

## 4 Pillars of Consumer Protection

### Introduction

The European Parliament is currently considering financial services legislation on topics as diverse as solvency of providers, adviser remuneration, regulation of sales processes, product literature, alternative dispute resolution and publication of sanctions. The EU is fast becoming the key driver of financial services reform. While these developments can create regulatory inconsistencies, they also present an opportunity to enhance consumer protection – a key EU objective<sup>1</sup>.



In the face of this unprecedented shift in legislative activity the Panel believes it would be helpful for the EU to develop a set of solid Pillars against which to test its consumer protection agenda for financial services. These Pillars could be used to underpin the standards by which EU financial services regulation and legislation is scrutinised and evaluated.

We have condensed our priorities into four Key Pillars. These can be used in a variety of situations to test legislation and rules as they emerge.

The Panel believes a constructive way forward is for every element of financial services legislation to be compared to the principles of the Four Pillars. Regulators, supervisors and legislators must be mindful of EU consumers as they work on legislation and explain how they will respond if current legislation is found to be failing. Europe's consumers have suffered enough from inadequate financial services rules, and deserve better in future. We can achieve better outcomes for all parties if the four pillars become part of the EU's *acquis communautaire* when formulating the future regulatory landscape for financial services we can achieve better outcomes for all parties.

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<sup>1</sup> Article 169 of the Lisbon Treaty states 'In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers'.

## **Pillar 1, Access: must be universal and real**

*There must be universal and real access to the financial services consumers need.*

Financial services are an essential utility for participation in society and protection of living standards. It is not sufficient to legislate for citizens to have a “right” to financial products while leaving in place product features which in reality continue to exclude, or worse, harm citizens who might use them.

Consumers must be able to opt out of product features which they believe they do not need or might otherwise prevent them from using the product, for example, basic payment accounts must have features that are appropriate for the customer. The current practice of tying products also needs to be scrutinised to ensure good consumer outcomes.

We would like to see work to deliver straightforward-outcome products to consumers. For example, while some products may be quite complex in composition, straightforward-outcome products which meet certain criteria and deliver reliable outcomes could be delivered<sup>2</sup>. Similarly, much simpler products should be developed which open up access to citizens to protect vital elements of their lifestyle such as their home and their possessions.

Consumers should be able to access the products they need without being limited by geographical location, or lack of capability - physical or technological. A national generic money advice service is a key component in ensuring all citizens have access to the financial products they need. We believe all EU member states should establish such a national service which is free to consumers, such as the Money Advice Service<sup>3</sup>.

## **Pillar 2, Value: charges and costs must be fair, transparent and proportionate**

*Financial services must offer value to the customer; charges and costs must be fair, transparent and proportionate.*

Consumers should have the right products and services at a price they can afford and which offer value for money. This will encourage consumers to engage and to have more trust in financial services.

Advice must be free from bias and all those giving product recommendations to consumers must have a duty of care to act in the best interests of the customer. This means that an adviser should behave honestly, fairly and professionally in accordance with the best interests of their customers. To ensure that the consumer

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<sup>2</sup> [http://www.fs-cp.org.uk/publications/pdf/straightforward\\_outcome.pdf](http://www.fs-cp.org.uk/publications/pdf/straightforward_outcome.pdf)

<sup>3</sup> <https://www.moneyadviceservice.org.uk/en>

is put at the heart of financial services, inducements related to product choice and sales volume must be banned.

Value for individual consumers represents the personal trade-off between price and quality, so it is essential that charges are transparent and are explained in such a way as to make them easily comparable in any pre and post-sale documentation.

Charges must be fair and proportionate, excessive charges eat into the value of products and can leave consumers substantially worse off particularly with long-term savings products such as pensions.

**For example**, in the UK and other Member States, research<sup>4</sup> has shown that commission-based remuneration for advisers can distort the advice given to consumers. This view has driven the FSA's introduction of the Retail Distribution Review<sup>5</sup>. Further FSA and EU Commission work on remuneration practices has revealed distortions created by remuneration based on the incentives which benefit the provider or the adviser, not the customer.

It is also imperative that charges are fair and that opaque charges, margins and costs are challenged so that they do not eat unfairly into yield. Again, this is an example of a situation where the interests of customers and providers should be more closely aligned.

### **Pillar 3, Redress: accessible and binding**

*Consumers must have practical access to binding redress, no matter where they are located.*

It is foolhardy to expect that nothing will ever go wrong. But consumers need to know that there is fast and free access to complaints and compensation when they do. Independent Alternative Dispute Resolution (ADR) schemes are vital. We believe that all member states should establish readily accessible independent complaints services that are free for the customer and binding for industry. Industry often baulks at the cost of funding such ADR schemes, but the costs have to be set in the context of the role of ADR in restoring trust among consumers.

Ombudsmen should not only be a trusted independent, free to access channel to decide what is fair and reasonable for customers who complain, but they can also offer a means to detect poor practices and, through interpretation and feedback, raise standards across industry.

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<sup>4</sup> *Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective* November 2010, Decision Technology Ltd for the European Commission

<sup>5</sup> <http://www.fsa.gov.uk/rdr>

It is also essential to the goal of delivering a single market for financial products that pre-sale documentation makes clear which ADR and compensation scheme will apply to the product and advice being provided.

**For example**, in the UK the Financial Ombudsman Service gives consumers confidence that there is an independent arbiter to whom they can take their complaints if they have a problem and that they will get a fair hearing and effective redress<sup>6</sup> if their complaint is justified.

#### **Pillar 4, Policing: effective and enforced**

*Policing of the financial services landscape must be effective with tough enforcement and appropriate penalties.*

Consumers want to know that someone is setting and enforcing standards. Regulators must enforce the rules they have in place for financial institutions robustly. Publication of sanctions as well as banning companies and individuals will be the key to restoring public trust in, not only the industry, but also in regulators.

**For example**, across the EU regulators have realised that tough enforcement is necessary to deter wrongdoing. The slowly-unfolding Payment Protection Insurance (PPI) scandