crisis. Focus has now moved to look at longer term measures to safeguard the system so that it does not suffer from such a shock again, and at improved arrangements to deal with any fallout from possible future crises.

During this year, we have seen a welcome step change in the FSA's commitment to consumer protection. This has built on a gradual improvement over the past few years, which means that, if the past 5-6 years are taken together, there has been a significant improvement in the way that the FSA works on behalf of consumers of financial services. The FSA should be congratulated for that.

The Panel has been involved in some major developments in the protection of consumers using financial services, particularly in:

- regulating conduct of retail banking by the FSA, which started in November 2009;
- action taken by the FSA to constrain risk in the mortgage market;
- the decision to end commission on investment advice from 2012;
- the commitment to increase the professional standards of investment advisers by 2012;
- increased enforcement action by the FSA;
- publishing consumer complaints data collected by the Financial Ombudsman and the FSA; and
- supporting the creation of a national generic financial advice service – the Consumer Financial Education Body.

There remain areas where we have concerns. The most notable of them are as follows:

- whether banks will embrace the spirit of fairness on which the FSA's regulation of retail Conduct of Business is based. Banks do not always seem to agree with the FSA's approach to issues like interest rate notification, the application of set off and unauthorised transactions;
- the boundary between FSA and the Office of Fair Trading (OFT) regulation is not simple. We continue to urge FSA regulation for credit and debt within organisations already authorised by the FSA for other business;
- much has been achieved by the Retail Distribution Review (RDR), but there is still more to do to ensure it is implemented effectively. We will closely follow how the FSA handles changes in the regulation of professional standards and platforms;

¹ See Appendix 2 for Terms of Reference of the Financial Services Consumer Panel.

- Payment Protection Insurance (PPI) regulation, is a topic where we support the FSA's determination to continue strengthening consumer protection in the face of industry pressure: this must not be diluted;
- the current regulation of with profit funds and annuities leaves too much potential for consumer detriment; and
- the FSA must continue to communicate clearly with consumers, in order to meet its consumer protection objective after MoneyMadeClear is passed to the Consumer Financial Services Education Body.

2009/10 has been a year of debate and serious scrutiny of financial services regulation, to ensure it is fit for purpose in the future. We are already

seeing evidence of the FSA's commitment to more intrusive supervision and improved consumer outcomes. The Panel has long argued for this approach and we will continue to press for ever better outcomes.

This annual report initially sets out the Panel's perspective on financial regulation – its strategy and the overall principles which it has applied in reviewing and commenting on regulatory developments (Chapter 2). Then we set out the advice we have given to the FSA and other bodies on developing new regulations (Chapter 3) and in maintaining regulatory principles already agreed (Chapter 4). We look at our work beyond the FSA in Chapter 5, and finally our plans for the future in Chapter 6.

Chapter 2: The Panel's perspective on financial regulation

This chapter sets out the overall approach of the Consumer Panel – what we are trying to achieve, and the strategy that we employ to achieve it.

KEY OUTCOMES FOR CONSUMERS

Our approach is always to look at the ultimate outcomes for consumers. We focus on whether the regulator is ensuring fairness, value for money and effective competition in the marketplace, within the constraints of its regulatory powers. We see the regulator's role as setting effective rules that deliver fair treatment and consumer protection, which firms should then comply with. Where firms do not comply with rules, the FSA needs to take tough and prompt action. Overall, we do not believe the consumer has been best served by 'light touch regulation' and we are keen to see more effective, and early, intervention from the regulator.

A well-regulated retail marketplace should deliver key benefits for consumers:

- transparency and full disclosure of hidden costs;
 - a credit market which is accessible and which treats customers fairly;
 - a well-functioning mortgage market which enables responsible lending to customers;
 - products which are presented in a simple and honest way and prices that can be easily compared with other products of the same type, offering value for money;
- the widespread availability of competitive products that meet key needs (for example in banking and planning for retirement), and which "do what they say on the tin";
 - 'good' product innovation, rather than innovation that conceals cost or risk in the pursuit of providing an apparently better price or higher rate of return;
 - a retail distribution structure that gives customers a real choice, a structure that operates through different channels and one where competition works effectively to hold costs down while, at the same time, meeting customer needs;
 - access to independent advice, free from product, provider and sales bias, where financial intermediaries act as true agents of the consumer;
 - a market that recognises and responds effectively to the needs of more vulnerable consumers, whether due to age, location or ability.



STRATEGIC GOALS

Over the past year, we have strengthened our strategic approach and developed a set of high level strategic goals for the Panel to achieve, working with the FSA, government departments and other appropriate audiences. They are as follows:

- **Enhance consumer protection**

The Panel aims to contribute effectively to the development of policy initiatives emanating from the FSA, government and other key policymakers to ensure that consumer protection is at the heart of policy. At the same time, we recognise that there must be a reasonable balance between the emphasis on financial stability and consumer protection, since the consumer ultimately bears the costs of any failure of regulation.

- **Improve FSA effectiveness in relation to its consumer protection objective**

The Panel recognises the changes made by the FSA over the last year in seeking to achieve its consumer protection objective. Restructuring and refocusing should help, but continuing problems with PPI, banking regulation and annuities show that problems still persist and need effective action from the regulator.

- **Engage with the debate on the future shape of regulation in the UK and EU**

Clearly, the FSA can only act within the powers that it is given by parliament. We have a key role to play in influencing the debate on the future regulatory architecture in the UK. We also need to influence the development of EU financial services policy so that it reflects UK

consumers' interests and ensures they can buy financial services with full confidence; this includes buying financial services cross-border if they choose to do so.

- **Increase Consumer Panel effectiveness**

We are always looking to improve the way we work as a Panel. We want to ensure that key opinion formers are aware of the Panel's position, concerns and priorities and that the Panel is perceived as a credible and effective adviser to the FSA.

THE WAY THE PANEL WORKS

We aim to provide constructive advice and analysis on how to improve regulation to provide appropriate levels of protection for consumers. This year, we have worked to improve the effectiveness of our liaison within the FSA. We have looked at how we can add value with senior officials and board members, as well as our interaction throughout the organisation at the detailed policy level.

In addition, we have engaged with politicians, government departments, other regulators, business representatives and other consumer bodies, as all have been involved in the debates on the shape of future financial services regulation. In particular, we have worked with Consumer Focus, the statutory organisation campaigning for a fair deal for consumers across the sectors in the UK, and with which we have a statutory link.

These priorities and goals, along with our terms of reference (see Appendix 2), set the framework within which we have monitored and advised the FSA over the past year. Our work is detailed in the following chapters of this report.

Chapter 3: Major initiatives on future of financial regulation

This chapter focuses on the Panel's input to the following major changes to the scope and methods of FSA regulation over the past year:

- the Turner Review and regulatory reform in response to the banking crisis;
- increasing the effectiveness of the FSA;
- FSA regulation of the conduct of retail banking;
- proposed changes to mortgage regulation;
- the Retail Distribution Review(RDR) and changes to the regulation of financial advice and investment products; and
- changes to the FSA's remit – regulating sale and rent back and the creation of the Consumer Financial Education Body.

THE REGULATORY STRUCTURE IN RESPONSE TO THE BANKING CRISIS OF 2007-9

The Turner Review and Financial Services White Paper

Much has been said and done this year by the relevant authorities to reform the regulation structure to try and avoid a reoccurrence of the recent financial crisis. The agenda of key challenges for the UK was set out in The Turner Review², published in March 2009. The Panel has responded to The Turner Review and to the regulatory proposals from the government and the FSA which followed.

Our involvement in the debate has been rooted in the imperative of having an effective regulator which is fit for purpose and able to intervene and deliver on its statutory objectives, most notably Consumer Protection.

We pointed out that although macro-prudential risk needs to be appropriately managed and supervised in the future, this must not be at the expense of consumer interests. We urged an end to light touch regulation and more effective and timely intervention from the regulator. The end result must be an effectively regulated market that consumers trust and which works in favour of its customers, responding to their actual (as opposed to created) needs, therefore driving down costs, offering safer products and representing value for money.

We are pleased that there has been progress on many of our key action points for the government and the FSA, as follows:

- **Conduct regulation**

We urged the FSA not to dilute its focus on conduct regulation as it addresses the previous inadequacies of prudential regulation. This is particularly because, when in times of difficulty,

2 FSA The Turner Review: A regulatory response to the global banking crisis, March 2009.



firms could be tempted to boost their income through behaviour which leads to consumer detriment. We were pleased that the FSA's 2010/11 Business Plan included a clear commitment to their work on consumer protection.

- **Transparency of enforcement action**

We have long believed that the FSA should be a more transparent regulator. This is particularly important when the FSA takes enforcement action against a firm. The FSA should be able to name firms who are charged with being in breach of their regulatory obligations. Consumers have a right to know about the shortcomings of the firms with whom they deal, well before the ultimate sanction of enforcement action by the FSA.

We were pleased that the Financial Services Act 2010 enhanced the FSA's enforcement powers and provided for transparency of enforcement cases at an earlier stage than was previously possible. However, we still believe that transparency is desirable even earlier in the FSA enforcement process. We were disappointed that the amendment which we proposed to Section 349 of the Financial Services and Markets Act 2000 in the Financial Services Bill this year did not get through the parliamentary process.

- **Consumer credit**

We have argued that the FSA should be responsible for regulating consumer credit in the significant firms it supervises. Under this proposal, the FSA would be responsible for regulating all key business of its authorised firms including credit and debt, which is currently regulated by the Office of Fair Trading (OFT). We believe our proposal would strengthen consumer protection and address possible confusion over regulatory roles.

This is not a policy that has been adopted by the government or the FSA: however we continue to press for better liaison between the FSA and OFT, and for them to closely scrutinise whether the regulatory boundary effectively protects consumers.

- **Enforcement**

We said that the FSA should have a greater appetite for enforcement action, with tougher and prompter action to punish poor behaviour and encourage firms to comply with rules. We have been pleased with the increased amount of enforcement action from the FSA this year.

- **Reviewing business models**

We suggested that the FSA should give greater supervisory challenge to firms. We said they should aim to identify risks before they create any significant consumer detriment, by reviewing business models and demanding clear accountability of senior management for the activities of the firm. We were pleased that FSA restructuring over this year has set up a dedicated department to overview conduct risk, which should drive supervision in this area.

- **Product scrutiny**

We have urged the FSA to look to use its powers to introduce product regulation in certain market sectors. FSA regulation currently concentrates on the sales process for financial products. However, given

the asymmetry which exists between consumers and firms (i.e. the fact that consumers' knowledge of financial products and services will always be less than that of providers), we believe more attention should be paid to the actual products and their inherent risks. We were pleased FSA Chairman Adair Turner suggested looking at certain more complex products this year³, particularly in the mortgage market, and we will be pressing the FSA to do more here in the coming year.

- **Value for money**

We were disappointed that the government did not accept our suggestion that the FSA should be given an added responsibility in the 2009-10 Financial Services Bill – to have regard to 'value for money' when discharging its regulatory responsibilities. We believe most consumers would view 'value for money' as an essential component of fairness and that there are some sectors where competition alone is not sufficient to deliver good value.

Financial Services Act 2010

During the progress of the subsequent Financial Services Bill in Parliament, we worked with other consumer organisations – Which?, Citizens Advice, and Consumer Focus – to ensure that parliamentarians understood the importance of changes being proposed for redress, collective action, the Consumer Financial Education Body and regulatory transparency. The Consumer Panel specifically focused on briefing parliamentarians of all parties on specific means of improving the transparency of the FSA, particularly in the enforcement process.

Reform of financial supervision in Europe

The Panel has also engaged in the debate at a European level, where the European Commission has proposed enhanced cooperative arrangements to reinforce financial stability consistently throughout the EU.

The new EU structure will involve creating a European Systemic Risk Board (ESRB) to monitor and assess the risks to the financial system's stability as a whole, as well as a European System of Financial Supervisors (ESFS). This will consist of the existing network of national financial supervisors working in tandem with the new ESAs⁴ (successor organisations to the Lamfalussy Committees). The national financial supervisors will continue to be responsible for the supervision of individual financial institutions ("macro-prudential supervision"), and the ESAs will oversee the application of supervisory standards and ensure strong co-operation between the national financial supervisors.

We responded to these proposals during the year and called for:

- any formal EU structure for financial supervision to be fully transparent, independent and fully accountable, with appropriate governance structures and with the protection of the interests of consumers as a central part of the proposed new bodies' objectives;
- an EU financial services consumer panel to advise the proposed EU bodies and the Commission, building on the work of FIN-USE, the expert forum of financial services users, and the European Financial Services Consumer Group;
- action on passporting and home country supervision arrangements (see Chapter 5 page 35);
- increased national powers to limit retail deposit-taking by firms trading in other member states, subject to appropriate procedures to prevent barriers to the operation of the single market;
- an EU agreement on minimum standards of independence and minimum sets of powers for national regulators (as already exists in the telecoms sector) including obligations to assist each other under appropriate circumstances and to have the protection of users of financial services in their objectives;

3 Speech by Adair, Lord Turner, Chairman, FSA to Financial Capability Conference, 15 July 2009.

4 European Supervisory Authorities.

- require national regulators to consult on, and propose establishing independent financial services consumer panels; and
- an increase in deposit guarantee scheme limits (see Deposit Guarantee Schemes, Chapter 4 page 28).

We also reiterated the Panel's views on minimum rather than maximum harmonisation, remuneration structures within financial institutions, regulatory transparency, deposit guarantee schemes, alternative dispute resolution and collective redress.

INCREASING FSA EFFECTIVENESS

Board membership

In our 2008/9 Annual Report, we pointed out that, with calls for improved governance in financial institutions, the FSA should also consider its governance and whether effective consumer representation existed at the highest levels. We called on the FSA to have at least one non-executive director with significant consumer credentials on its board. It is encouraging that this year the FSA has recruited some new non-executive directors, including Mick McAteer⁵ and Brian Pomeroy⁶, who have experience of championing consumers and protecting the vulnerable.

Restructuring the FSA

We were encouraged by the FSA restructuring this year, which has focused the organisation's regulatory responsibilities under two managing directors – one for Supervision and one for Risk. This means common themes and resources can be applied across the organisation's different sectors for Supervision. Just as important from the consumer protection perspective, is the ability to identify and mitigate the risks of consumer detriment by financial services firms' actions. This is being addressed by the creation of the Risk Directorate.

Coordinating Risk activities

Since October 2009, the Risk Directorate – run by Sally Dewar – has been responsible for identifying and mitigating sectoral and market-wide risk, the FSA's overall risk management process and providing Supervision with specialist support. Risk also deals with policy formulation, covering prudential policy, conduct policy and markets policy.

We have high expectations of the new Conduct Risk division, which will focus on risks in the way firms transact their business with their customers that could lead to actual or potential consumer detriment. We hope that by subsuming work on the Treating Customers Fairly (TCF) principle into Risk, the positive benefits expected by the FSA will be produced and we will ask for evidence of this. The overall approach to identify, prioritise and mitigate conduct risks, using Conduct Risk Analysis, Outcomes Testing, Thematic Projects and specialist supervision means the FSA should be able to analyse conduct and prudential risk in any given sector in a way that it could not do before.

The FSA has said it will proactively analyse risks at an individual firm level, by making judgements about the prudential and conduct risks which firms and consumers may face. For example, in the mortgage market the FSA has said it will look for high-risk lending strategies and so will intervene where necessary to curb high-risk product sales, or sales to particularly vulnerable borrowers, or both. We support the FSA's move towards targeted product regulation, where appropriate, and a clear responsibility on lenders to assess affordability.

Outcome focused regulation

As detailed rules can often be circumvented, the Panel had supported the FSA's move to more principles based regulation and in particular applying the principle of Treating Customers Fairly

5 Mick McAteer is founder and Director of The Financial Inclusion Centre, with over 20 years of experience in financial services. He was formerly Principal Policy Adviser for Which?.

6 Brian Pomeroy CBE is currently Chairman of the Treasury's Financial Inclusion Taskforce and, among other roles, has been Chairman of the Payments Council, Centrepoin and Homeless Link, the Disability Rights Taskforce, and a trustee of Money Advice Trust.

(TCF). However, we have always been sceptical about whether it is really possible to monitor and control bad practices by applying overarching principles with minimal rules.

We have welcomed the FSA's moves to strengthen its supervisory approach and focus on outcomes rather than processes. This should enable strong action to be taken in areas where there are clearly poor outcomes for consumers, such as the ones we have seen in PPI sales. We hope that outcome focused regulation really will deliver better outcomes for consumers and we will look for evidence of this in the coming year.

Consumer responsibility

We were pleased that, over the course of the year, we helped to persuade the FSA to abandon the debate about consumer responsibility for the moment. It is entirely reasonable that the FSA should be promoting sensible actions for consumers to take when seeking advice. However, the complexity of many financial products and the difficulty of finding an acceptable way to describe risk means that most consumers are ill-equipped to judge how a product will perform in future, and whether it meets their needs.

We argued that the concept of 'consumer responsibility' is flawed: such a regulatory concept would risk giving firms an excuse to evade responsibility for serving consumers well. We are pleased that the FSA has listened to our advice, and in its feedback statement in September 2009⁷ announced a more realistic way forward by promoting sensible actions for consumers as part of its consumer capability work.

Consumer engagement

We were pleased that the FSA decided to review its consumer engagement strategy towards the end of

the financial year, although we registered concern that the remit of the review was not broad enough.

We agreed that the engagement strategy, if adopted, prioritised and implemented effectively throughout the FSA, should strengthen the FSA's ability to protect the consumer interest. However, we also asked the FSA to consider appointing an FSA Board Executive to be responsible for the FSA's consumer interest objective, to improve the FSA's corporate governance in this area.

Strengthening enforcement action – credible deterrence

The FSA's increasing emphasis on the importance of strong enforcement action is welcome and long overdue. The FSA's adoption of the aim of providing "credible deterrence", so that firms really believe that strong FSA action against wrong-doing is likely, is also important for consumers so they can have confidence that the industry is well policed.

Thankfully, there has been an increase in the amount of FSA enforcement action against firms, and more recently against individuals as well.



7 FSA FS09/2: Consumer responsibility: Feedback on DP08/5 September 2009.

FSA REGULATION OF RETAIL BANKING

FSA regulation replacing the Banking Code

Over the past few years it became increasingly clear that the regulatory arrangements for retail banking – where the FSA effectively delegated regulatory control of how banks conducted their retail business to the voluntary Banking Code – were not up to the task. Given the extraordinarily important economic and social role of banking, we pointed out to the FSA that it was becoming untenable for them to have such a peripheral role in regulating how banks deal with their retail customers. We therefore have followed the FSA's work in developing a new system to regulate retail banking with close interest over the past year.

In our dialogue with the FSA on its new regulatory arrangements which came into effect on 1 November 2009, we highlighted several key consumer issues for the transfer:

- consumer communication would be vital, as one of the best things about the Banking Code was that the key elements were visible and readily available in the short leaflet regularly circulated to bank customers;
- the consumer protection already offered by the Banking Code should not be lost as a result of transferring regulation to the FSA;
- the FSA should not rely too much on principles and industry guidance, but needed to set out detailed rules in certain areas. We were pleased that the FSA acknowledged in its Policy Statement⁹ our expectations for applying the FSA fairness principle and its impact on banks' behaviour, especially regarding charges;
- working arrangements between the FSA and the OFT continue to stimulate concerns about unnecessary regulatory gaps and overlaps.

However, there has still not been enough enforcement action against individuals in larger firms. To use FSA Director of Enforcement, Margaret Cole's own words: "By hitting companies and individuals in the pocket where it hurts, the fines will be a stark warning to others on what they can expect to pay for flouting our rules"⁸.

We continue to urge the FSA to pursue individuals in the largest financial firms who are responsible for wrong doing in their firms.

Strengthening enforcement action – past business reviews

We have pressed the FSA to review its approach to past business reviews. We remain unconvinced that enough is done to ensure that consumers really understand that letters sent by firms in which they may have lost confidence, offering further scrutiny of their procedures, is really an opportunity for compensation, rather than the firm trying to sell them an additional product.

Our concern is fuelled by response rates to past business reviews being surprisingly low. We believe communication with affected customers needs to be improved: it must be clear, effective and believable. It will probably also require some third party endorsement of the message, in addition to that of the firm that was responsible for the wrongdoing.

The FSA must research the effectiveness of past business reviews; specifically how consumers engaged with the process. There needs to be more information on whether consumers prefer to receive correspondence from a firm, the regulator or another third party; and if other forms of communication may encourage more consumers to respond. We are sceptical that the letters really have provoked customers to consider their case for redress and the majority may well have failed to make a legitimate claim.

8 FSA press release launching Consultation Paper CP09/19, 6 July 2009.

9 FSA Policy Statement 09/6: Regulating retail banking conduct of business: Feedback on CP08/19 and final rules, April 2009.

Indeed, we took this up in our response to The Turner Review, where we advocated that regulation of consumer credit for FSA authorised companies should be transferred from the OFT to the FSA; and

- a post implementation review of the new regime would be essential for such a major change in regulation.

We are pleased that the FSA has taken a robust approach in transferring many requirements from the Banking Code into its new Conduct of Business requirements for banking. The FSA will now supervise banks under its Principles for Business and particularly, from the consumer point of view, Principle 6 (treating customers fairly). This should benefit consumers considerably, along with more minor but nevertheless significant changes such as notifying customers of interest rate changes; refunding unauthorised payments; and making switching bank accounts easier.

We remain concerned about banks' adherence to the new rules and want to ensure the FSA follows up speedily and effectively with any who seek to circumvent them. We will be monitoring specific consumer protection aspects of retail banking regulation so that we can assess the effectiveness of FSA regulation. The areas that we will examine in the first year of full FSA regulation include:

- Reinstatement of unauthorised payments without delay;
- Effectiveness of notification of interest rates; and
- Application of right of set off (see below in BBA industry guidance section).

In addition, although the FSA has been responsible for regulation of bank consumer complaint handling prior to the new Banking Conduct of Business (BCOB) rules, there is increasing concern that banks are not treating their customers' complaints fairly. The FSA is undertaking further research in this area and we will watch the outcome closely.

FSA approval of BBA Industry Guidance

As part of the preparation for FSA regulation, the British Bankers Association (BBA) announced it would seek FSA approval for industry guidance following the process as agreed by the FSA in 2007. As it is such a critical area for consumers, we were dismayed that the BBA seemed only to pay lip service to the consumer consultation requirements of FSA-approved industry guidance. The guidance for consumer groups to review was poorly drafted, and delayed from March until August 2009. This resulted in a shorter timeframe than normal consultations and, as it was held over the summer months, many staff were on leave.

The BBA subsequently ignored concerns raised by the consumer lobby during the consultation, both regarding the content of the BBA's draft industry guidance and also the consultation process itself. The Panel requested the FSA to step in, and ask the BBA to take account of the consumer lobby's suggestions during the consultation.

We raised two particular concerns. The first related to the identification documents required to open basic bank accounts, as there was a danger that the new guidance would offer less protection than the Banking Code. It cannot be assumed, particularly for those opening basic bank accounts, that people have a passport/driving licence/utility bill. We pressed for the guidance to advocate a more flexible approach, where people would be asked what information they could supply to prove their identity and home address.

The second area of concern relates to the right of set-off by the retail banking sector. Banks are legally allowed to take money from accounts in credit to pay other debts which the same person may control that have breached their credit agreement. However, there is evidence that banks are increasingly mis-using their right of set-off against customers, and using technical or software

excuses to leave individuals unable to pay their living costs or pay for vital care services. The inevitable conclusion is that banks are not treating their customers fairly. Our concerns in this area are still to be resolved. We do not believe this can be adequately addressed in the BBA's industry guidance. We have requested that the FSA takes forward this issue for further investigation, outside of the guidance.

Bank charges – fairness of unauthorised overdraft charges

We were extremely disappointed when towards the end of 2009, the Supreme Court ruled against the OFT on whether unauthorised overdraft charges can be considered fair under the Unfair Contract Terms. This followed lengthy delays for consumers while waiting for resolution from the test case on bank charges brought by the OFT.

In late December 2009, the OFT announced it would not be pursuing further court action against the banks on unauthorised overdraft charges, even though the court ruling was only on one aspect of the law. The court decision also did not rule against individual consumers taking action, and so this area remains unclear.

We believe that there is no justification for such high unauthorised overdraft charges hitting consumers when they are most vulnerable. If banks are serious about treating customers fairly, they should accept that it is not fair to fund their retail banking operations through high charges to one section of their customers. Many banks have changed their justification and explanation for the different charges for overdrafts over the past couple of years as the debate has progressed.

We have urged the FSA to play a role in working with the OFT and banks to clarify this area. We believe that there is still a case to answer from the banks regarding the fairness of bank charges: those who incur overdraft charges tend to be people with



the least amount of money and can find themselves trapped by the rapidly escalating nature of the charges. They should not be subsidising those with more money in their accounts.

We are concerned there is a lack of clear advice for those customers challenging bank charges. This is particularly necessary as further court action is pending from individual consumers in the absence of action from the OFT.

We have also detected a worrying tendency for banks to use the OFT's unsuccessful court action as a reason to reject any type of complaints about overdraft charges. We will follow with interest, the FSA's investigation of bank handling of complaints due in the next financial year¹⁰.

Banks – cash ISAs

We supported the action by Consumer Focus at the end of March 2010, to highlight the problems with levels of interest paid on cash ISAs. Consumer Focus launched a super-complaint to the Office of Fair Trading (OFT) on the basis that the market is not working for consumers.

We gave public backing to the super-complaint, and said it could not be a fair outcome for consumers – or what the government had wanted to achieve in providing the tax incentive for ISA accounts – that people should end up with the same or less interest

10 The FSA has now published its review of complaints handling, and the Panel issued a public response on 28th April 2010.

in a tax free account than in a standard savings account. We particularly focused on issues around switching and transparency. We will continue to highlight any systematic unfairness in the application of interest rates.

MORTGAGE REGULATION

Mortgage Market Review

The FSA published its Discussion Paper on the mortgage market¹⁰ in October 2009. It had the admirable aim of seeking to protect consumers not only by ensuring that the financial system is prudentially sound, but also by ensuring that firms conduct their business fairly. There is a recognition that the market has worked well for many consumers: most mortgage borrowers will come through this recession meeting their mortgage payments and keeping their homes. But it has been a cause of major economic distress for others. The FSA acknowledged that the existing regulatory framework proved to be ineffective in constraining particularly risky lending and unaffordable borrowing and there is a need to address this.

Mortgage debt accounts for four-fifths of outstanding UK lending to individuals and housing associations. Taking out a mortgage is one of the most important decisions taken by private individuals. The Panel believes that in a well functioning mortgage market, consumers should be able to shop around for affordable mortgage products that meet their individual needs. The total cost of a mortgage should be easily comparable across the market, with lenders competing for consumers' business on price and level of customer service. Intermediaries and lenders should comply with FSA rules and principles, with those falling short being named, thus offering those firms treating their customers fairly a business advantage. And finally for any customers experiencing financial difficulty, firms should treat them positively and sympathetically: a solution to

managing mortgage arrears should be made on an individual basis, within a clear and transparent policy on arrears handling.

To a large extent this has been happening, however there have been significant failures, as the paper points out, which have created considerable detriment and costs both for consumers and the industry.

In our response, we welcomed the FSA's attempt to identify and address weaknesses in how this market functions, which have become apparent during the last business cycle and which need further regulatory intervention. We drew attention to two issues in particular:

- our support for mandatory verification of an applicant's income in view of the detriment created by an unfettered self-certified sector. However, with the self-employed in mind, we recognise the need for lenders to be flexible about what forms of independent income verification should be used, with lenders being astute and pragmatic when assessing applications; and
- our belief that the lender rather than intermediary should be ultimately accountable for checking the customer's ability to pay. Having said that, the adviser must also check affordability, as they are responsible for the advice they give on taking out an appropriate mortgage.

We recognise the FSA's proposals represented a very significant shift in direction and have stimulated a vigorous discussion on the right outcomes for the market, which is continuing. We look forward to taking part in the ongoing debate and further work from the FSA in this area.

Responsible lending and borrowing in the EU

We welcomed the European Commission's consultation on responsible lending and borrowing in the EU. In our response, we said that not only does irresponsible lending impact badly on

11 FSA Discussion Paper DP09/3: *Mortgage Market Review*, October 2009.

individual consumers, but its impact on the financial system more broadly is felt by all consumers. It is therefore imperative that firms engage in responsible lending practices to maintain financial stability; reduce consumer detriment and create a financial system which works in the interest of all consumers.

We also argued that any Commission proposals for harmonisation should be based on a high level of consumer protection, and provide minimum harmonisation. This is because minimum harmonisation would create a baseline across Europe for consumers to know they are always protected, whereas, maximum harmonisation would restrict internal market competition by preventing different countries having higher levels of protection in response to different dynamics in their markets.

We were pleased that the paper looked at two aspects in relation to responsible lending – firstly whether the product itself is inherently suitable, and secondly if it is suitable for individual consumers. The system of financial regulation has encouraged innovation leading to a multitude of products. However, not all innovation has been positive and products have been developed which are complex and risky for consumers and firms. We therefore welcomed the debate on the suitability of products and product design. We pointed out that responsible lending must require firms to take steps to ensure that the products sold are appropriate to consumers' needs and their ability to repay.

We suggested that, as the Consumer Credit Directive does not extend to mortgage lending, even though it is a prime area of risk to the consumer, more needs to be done to consider the risks emanating from the mortgage market. We also warned that, although we would support action from the Commission to raise the financial capability of consumers, we firmly believe that it is the firms'

behaviour which is the primary source of consumer detriment, and so financial education should not be a substitute for effective regulation in ensuring fair outcomes for consumers.

FINANCIAL ADVICE AND INVESTMENT PRODUCTS

Retail Distribution Review

The Panel has had a long standing interest in how advice on financial investments is provided and the need to ensure consumers are clear on the type of advice they are receiving and if it is likely to be biased. We have therefore been fully supportive of the objectives of the FSA's Retail Distribution Review (RDR).

We congratulate the FSA on its determination to progress the fundamental reform to the retail investment market through the RDR in the face of considerable industry opposition. At the end of March 2010, the FSA published its main policy changes as a result of the RDR¹². We believe these changes to the structure of financial advice will deliver significant consumer benefits. Improving the clarity with which firms describe their services to consumers will aid understanding and should lead to better outcomes. The improved quality of advice should also reduce the incidence of mis-selling and increase persistency. All these outcomes are worth pursuing.

We plan to continue full engagement with the FSA over the coming year on this subject, as there are still details to clarify. There are specifics such as how to reflect Adviser Charging in product disclosure documents; the ending of product rebate charges on platforms and the remuneration of individual advisers which the FSA has promised to review. We will also watch with interest on how the new rules set out so far by the FSA are implemented by the industry.

12 FSA Policy Statement PS10/6: *Distribution of retail investments: delivering the RDR – feedback to CP09/18 and final rules*, March 2010.

Commission bias and Adviser Charging

In particular, we have encouraged and fully supported the FSA in tackling, once and for all, the potential for commission bias which has driven so much consumer detriment in the past. At a time when the financial sector is experiencing a sustained period of turbulence, it is encouraging that the FSA has maintained its determination to implement such far-reaching change.

We welcomed the FSA's announcement in the RDR Policy Statement to introduce new rules on Adviser Charging. This means that Adviser Charging will replace all commission for personal retail investment advice.

Professional standards

We have fully supported the FSA's ambition to improve professional standards for advisers as part of the Retail Distribution Review. We believe this will be a key driver in improving consumer trust and confidence. Indeed, we have advocated that professional standards should be raised still further until they are on a par with other equivalent professions.

Although the industry has suggested it does not have sufficient time to implement the requisite raising of standards by 2012, we believe it should be possible. There is ample time to ensure all advisers undertake the necessary training and we have encouraged the FSA to be resolute in ensuring the proposals are implemented by that time.

We believe a Professional Standards Board¹³ is needed to monitor professional standards independently from the regulatory process and provide a significant change to inspire consumer trust and confidence. We have said that an internal FSA model may be an acceptable approach, and are

awaiting more details of how it will function and ensure effective consumer representation. We would like to see the effectiveness of an internal model assessed within an appropriate timescale.

Read across to other markets

We are particularly pleased that the FSA is aiming to achieve a level playing field, with the same professional standards and transparent charging structures required in the independent, tied and multi-tied arenas.

We have consistently urged the FSA to consider 'read across' as appropriate to other markets. As well as improving consistency for consumers, we believe that all products in the retail market should be promoted and sold on the basis of suitability and need, rather than as a result of possible commission bias. Otherwise there may be a danger that the bad habits addressed by the RDR in the retail investment market simply transfer to other areas not as yet covered by the RDR requirements.

We were pleased to see a development of this approach in the FSA's Consultation Paper¹⁴ which proposed to 'read across' aspects of the RDR to corporate pensions and pure protection advice. While we acknowledged that the benefits of introducing adviser charging in the corporate pensions market were not as clear as in the retail market, we had no objection to that approach. We also suggested that the FSA needed to do more research into the actual and potential commission bias in the pure protection market. However we think that simply applying the professionalism requirements of the RDR to the pure protection market would be unnecessarily onerous and ultimately prohibitively expensive for consumers. The FSA will need to strike the right balance in a market where the products are often simpler than in

13 FSA Consultation Paper CP09/31***: *Delivering the Retail Distribution Review: professionalism; corporate pensions; and applicability of RDR proposals to pure protection advice*, December 2009; and FSA Consultation Paper CP09/18. *Distribution of retail investments: Delivering the RDR*, June 2009.

14 See note 12.

the investment market, but where buying the wrong product could nevertheless have significant financial impact on individual consumers.

Limits on complaints

We have also advised the FSA to resist any calls from the industry to re-introduce a 15-year time limit on complaints against advisers in response to proposals in CP09/18¹⁵. We fail to see how benefits to advisers of introducing a long-stop could outweigh the disadvantages to consumers who are potentially hampered by one. The Financial Ombudsman Service has said a 15-year long-stop would time-bar about 2,000 of its cases a year. We believe that this figure represents too high a number of consumers who would be denied the opportunity to get adequate redress if a time-bar was reintroduced.

Simplified advice and products

The Panel has always been concerned that the less affluent may find it more difficult to access independent advice, particularly when charging structures become transparent and advice is no longer deemed to be 'free', as so many consumers erroneously believed. It may take some time before consumers en masse acknowledge that advice has a value and is worth paying for. This may lead to a reduction in levels of savings in the middle market. We think that this potential gap could be filled by developing simple straightforward products about which consumers could be advised through the development of a simplified advice process and towards which they could be directed by the work initiated by the Consumer Financial Education Body.

We have urged the FSA to work proactively with the industry to investigate this avenue thoroughly. We can see room for the development of a simplified advice process, possibly based on basic advice, where risk would be mitigated, and where products with straightforward characteristics and genuinely

lower risk profiles could be marketed in a cost-effective way. We understand the FSA's rationale for retaining the Basic Advice regime to maintain access to advice, although we have some concerns that this may lead to 'unintended consequences' as Basic Advice will not be covered by some features of the RDR proposals, such as increased qualifications and Adviser Charging.

Platforms

The Panel acknowledges that platforms have been embraced by many users: it is estimated that about £110bn in assets are currently held on platforms. However, we are concerned that using platforms may not always be in consumers' best interests. We are particularly concerned about charging levels and restrictions on consumer choice, as switching between platforms can be logistically difficult and costly.

We also need to be convinced that platforms will not be used as a device to circumvent the new adviser charging requirements; that they do not impinge on the new standards of independence of advisers; that charging and costs are transparent; and that they meet consumers' and not just advisers' needs.

The Panel will respond to the Discussion Paper on platforms published in March 2010, and continue to engage in the debate about platforms over the coming year.

Complex and non-complex financial instruments

It is encouraging that CESR (Committee of European Securities Regulators) initiated a consultation this year on complex and non-complex financial instruments for the purposes of the MiFID (Markets in Financial Instruments Directive) appropriateness requirements. We agreed with the MiFID requirements to prevent complex products being sold on an

15 FSA Consultation Paper CP09/18 *Distribution of Retail Investments: Delivering the RDR*, June 2009.

16 FSA Discussion Paper DP10/2: *Platforms: delivering the RDR and other issues for discussion*, March 2010.

execution only basis to inexperienced retail investors. However, this means that the 'classification' of investment products is therefore of paramount importance. This is a difficult area, because greater complexity does not always mean greater risk, and the level of risk or detriment may depend on the type of consumer. We are also aware that it is important to strike a careful balance so taking an over-cautious approach does not unreasonably inhibit investor flexibility, or cause an increase in charges if firms are obliged to apply the appropriateness test where execution only would be appropriate.

We therefore advocated a more fundamental review of classifications and the basis on which classifications are made. We suggested that CESR and/or the European Commission should undertake comprehensive research into consumer understanding of the complexity and level of risk of the products concerned.

Key Information Document disclosures for UCITS

Our reasons for supporting the Commission and CESR's (Committee of European Securities Regulators) work on the development of the Key Information Document (KID) for UCITS are clear. While we acknowledge that disclosure in itself is not a panacea, we believe the KID is a significant step forward in investor protection and one which could have a positive impact on disclosure regimes for other products and in other retail financial services markets.

We acknowledged that CESR's research pointed towards use of a synthetic risk indicator rather than the narrative that we had favoured. However, we told CESR that, if an indicator is used, it should be accompanied by a disclaimer setting out its limitations.

We supported the use of harmonised guidelines to ensure the necessary degree of consistency when showing funds' past performance. We argued

strongly to include a benchmark for all funds which shows their past performance. This should not just be included when the fund in question is a tracker, or when a reference is made to a benchmark in the objectives and strategy section of the KID. It is also important for investors to understand the level of charges they will pay for any particular product, but achieving in a way which makes comparison possible is problematic. We urged CESR to continue their research into a summary measure of charges.



CHANGES TO THE FSA'S REMIT

Sale and Rent Back

The Consumer Panel fully supported the extension of the FSA's remit to include regulation of Sale and Rent Back. We were pleased that the FSA implemented an interim regime immediately, and then took time to develop the final regulatory system. Sale and Rent Back is targeted at those in financial difficulties who may be vulnerable to selling techniques which obscure the downsides. We were pleased that the FSA has now introduced much stricter conditions on promoting these schemes and has banned cold-calling, leaflet dropping and the use of emotive phrases in promotional material – along with tighter monitoring of these firms' activities.

We believe that FSA regulation of this area promises to provide better explanation and protection for consumers who are facing severe financial problems. However, we have pointed out that the FSA must police this area thoroughly. We are still worried that firms will try to exploit consumers within the rules, and by trying to operate outside the rules. Only around 80 firms applied for FSA authorisation prior to the FSA taking over, although the OFT had judged that there were over 1000 firms undertaking sale and rent back activities. We have therefore urged the FSA to watch the authorisation boundary carefully.

We also registered concern with the FSA that, in the final proposals, there was a requirement to provide fixed term assured shorthold tenancies (AST), with only a minimum term of five years, whereas the original consultation discussed a fully assured tenancy. We believe this limitation could result in considerable consumer detriment if consumers lose their homes as soon as the assured tenancy period is ended. We recommended that if it was necessary to include such a limitation, an additional requirement should be included stating that all consumers must receive advice about its potential consequences – i.e. that they will receive significantly less money than they would if they sold their house, and that they may have to move out of their home once the five years has elapsed.

The FSA responded that it already required firms to provide consumers with a MoneyMadeClear leaflet on sale and rent back during the sales process, which must also be explained orally to the consumer. The leaflet clearly signposts the importance of obtaining independent advice and suggests contacting agencies such as Citizens Advice which would provide this. We will monitor the developments in this area and ask the FSA to report back to us on its commitment to keep the

effectiveness of the new regime under review and to take action if significant consumer detriment comes to light.

Financial capability and the Consumer Financial Education Body

We have supported the FSA's work on financial capability and consumer financial education over the past few years. The Consumer Panel has consistently called for a method of giving generic financial advice unrelated to the selling of specific financial products as a way to help consumers through the minefield of the financial services landscape. We therefore welcomed the FSA's development of money guidance following the *Thoresen Review*¹⁷, and the development of MoneyMadeClear as a separate sub-brand of the FSA.

We welcomed the setting up of a new and separate financial services education body in the Financial Services Act 2010. The Act also takes the promotion of consumer understanding objective away from the FSA. This separation will be an important step forward, as long as the new body is sufficiently independent of the FSA to be able to do its job effectively.

Towards the end of the financial year, we asked the FSA for clarification of their plans for communication with consumers after MoneyMadeClear is separated from the FSA. We believe the FSA will still need to communicate certain messages to consumers – for example, following enforcement action against firms; if a regulated firm is in difficulty; and when providing information about which firms are regulated and how. We will engage in further discussions with the FSA on this subject in the coming year.

17 Thoresen Review of generic advice: final report, March 2008, HM Treasury.

Chapter 4: Ongoing FSA Regulatory Responsibilities

This chapter reviews the Consumer Panel's input to areas of FSA regulation where there have not been major changes in the FSA's stance, and yet there are significant implications for consumers:

- Payment Protection Insurance
- With profit funds
- Financial complaints and compensation
- Later life – decumulation and pensions

PAYMENT PROTECTION INSURANCE

We continue to be concerned about how long it has taken the FSA to sort out problems related to selling Payment Protection Insurance (PPI). In our last annual report, we welcomed FSA action to ban the sale of single premium PPI, and called on the FSA to tackle the wider problems in the way that PPI is sold.

However, the FSA has it seems, spent the past year battling against industry pressure to get their tough stance to be accepted. We welcomed the FSA Consultation Paper¹⁸ on PPI complaints in September. It proposed tough action from the FSA on complaints about sales of PPI – forcing firms to re-visit all rejected complaints about sales of PPI and re-examine them against new FSA guidance. We believed this would help improve firms' handling of complaints and therefore ensure consumers receive a fair outcome when they complain. However, in March 2010 the FSA had to publish a further consultation paper on handling FSA complaints in the

face of the industry insisting on further calculation of the costs and benefits of the proposals.

We maintain that too many firms have regarded PPI as an easy product to sell and make money from, without considering whether it really is right for the customer. We have strongly supported the FSA in pressing ahead with plans for new rules and guidance as set out in CP09/23 and CP10/6, which would ensure consumers receive a fairer outcome if they make a complaint about PPI in future. It is vital that the FSA takes strong action and does not back down.

There have also been delays in getting fair treatment for PPI customers on reviewing previously rejected complaints. We were disappointed that the FSA decided to wait for its powers to be clarified under the 2009/10 Financial Services Bill before deciding how to get fair treatment for consumers whose previous PPI complaints had been rejected. Although this part of the Bill was passed into the Financial Services Act 2010 at the end of the

18 FSA Consultation Paper CP09/23: *The assessment and redress of payment protection insurance complaints*, September 2009.

19 FSA Consultation Paper CP10/6: *The assessment and redress of payment protection insurance complaints; feedback on CP09/23 and further consultation*, March 2010.

parliament in April, it still requires an Order to be laid in the new parliament to come into effect. This means there are likely to be further delays.

In addition, we remain convinced that the FSA still needs to tackle PPI sold with credit cards, secured loans and mortgages where people may not have complained. We also still await FSA enforcement action against individuals in some of the bigger firms who were responsible for mis-selling PPI.



WITH-PROFITS FUNDS

At last, the FSA has this year, started to undertake a review into how with-profits funds are operated, with parallel work on the reattribution regime. The FSA is due to report on this work in summer 2010. Our concerns about with-profits funds date back many years. During this year we have discussed our concerns with the policy holder advocate, and pressure groups, as well as with the FSA. We will continue to press the FSA for more action to protect the interests of with-profits policy holders. We also plan further liaison with consumer groups to manage a coordinated response to the FSA's with-profits review. Our concerns lie in the following areas:

Compensation and redress

The Panel was extremely concerned that the FSA, in its Consultation Paper on compensation – which required response by May 2009 – missed an opportunity to protect policyholders by restricting consumers' compensation rights. Shareholders should be responsible for meeting any mis-selling and other management related costs. The current situation of permitting the inherited estate to meet these costs effectively penalises policyholders for corporate failures. The FSA had the opportunity here to remove the considerable potential consumer detriment inherent in the current arrangements, but it decided not to do so for any mis-selling that occurred before the change in the rule, even where the mis-sale had not yet been discovered.

Governance: independence and transparency in with-profits committees

Since 2004 the FSA has required firms to have an independent voice to represent policyholders, most commonly in the form of a With-Profits Committee (WPC). However, it is not clear that these committees are sufficiently independent of the Board. We have said that governance must be stronger and more transparent. WPCs must be truly independent of a firm's board and should be required to ensure that the financial management of a fund is in the best interests of policyholders, taking into account Treating Customers Fairly. The appointment of a majority of independent members and an independent chair should be mandatory. There should be better communication to policyholders, with WPCs making sure policy holders are adequately informed about all actions which impact on their investments and in a way that is clear and they are able to understand.

The reattribution process

The over-arching principle that should guide any reattribution is to treat policyholders fairly. The appointment of a Policyholder Advocate is key to the success of the process. In all with-profits funds, a decision to close a fund or seek new business less aggressively can lead to excess surplus. Although FSA rules require excess funds to be distributed to policyholders through a special bonus, a large share of the excess surplus usually goes to shareholders when there is a reattribution. A review of proposed future business strategy is one of the reattribution's most important requirements. We were pleased the FSA has clarified its position that firms are allowed to adjust their risk appetite in response to changing market conditions, but this must be without allowing any manipulation of this flexibility to disadvantage policyholders.

Closed funds

Policyholders are not in a position to contribute to any consideration of whether a with-profits fund should be closed and must rely instead on the WPC to represent their interests. This provides yet another argument for the independence of the WPC. In addition, although policyholders must now be notified of a decision to close a with-profits fund, we remain concerned about the clarity of that notification. Communications between the firm and policyholders need to be clear and written in language policyholders can understand.

FINANCIAL COMPLAINTS AND COMPENSATION

Publishing FSA and Financial Ombudsman Service complaints data

As part of our desire for greater transparency from the regulator, we have actively urged the FSA and the ombudsman service in the past to reveal more

information about the level of complaints received by individual firms. Consumers should be able to find out more about the behaviour of the firms that they deal with. The Panel has participated in liaison meetings with the regulators, firms and consumer groups about the way in which to publish the data. We therefore welcomed FSA publication of patterns of complaints and the Financial Ombudsman details of firms with the highest levels of complaints. There are still weaknesses in the presentation and format of the data, as the contextual information does not make comparison easy. However, it is certainly a step in the right direction, and should help to identify areas of poor performance.

Financial Ombudsman Service's Plan and Budget

In reviewing the Financial Ombudsman Service's Plan and Budget for 2010/11, we noted that although it handled a record number of cases in the last financial year the true impact of the downturn has, we fear, still not been felt.

We are hopeful firms will realise the reputational benefit of improving their complaint handling thanks to the publication of complaints data by both the Ombudsman Service and the FSA. In addition, the FSA's work to improve payment protection insurance (PPI) complaints handling has yet to come into force. The FSA's proposed new rules and guidance²¹ would have helped to improve firms' PPI complaints handling. However, FSA action in this area has been delayed, pending further consultation. Therefore the Ombudsman Service is likely to still be handling large numbers of PPI mis-selling complaints.

We registered our concern that the Ombudsman Service should not under-predict the number of complaints expected. This is likely to cause more consumer detriment than over-prediction. The consumer cost of forecasting errors are not symmetric; under-prediction could create

21 FSA Consultation Paper CP09/23: *The assessment and redress of payment protection insurance complaints*, September 2009.

inadequate resources leading to delays in adjudications. We very much hope that the Ombudsman Service is right in not being too pessimistic in predicting the number of complaints for 2010/11, but we remain concerned that they may need to handle more complaints than they have budgeted for.

FSA and the Financial Ombudsman Service's "wider implications" process

We welcomed the joint initiative from the FSA, Office of Fair Trading and Financial Ombudsman Service to create a new consumer protection committee to scan for emerging risks as part of the plans in an FSA Discussion Paper to update the "wider implications" process. This should enable the three bodies to spot emerging risks, increasing the regulator's and the ombudsman service's ability to respond quickly and decisively to market threats.

Protection of SIPPs (Self Invested Personal Pensions)

We registered disappointment that the FSA's consultation on deposit compensation did not cover the anomaly that exists in the protection of SIPP deposits. Insured SIPPs – those generally offered by life assurance companies – are covered for 100% of the first £2,000 and 90% of the remainder with no upper limit, whereas trustee SIPPs are protected only up to a maximum of £48,000 (100% of the first £30,000 and 90% of the next £20,000). From a consumer perspective we have said that this is an anomaly that must be addressed: all trustee based SIPP assets should be protected to the same unlimited level as insured SIPP assets.

In addition, we have recommended that the definition of protected 'temporary high balances' should be extended to cash balances relating to SIPPs and other personal pensions saving. As SIPP holders approach retirement, their funds will be switched into cash backed assets prior to the likely purchase of an

annuity and will, ultimately, be held in a bank account as a large lump sum. This sum is likely to represent a lifetime's savings which would be impossible to recoup by the individual, and should be fully protected under the compensation scheme.

Deposit guarantee schemes across Europe

Our response to the EU consultation²² on Deposit Guarantee Schemes in July 2009, was a further opportunity to state our belief that there should be no limit on deposit compensation. We believe this would mean that, in an emergency there would be no incentive to withdraw money, and consequently no run on a bank. We accept there is moral hazard in a compensation scheme guarantee for all deposits, meaning less accountability for poor business decisions. However, the crisis in 2007/2008 showed there are already some banks which are 'too big to fail' and governments had to step in.

Nonetheless we recognised that the EU proposal to increase the minimum level of compensation would lead to increased protection for consumers across all member states. We therefore welcomed the review of the Directive and many of the proposals therein. The revision also proposed an increase in the minimum compensation limit from €20,000 to €50,000 but we note that several countries are raising their compensation limit to €100,000. A limit of €100,000 would ensure that 90% of deposits would be protected, as opposed to 80% which will be protected by the €50,000 limit. Clearly, we welcome any action which strengthens the protection afforded to customers and we encouraged the Commission to seek as high compensation limits as possible.

We also encouraged the Commission to impose the most stringent time constraints possible on payouts when a bank defaults. The review specified payment within 20 days of a default, but we suggested the Commission followed the FSA's lead in proposing payout within 7 days or less. It is vital that

22 Review of Directive 94/19/EC on Deposit Guarantee Schemes.

consumers across Europe have access to liquid funds as soon as possible in the event of a bank failure, and there is a seamless transfer of banking facilities.

Investor compensation schemes in Europe

We also supported the European Commission's review of the Directive (1997/9/EC) on investor compensation schemes during the year.

We warned against any calls to remove national variations in investment compensation schemes by moving towards maximum harmonisation in the ICSD (Investor Compensation Schemes Directive). We believe that consumers in Member States should have a minimum level of security, with the freedom to look beyond the national market for better rates or higher levels of security for large sum deposits. Restrictions on the flexibility available at a national level would be detrimental to consumer interests and could erode overall consumer confidence.

We will look to the clear identification of authorised entities for deposit compensation across Europe in the coming year. We believe that consumers must be able to see easily the entities covered by compensation and the maximum level of compensation. This is difficult when the same authorised entity can be responsible for a number of different banking brands, the customer may be unaware that a single compensation limit will apply across all those brands.

LATER LIFE – DECUMULATION AND PENSIONS

Financial Services in Later Life

Financial decisions in later life are complex and can be made more so by individual circumstances; whether by ill-health, loss of physical or cognitive functions, a reduced social network or an inability to access new technologies.

In June 2009, we published a research report²³ we had commissioned to assess if we were right to be concerned at the level of consumer protection available to those in later life looking to use – rather than accumulate – their savings. The report's conclusions provided further evidence that this is an area we need to pursue.

Consumers in later life suffer from a lack of information, guidance and advice across a wide range of financial markets. This can lead to inertia and lost opportunities to maximise income in retirement. While the FSA's financial capability initiatives, including the Money Guidance Pathfinder, have worked to extend the information and guidance available to all adults, it is not yet clear that later life groups are being reached in significant numbers. Moreover, while the details of the FSA's Retail Distribution Review are becoming clearer, it is likely to be many years before it becomes apparent whether the advice gap has narrowed.

Annuities

An annuity is the main product used to manage decumulation, particularly as this is a requirement for those who have saved through a formal pension. We have a number of concerns about the regulation of this area as follows.

- **uptake of the Open Market Option:** we believe there is scope for the FSA to intervene with the industry to increase uptake;
- **value for money:** the effectiveness of competition in the annuity market and the returns earned by annuity providers;
- **adequacy of advice about options:** including in particular advice on generic options as regards different kinds of annuity. This could be an important area of Money Guidance through the new Consumer Finance Education Body;

23 Financial Services and Later Life – a scoping project for the Financial Services Consumer Panel, June 2009.

- **default option:** we question whether it is suitable for the default annuity to be the standard single life, non-indexed, or whether a range of possibilities should be offered and whether more attention should be drawn to impaired life annuities;
- **risks associated with Variable Annuities:** we have asked the FSA's new Conduct Risk team to investigate this, and will be following this up with the FSA; and
- **Solvency II requirements:** we are concerned that the higher levels of capital requirements will lead to higher costs and further problems for the consumers looking for value for money from their annuity. We will continue to follow developments and intervene in the debate if necessary.

During the next financial year, we plan to undertake research to examine the extent of consumer detriment which has arisen as a result of the current distribution patterns for annuities. We will also look at potential solutions and remedies to address any detriment and improve consumer outcomes.

Personal Accounts and the National Employment Savings Trust (NEST)

Although the creation of NEST is outside the FSA's remit, the Panel has taken a close interest in the development of the idea of personal accounts over the years, as it is likely to have a significant impact on consumers of financial services and how they interact with the areas of the industry regulated by the FSA. As a result of this, we nominated a member of the Consumer Panel to sit on the Consumer Representative Committee of the Personal Accounts Delivery Authority (PADA, now known as the NEST Corporation), the body charged with creating and delivering the scheme.

We were disappointed that the government and the NEST Corporation opted for up front charges of 2% to be added to NEST accounts to cover set up

costs²⁴. We strongly believe an overall, annual management charge is the most appropriate charging structure, and told the government and NEST that it would best meet the three criteria they had agreed to apply of: simplicity; clear rationale; and transparency.

Auto enrolment means that for many people this will be their first time to contribute to a pension, and so upfront charges may take a significant part of their disposable income. Older individuals in particular will have a relatively short time in which to build up their pension pot. It is therefore all the more important that savings are invested in full at the outset and are not eaten up by up-front fees. We therefore lobbied for an annual management charge as a fairer approach.

We also registered concern about the wider implications of the up front charging structure. The NEST scheme will, in our view, become the benchmark for other workplace based pension schemes in terms of levels of contribution and charging structures. The decision to include up-front fees for NEST will risk a general industry shift back to the front-loaded charging that was so prevalent in the market a few years ago. Such a move would be detrimental to large numbers of members of occupational schemes, whether these be trust or contract based.

We have also advised NEST that they need to manage the expectations of the level of the ultimate pension income that contributors will receive from a NEST. People must be warned that they should not rely on a minimum contribution to NEST, or potentially minimum contributions to other workplace schemes they may be auto-enrolled into, to provide a good income in retirement, and should consider additional measures.

We will continue to engage in debate on auto-enrolment and the setting up of NEST, and watch out for areas of potential consumer detriment.

24 Announcement by DWP Minister for Pensions and the Ageing Society (Angela Eagle) to parliament 16 March 2010.

Chapter 5: Ongoing FSA Regulatory Responsibilities

This chapter reports on the Consumer Panel's activities under its remit to look more widely than the FSA, and consider and represent the interests of consumers beyond the FSA:

- consumer and trade organisations;
- government and politics; and
- Europe.

CONSUMER AND TRADE ORGANISATIONS

Consumer Focus

We were given a statutory link with Consumer Focus when it was set up under the Consumers, Estate Agents and Redress Act 2007. Consumer Focus is the successor body to the National Consumer Council. Its remit is to provide a stronger, more coherent consumer advocacy body, able to address consumer issues across different sectors, undertake cross-sectoral research, and provide a voice for consumers in dialogue with companies, regulators, government and Europe. It was recognised that the Financial Services Consumer Panel plays a specific role in the complex area of financial services regulation.

During this year, we have developed a close working relationship with Consumer Focus. We undertake regular meetings and liaise at Chairman and Secretariat levels. We share opinions on policy developments and exchange press releases and responses to consultations. In particular, we have

worked closely over the consumer protection implications of the legislation which became the Financial Services Act 2010. Lord Whitty, Chairman of Consumer Focus tabled amendments to improve the transparency of FSA enforcement action which were initiated by the Consumer Panel. We also have supported the Consumer Focus action in launching a super complaint about ISA interest rates as we have particular concerns about transparency and switching. (see Regulation of Retail Banking – Chapter 3 page 14)

Other UK consumer organisations

An important aspect of our work is to share information and views with other consumer organisations. This helps us in our policy development, and increases awareness of financial services issues within the wider consumer representation community.

This year, we have launched an initiative where we engage with the broadest range of consumer organisations which may have an interest in financial

services. Our aim is to identify regulatory gaps/overlaps which have implications for consumer detriment, and to find emerging and existing areas of consumer detriment which regulators do not currently address. By drawing together a holistic assessment from the consumer perspective of these gaps/overlaps and emerging risks, we can help the FSA and other relevant regulators and government departments, to develop ways of mitigating those risks early on.

Over the last half of the financial year we gathered intelligence from a range of organisations including the UK Shareholders Association, the Association of British Credit Unions, Friends Provident Foundation and the Campaign for Community Banking, as well as Which? Consumer Focus, Age UK and Citizens Advice. From this we analysed regulatory gaps and emerging risks which we presented to senior FSA directors. We plan to repeat this analysis on a six-monthly basis.

We also contributed to the Future of Banking Commission, initiated by Which? to enable ordinary people, bankers, politicians, regulators and business leaders to get together to discuss the culture and regulation of the banking sector in order to help restore trust between the public and the banks.

Trade associations

The Panel engages with industry representatives, particularly in discussing regulatory developments where the industry is not supportive of aspects which will be important for consumer protection.

We focus our liaison with trade association on specific regulatory policy developments. This means that over the past year, we have had ongoing dialogue on the Retail Distribution Review with AIFA, ABI and PFS²⁵.

We have engaged in discussions with the BBA²⁶ over the development of the FSA's Banking Conduct

of Business rules in general and about the BBA's guidance for the industry in particular.

We have also talked about the regulation of consumer credit with the FLA²⁷, and mortgage regulation with the Building Societies Association and CML²⁸.

As well as specific regulatory issues, we also debate on the broader regulatory agenda with, for instance, the Panel's Chairman giving the Building Societies Association Annual Lecture this year.

GOVERNMENT AND POLITICS

Other regulators

We have an ongoing concern with the boundary of regulation between the FSA and the Office of Fair Trading (OFT). During this year several developments have caused us to continue to watch this area, particularly as the FSA has now taken over the regulation of Conduct of Business for retail banking (see Regulation of Retail Banking section Chapter 3, page 14), while the FSA remains responsible for consumer credit, including unauthorised overdrafts.

We have held meetings with staff from the OFT during the year, to gain a fuller understanding of their regulatory priorities. We remain of the view that the responsibility for regulating credit and debt management within significant companies already regulated by the FSA should be transferred from the OFT to the FSA.

Another issue on the boundary of regulation is pensions, and we have had several discussions with PADA and NEST to follow the developments of personal accounts. The issues that we have covered are explained in Chapter 4 – Later life, decumulation and pensions section.

25 AIFA – The Association of Independent Financial Advisers; ABI – The Association of British Insurers; PFS – The Personal Finance Society.

26 BBA – British Bankers' Association.

27 FLA – Finance and Leasing Association.

28 CML – Council of Mortgage Lenders.

Treasury Committee

We have submitted evidence to the House of Commons Treasury Committee Inquiry on mortgage arrears²⁹ during the year. We were pleased that in its report, the Committee agreed with us that more rules or a more explicit statement of the requirements on firms in guidance are urgently needed. This will help put 'grit into the system' concerning whether firms really are treating their mortgage customers fairly. They also supported our view that revisions are necessary to ensure the rules are appropriate for today's very different economic circumstances in comparison to the boom times when the FSA's mortgage rules were first drawn up.

We found the Inquiry a useful opportunity to get political support for our concern that poor practices remain prevalent, particularly among specialist lenders and third party administrators. This was despite the FSA having written to the chief executives of all mortgage lenders and administrators in November 2008 giving them until January 2009 to ensure their customers in arrears were treated fairly. In March 2010 we submitted further evidence to the Treasury Committee's follow up Inquiry into mortgage arrears. We acknowledged that the FSA had taken enforcement action against a number of lenders, but also called for greater transparency of the enforcement process, reflecting our work in trying to secure an amendment to the Financial Services Bill on this point.

Public Bill Committee for the Financial Services Bill 2009/10

Under the House of Commons Public Bill Committees' powers to take evidence from outside experts, the Chairman of the Consumer Panel took part in one of the first evidence session of the Committee, with representatives of other consumer

bodies in December 2009. The aim of the session was to establish the consumer movement's views on the strengths and weaknesses of the legislative proposals before moving into their detailed debates on the clauses of the Bill.

Political parties

In the run up to a General Election after a period of turmoil in the financial markets, it has been unsurprising to find the role of the FSA a subject of keen political debate.

We have urged the importance of consumer protection in financial regulation, and the need to consider the consumer interest in all new developments for financial regulation. Chapter 3 covers much of the input which we have made to the development of the Labour Government's policy this year. In addition, we have engaged in constructive debate with the Conservative Party over their plans for changing the FSA. We have also sent copies of our key submissions on the Financial Services White Paper and the Financial Services Bill to the Liberal Democrat Treasury Spokesman, Vince Cable.



29 *Mortgage Arrears and Access to Mortgage Finance* – House of Commons Treasury Committee Report, published 8th August 2009.

European Liaison

The Panel has taken an increasingly active role in pursuing some key policy issues in Europe, in recognition of the impact that European developments have on the framework of regulation in the UK. We have responded to a number of European consultations, as detailed by subject in chapters 3 and 4 of this report.

At the end of March 2010, several Panel members went to Brussels to meet a number of Commission officials and MEPs to discuss consumer issues in financial services.

During this year the Consumer Panel was pleased to become a partner of BEUC³⁰, the European Consumers' Organisation. Its membership includes 43 national consumer organisations from 31 European countries (EU, EEA and applicant countries). BEUC acts as the umbrella group in Brussels for these organisations and its main task is to represent its members and defend the interests of all Europe's consumers.

The link with BEUC gives the Consumer Panel access to a European wide forum of consumer organisations. It is part of our strategy of engaging earlier and more effectively with the EU on key issues. As BEUC is formally recognised by the EU as the voice of Europe's consumers, it takes part in formal forums and consultations, and is in close day-to-day contact with the Commission and MEPs, and lobbies actively.

The partnership arrangement means the Panel will receive updates on EU financial services developments, and have an opportunity to provide information and views to help shape BEUC opinions on financial services issues. As part of this, we will take part in the twice-yearly meetings of BEUC financial services experts and so have better access to European decision making on financial services issues as they impact on consumers.

European issues

Chapters 3 and 4 contain illustrations of where the Panel has contributed to European consultations on specific issues. In addition, the Panel has pursued three key issues for its own European agenda over the year as follows.

- **Alternative Dispute Resolution (ADR)**

We remain concerned that the drive for the single market has moved ahead of the development of an appropriate infrastructure for consumer protection – and is likely to continue to do so. We support the operation of FIN-NET, the EU-wide network of financial ombudsmen and consumer complaints organisations of which the UK's Financial Ombudsman Service is a founder member. Although there are common minimum standards amongst members there are inconsistencies in coverage and for some forms of business in some Member States, there is no service at all. This is an area, therefore, where there is a likelihood of consumer confusion and possible detriment on an EU-wide scale.

Over the course of the year, we have worked with the UK Financial Ombudsman Service to develop our position on FIN-NET and other related issues. We have also responded to EU consultation papers on ADR, consumer collective redress and consumer rights.



30 BEUC – the Bureau Européen des Unions de Consommateurs.

- **Passporting**

We continue to worry about inconsistencies in regulatory effectiveness across Member States and its effect on passporting arrangements. This is when firms/individuals who can conduct business in one Member State are allowed to conduct the same business in other Member States with the minimum of formality and less capacity for the host Member State to oppose such a move. As the extent regulators in Member States take consumer interests into account varies, the level of consumer protection provided by different regulatory regimes is inconsistent. Finally, due to variations in regulatory approach, individuals who may not be directly permitted to conduct business in one Member State, can still do so from another.

Passporting arrangements are a fundamental plank of the single market, and yet this is an area of significant potential detriment. The whole question of regulation within the single market has been brought into focus with the publication of The Turner Review and the Commission's commitment to a programme of change to drive EU recovery.

We have frequently raised concerns about inconsistencies in regulatory effectiveness across Member States and the effect of this on passporting arrangements. We were therefore pleased that the Commission announced in a reply to a question in the European Parliament, prompted by the Panel, that the Commission plans to review the adequacy of home/host

provisions. As part of this, the Commission is suggesting that the future European System of Financial Supervisors should develop draft technical standards regarding the information that home and host authorities shall exchange under the passporting arrangements.

- **Raising levels of financial services expertise at national level**

The Panel has long been concerned about the paucity of informed consumer input in developing EU policy, and has consistently raised this as an issue at every opportunity. There has been a growing interest in harnessing consumer views, and, more recently, in increasing the standard of financial services expertise in consumer organisations at a national level. This would naturally feed into the standard and availability of input at EU level. This approach also has the benefit of increasing the effectiveness of existing structures such as FIN-USE and the Financial Services Consumer Group, rather than calling for additional resources in a new or enhanced EU level advisory forum.

Our new role as a partner in BEUC and our work in promoting more consideration of European consumer issues has helped us to press forward on this agenda. We have also taken the opportunity to talk to FIN-USE, the Commission's advisory committee of financial services users' representatives, about the Panel and its role with a view to encouraging support for establishing panels in other EU Member States.

Chapter 6: Future Priorities

The forthcoming year's work will be overlaid with an additional dimension, given the political interest in better regulation and more effective consumer protection at a time of political change and uncertainty. In the General Election in May 2010, the Conservative Party manifesto made a commitment for a restructuring of the FSA. Our intention will be to work with the Government to ensure any changes to the means of regulating the financial services industry, take full account of the consumer interest.

At the beginning of 2010, the Consumer Panel presented its future strategy to the FSA Board. The key issues that it will pursue are as follows:

Consumer protection

- identifying existing and emerging areas of consumer risk/detriment and regulatory gaps/overlaps, and recommend ways to mitigate these; and
 - working to ensure that consumers are offered a fair deal (i.e. products and services that meet consumer needs, offer transparent, competitive pricing and provide value for money).
- the Panel will continue to advise the FSA on approaches to regulation which meet the consumer interest adequately and appropriately;
 - the Panel will scrutinise the effectiveness of the FSA's approach to regulation in key areas (this will include conducting a suitable case study using the Banking Conduct of Business Sourcebook), in order to advise and inform the FSA's future strategy, policy and practice developments;
 - the Panel will work with the FSA to conduct research to track the level of consumer engagement with and confidence in the sector; and
 - the Panel will continue lobbying to enable the FSA to use the information it holds on companies, and concerning enforcement actions, in pursuit of its consumer protection objective.

Improving FSA effectiveness in relation to consumer protection

To maintain a constructive advisory relationship with the FSA to ensure its effectiveness in relation to its consumer protection objective

Engaging with the debate on the future shape of regulation

- the Panel will continue to engage with the debate on future regulatory architecture, seeking to influence key decision makers in the interests of financial services consumers;
- it will seek to maintain a constructive collaboration with Consumer Focus and develop a similar relationship with CFEB; and
- it will continue to take part in the debate on the development of the EU regulatory framework, influencing key decision makers in the interests of UK financial services consumers.



Increasing Panel effectiveness

- the Panel will engage in public debate when appropriate;
- the Panel will continue to develop informed positions on key financial services issues that impact on consumers, and promote these positions to influence key opinion formers;
- the Panel will communicate its work, including through the design and maintenance of its website, and other key communication media; and
- the Panel will seek direct feedback from relevant sources on its performance and influence.

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>
<p>Review of the prudential rules for personal investment firms</p> <p>CP08/20</p>	<p>Measures to support the aims of the RDR in ensuring that PIFs have adequate capital resources.</p>	<ul style="list-style-type: none"> • Support for increased capital resources for PIFs; • Support higher capital requirements for those firms without full Professional Indemnity Insurance cover; • FSA should monitor the provision of PII.
<p>FSCS Reform: Fast Payout for Depositors and raising Consumer Awareness</p> <p>CP 09/3</p>	<p>Outlines proposals for depositors to receive fast payout of compensation (or access to funds) if a deposit taker defaults, together with proposals on raising consumer awareness of the scheme.</p>	<ul style="list-style-type: none"> • Ideally, there should be no limit on payments by the compensation scheme; • Any limit should be by brand rather than regulated entity; • Support for proposals to raise consumer awareness of the existence of FSCS; • Support for speeding up the processing of claims.
<p>Regulating Sale and Rent Back: An Interim Regime</p> <p>CP 09/06</p>	<p>Interim regulation of the Sale and Rent Back sector to provide consumer protection for the first time, including access to the Financial Ombudsman Service, and rules for firms' complaint-handling procedures.</p>	<ul style="list-style-type: none"> • Strong support for introduction of interim regime; • Urged robust assessment of applications for permission together with mystery shopping and post-sale consumer research.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
<p>Regulating Reclaim Funds CP 09/08</p>	<p>Ensuring regulatory protections remain when liability to repay dormant bank or building society deposits are transferred to a reclaim fund, and original firms retain some responsibilities, including to make the reclaim process as simple as possible.</p>	<ul style="list-style-type: none"> • Welcomed proposals for FSA to regulate reclaim funds; • FSA should take proposed operational costs into account when dealing with applications for authorisation.
<p>With-Profits Funds – Compensation and Redress CP 09/09</p>	<p>Revised proposals relating to the use of with-profits funds by proprietary life firms.</p>	<ul style="list-style-type: none"> • This is a backward step from the FSA’s original proposals in CP08/11 that could give rise to consumer detriment; • Firms should not be able to pay compensation and redress from with-profit funds, regardless of whether mis-selling occurred before or after this rule change;
<p>Reforming Remuneration Practices in Financial Services CP 09/10</p>	<p>Proposals to apply the Code of Practice on remuneration policies to large banks, building societies and broker dealers; and the possible extension of the Code to all authorised firms.</p>	<ul style="list-style-type: none"> • Support for mandatory Code of Practice on remuneration through FSA rules; • Clear action on remuneration to promote effective risk management and efficient markets is necessary to help to build overall consumer confidence.
<p>FSCS Temporary High Deposit Balances CP 09/11</p>	<p>Reviewing FSCS protection for consumers with temporary high balances when the firm goes into default.</p>	<ul style="list-style-type: none"> • Welcome many of the proposals, but would like to see further categories of cash sums included and an extension of the proposed time limits.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
<p>FSCS: Verification of the single customer view and changes to deposit compensation</p> <p>CP 09/16</p>	<p>Proposals relating to compensation payments for term deposit accounts and FSCS protection for customers.</p>	<ul style="list-style-type: none"> • Support for the intention behind this proposal, although the Panel questioned whether the additional costs incurred are proportionate when there are already regulatory obligations in place which require firms to manage customers' data effectively; • If there was compensation by brand as Panel advocates, the single customer view would not be necessary; • Reiteration of Panel concerns on coverage for some short term high balances and SIPPs.
<p>Distribution of Retail Investments: Delivering the RDR</p> <p>CP 09/18</p>	<p>Proposals to improve outcomes for savers and investors by enhancing the quality of advice they receive, and prepare both consumers and the industry for the future.</p>	<p>Support for reforms proposed, including:</p> <ul style="list-style-type: none"> • The elimination of the potential for commission bias; • Transparent charging structures; • Raising professional standards; • Application of Adviser Charging arrangements to individual advice on Group Personal Pensions; • Further work to explore a form of simplified advice to bridge the potential advice gap.
<p>Enforcement Financial Penalties</p> <p>CP 09/19</p>	<p>Outlining more rigorous and systematic approach to enforcement.</p>	<ul style="list-style-type: none"> • Support for FSA's tougher approach to enforcement; • Need for more action against senior management in large firms to provide deterrence; • Advocate greater transparency of enforcement action to provide more information for consumers.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
<p>Quarterly Consultation: Chapter 6: Proposed Amendments to BCOBS CP 09/20</p>	<p>Guidance on advance notification of interest rate changes for banks to enable customers to make better decisions about their money.</p>	<ul style="list-style-type: none"> • Support for measures to enable customers to make the best use of their money; and • Should be no transitional arrangements as this has been on the agenda for some time.
<p>Transparency as a Regulatory Tool and Publication of Complaints Data CP 09/21</p>	<p>Greater transparency of regulation and the publication by firms of their complaint data which should help consumers to make more informed decisions.</p>	<ul style="list-style-type: none"> • Welcome requirement on firms to publish their own complaints data; • Encourage the FSA to identify further areas for improved disclosure; and • Disappointed that the FSA decided against naming, faming or shaming firms which would have provided useful information for consumers and to encourage good practice in the industry.
<p>Regulating Sale and Rent Back CP 09/22</p>	<p>Implementing the full FSA regulation of the Sale and Rent Back market, providing greater protection for consumers.</p>	<ul style="list-style-type: none"> • Support for FSA's proposals for full regulation; and • Welcome FSA's restrictions on financial promotions, including the banning of cold-calling.
<p>Assessment and Redress of Complaints about the sale of Payment Protection Insurance (PPI) CP 09/23</p>	<p>Proposals would affect PPI customers who had complained, or will complain about the sale of a PPI policy.</p>	<ul style="list-style-type: none"> • Support for FSA proposals for fairer outcomes for consumers who complain; • FSA action needed as soon as possible in requiring firms to re-open past rejected complaints; • Firms should not be able to use redress payments to pay arrears first; and • Encourage the FSA to be bold in communicating problems in the PPI sector to consumers.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
<p>Delivering the Retail Distribution Review: Professionalism; Corporate pensions; and Applicability of RDR proposals to pure protection advice</p> <p>CP 09/31</p>	<p>Implementing the Retail Distribution Review to improve protection for consumers buying investment products and enhance professionalism amongst practitioners.</p>	<ul style="list-style-type: none"> • Supportive of aims to improve professionalism of financial advisers, both to give consumers more confidence in engaging and buying financial products, and to more people of a high calibre becoming financial advisers; • Welcome clarity on transitional arrangements and ambition of level playing field for practitioners; • No objection to FSA's approach on corporate pensions, although need for Adviser Charging not so clear cut; and • Would like to see more evidence to support the view that sales of pure protection do not need the RDR safeguards to be introduced.
<p>Quarterly Consultation - Guidance for Social Housing Providers Chapter 6</p> <p>CP 10/01</p>	<p>Responding to needs of social housing providers for guidance on the limits of regulated activity.</p>	<ul style="list-style-type: none"> • Although pleased the FSA is doing this, do not believe the guidance is clear enough; and • Wording is too legalistic and suggest it should be reviewed by financial capability team, and tested with social housing providers before finalisation.
<p>Effective Corporate Governance</p> <p>CP 10/3</p>	<p>The measures aim to ensure that acknowledged shortcomings in corporate governance and risk management will be addressed and so benefit the consumers as end users.</p>	<ul style="list-style-type: none"> • Supportive of aims of the proposals; • FSA should require largest firms to assign responsibility at Board level for consumer advocate or champion; and • Annual reports should include report on steps taken to ensure treating customers fairly is part of corporate culture.

<i>Consultation</i>	<i>Aims which impact on consumer interest</i>	<i>Panel response</i>
<p>Consumer Responsibility DP 08/05</p>	<p>Consideration of the respective rights and responsibilities of firms and consumers in the retail market for financial services.</p>	<ul style="list-style-type: none"> • FSA discussion placed unrealistic expectations on consumers and too little emphasis on industry delivering products designed genuinely to serve customer needs; • The FSA's legal analysis in support of the case for consumer responsibility was flawed; and • Focus on consumer responsibility is unhelpful distraction: FSA should be helping consumers to become more informed and to take sensible actions.
<p>Turner Review and DP09/02</p>	<p>Creating a stable and effective banking system as set out in the Turner Review.</p>	<p>For an effective regulator from the consumer viewpoint, the FSA should:</p> <ul style="list-style-type: none"> • not dilute focus on conduct regulation; • be more transparent; • regulate all aspects of the businesses it authorises, including provision of consumer credit; • take a tough stance on enforcement; • strengthen its interrogation of business models; • consider benefits of product regulation.
<p>Mortgage Market Review DP 09/03</p>	<p>Sets out the case for regulatory reform of the mortgage market and options for addressing recent consumer detriment in the market.</p>	<ul style="list-style-type: none"> • Welcome FSA work to identify and address weaknesses in the mortgage market; • Support for mandatory verification of income, although lenders need to be flexible in accepting evidence from self employed; • Advisers have a responsibility to consider affordability in providing advice, but ultimately the lender has responsibility for decision on whether to advance the loan.

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; and
 - 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, became Vice-Chairman in November 2005, and was appointed Chairman of the Panel 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. Kay was appointed Vice-Chairman of the Panel in October 2009.

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



Michael Chapman (retired from the Panel 31 December 2009)

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.



Mike Dailly (Appointed to the Panel October 2009)

Mike is Principal Solicitor and Director of Govan Law Centre, Glasgow with over 15 years experience as a practising civil court solicitor in Scotland with experience in using the law to protect consumers' rights and tackle social disadvantage. He is a Member of the Secretary of State for Scotland's Poverty Advisory Group, Legal Advisor to the UK Sustainable Home Ownership Partnership, and a Member of the Child Poverty Action Group in Scotland's Advisory Panel.

Attendance at Full Panel meetings – 4/6 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.



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 – 10/11 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 – 11/11 eligible to attend.



Bill Martin (Appointed to the Panel October 2009)

Bill is an experienced macroeconomist, and is currently a Senior Research Associate of the Centre for Business Research at the University of Cambridge. With an early career with the Government Economic Service, Bill was a special adviser in the Central Policy Review Staff between 1981 and 1983. Between 1983 and 1998, he held various senior roles, including that of Chief UK Economist, at the investment-banking arm of the Swiss bank UBS (formerly Phillips & Drew). He was then appointed as Chief Economist of the fund management arm of UBS until 2004.

Attendance at Full Panel meetings – 5/6 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 Herald, the Sunday Herald and the National, as well as contributing to numerous other publications and websites including her columns in Aurora and Moneymaggie. 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 – 11/11 eligible to attend.



Carol Stewart

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

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



Claire Whyley (Appointed to the Panel October 2009)

Claire is a professional researcher, policy analyst, and consumer champion. She is currently a freelance consultant helping organisations develop their capacity to understand and respond to consumer needs, and undertaking specialist research and policy development in the fields of consumer disadvantage, poverty, debt, credit regulations, financial and social exclusion. Claire was previously Head of Consumer Futures at the National Consumer Council until the end of 2008.

Attendance at Full Panel meetings – 5/6 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 2009–March 2010 (£000)	Actual April 2009–March 2010 (£000)	Actual April 2008–March 2009 (£000)
Panel members' fees ¹ and expenses	253	291	267
Fees	206	232	204
Travel & expenses	24	52	59
Professional fees ²	372	152	83
Sundries ³	92	109	8
Total	568	503	381

- 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 2009 to 31 March 2010 were as follows:

Panel Chairman	£52,000 per annum
Panel Vice Chairman	£26,000 per annum
WG Chairs	£22,000 per annum
Members whose minimum commitment is 45 days a year	£18,000 per annum
Members whose minimum commitment is 30 days a year	£13,000 per annum

- Professional fees includes research expenditure. As in 2008-09, the spending on research in 2009-10 was lower than budgeted as some of the planned research did not take place.
- Includes costs of non-FSA meeting venues/facilities and other miscellaneous expenditure.

Appendix 5: Publications and press releases

Public responses/public statements

Financial Services Compensation Scheme Reform: Fast payout for depositors and raising consumer awareness

Response to CP09/3

April 2009

Directive 1997/9/EC on Investor Compensation Schemes

Response to DG Markt call for evidence

April 2009

Financial Inclusion: ensuring access to a basic bank account

DG Markt Consultation document

April 2009

Regulating Reclaim Funds

CP09/08

April 2009

Second charge Lending Guidance for Brokers and Lenders

Response to Office of Fair Trading

April 2009

Commission Communication for the Spring European Council: Driving European Recovery

Response

April 2009

Regulating the Sale and Rent Back Market

Response to HM Treasury Consultation

May 2009

Regulating Sale and Rent Back: An Interim Regime

Response to CP09/6

May 2009

Technical Issues Relating to KID disclosures for UCITS

Response to CESR Consultation

May 2009

Reforming Remuneration Practices in Financial Services

Response to CP09/10

May 2009

With-Profits Funds – Compensation and Redress

Response to CP09/9

May 2009

FSCS Temporary High Deposit Balances

Response to CP09/11

Turner Review

Response to DP09/04

June 2009

Financial Services Strategy

Response to Office of Fair Trading Consultation

June 2009

Consumer Responsibility

Response to Discussion Paper 08/5

June 2009

Complex and Non-Complex Financial Instruments

Response to CESR Consultation paper
July 2009

Distribution of Retail Investments

Response to CP09/18
July 2009

Review of Directive 94/19/EC on Deposit Guarantee Schemes

Response to the EU Consultation
July 2009

Quarterly Consultation: Chapter 6: Proposed Amendments to BCOBs

Response to CP09/20
August 2009

Responsible Lending and Borrowing in the EU

Response to DG Markt Consultation
August 2009

Financial Services Compensation Scheme: Verification of the Single Customer View and Changes to Deposit Compensation

Response to CP09/16
August 2009

Review of Corporate Governance in UK Banks and Other Financial Industry Entities

Response to Walker Review
September 2009

Reforming Financial Markets

Response to HM Treasury
September 2009

Enforcement Financial Penalties

Response to CP09/19
October 2009

Assessment and Redress of Payment Protection Insurance Complaints

Response to CP09/23
October 2009

Distribution of Retail Investments: Delivering the RDR

Response to CP09/18
October 2009

Transparency as a Regulatory Tool and Publication of Complaints Data

Response to CP09/21
October 2009

Regulating Sale and Rent Back

Response to CP09/22
November 2009

Common Definition of European Money Market Funds

Response to CESR Consultation
December 2009

Credit Cards and Store Cards

Response to Department of Business, Innovation & Skills (BIS) Consultation
January 2010

Mortgage Market Review

Response to DP09/03
January 2010

Mortgage Regulation

Response to HM Treasury Consultation Paper
February 2010

Role and Powers of the Consumer Advocate

Response to Department of Business, Innovation & Skills (BIS) Consultation
March 2010

Guidance for Social Housing Providers (Chapter 6)

Response to CP10/01
March 2010

Delivering the Retail Distribution Review

Response to CP09/31
March 2010

Press releases

FSA takes backward step in treating with profits policyholders fairly

May 2009

FSA needs to get consumer protection right

June 2009

FSA is unrealistic on consumer responsibility

June 2009

FSA takes big step to help consumers – latest Retail Distribution Review changes

June 2009

Research shows nearly half of consumers do not seek advice when in mortgage difficulty

July 2009

Annual Report 2008/09

July 2009

Research reveals potential gaps in regulation for people using savings in later life

July 2009

Reforming Remuneration Practices – FSA does not go far enough says Consumer Panel

August 2009

Publication of Financial Ombudsman complaints data will improve standards for all

September 2009

FSA listens to reason on consumer responsibility

September 2009

Consumer Panel welcomes the FSA's approach on PPI – but it must only be the start

September 2009

Consumer Panel applauds FSA action on Mortgage PPI

October 2009

Consumer Panel calls on financial services industry to agree common standards of product design

October 2009

Consumer Panel urges action to make bank charges fair – despite technical Court Judgement

November 2009

Urgent action is need to ensure bank customers are treated fairly

December 2009

Full FSA regulation of Sale and Rent Back schemes come into force not a moment too soon

January 2010

FSA must not give in to pressure from industry on PPI

March 2010

Money guidance must not become political football

March 2010

OFT fails to deliver strong action on personal current accounts

March 2010

FSA ends commission on investments at last

March 2010

Consumer Panel welcomes Cash ISA super complaint by Consumer Focus

March 2010

Appendix 6: Panel members on other bodies

Panel members as consumer representatives on FSA bodies

FSA European and International Roundtable Group – Stephen Crampton

FSA Complaints Data Committee – Tony Hetherington

FSA RDR Regulatory Barriers & Enablers Industry Group – David Metz

Treating Customers Fairly Consultative Group – David Metz

FSA Quality of Advice Group – Adam Phillips

FSA Asset Management Forum – Carol Stewart

FSA Professional Standards Advisory Group – Carol Stewart

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

Financial Services Expert Group of the European Consumers Association (BEUC) – Stephen Crampton

Personal Accounts Delivery Authority (PADA) Group – Caroline Gardner

Financial Ombudsman Services Committee – Complaints Data Publication Group – Tony Hetherington

Financial Ombudsman Services Committee – Accessibility & Transparency Group – Tony Hetherington

Financial Ombudsman Services Consumer Group – Tony Hetherington

Financial Service & Markets Tribunal User Group – Tony Hetherington

Financial Health Forum – Nick Lord

Department for Business Innovation & Skills Consumer Finance Forum – Nick Lord

Retail Financial Services Forum – Adam Phillips

Financial Services Compensation Scheme Consumer Awareness Advisory Panel – Adam Phillips

Banking Code Review Group – Lindsey Rogerson

Payments Council Forum – Lindsey Rogerson

Appendix 7: Meetings with external bodies

Aegon	Financial Services Smaller Businesses Practitioner Panel (FSSBPP)
Age Concern	
Association of British Insurers (ABI)	Financial Services Practitioner Panel (FSPP)
Association of Independent Financial Advisers (AIFA)	Her Majesty's Treasury
Alter EU	Information Commissioner
British Bankers' Association (BBA)	Investment Management Association (IMA)
Building Societies Association (BSA)	John McFall MP
Chartered Insurance Institute (CII)	Lord Myners CBE
Citizens Advice Bureau (CAB)	Mark Hoban MP
Consumer Focus	National Employment Savings Trust
Council of Mortgage Lenders (CML)	Nottingham University (Financial Services Forum)
Centre for Study of Financial Innovation	OFCOM
DG Markt	Office of Fair Trading (OFT)
DG SANCO	Payments Council
European Financial Users Forum (FINUSE)	Prudential
European Consumers' Organisation (BEUC)	Safe Home Income Plans (SHIP)
European Parliament (Peter Skinner MEP, Syed Kamall MEP)	Scottish Consumer Forum
Financial Inclusion Taskforce	UK Permanent Representation to the EU (UKREP)
Finance & Leasing Association	UK Shareholders' Association
Financial Ombudsman Service (FOS)	University of Leicester (Centre for Consumer & Essential Services)
Financial Services Compensation Scheme (FSCS)	UKREP, Brussels
	Which?

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

ABI Annual Conference

British Bankers Association RDR Seminars

Building Societies Association Annual Lecture

Club FS Glasgow – Road to 2012

CML Annual Conference

Consumer Focus Seminar: Banking – Fee or Free?

Fidelity Investments Seminar on RDR

FSA Financial Crime Conference

FSA Mortgage Conference

IEA & Market Force Conference – Future of Life Assurance

Personal Finance Society Annual Leaders Summit

Personal Finance Society Seminar

Police Conference on Combating Fraud

University of Edinburgh on Future of Banking Event

Social Market Foundation – Rebuilding Trust in Financial Services Seminar



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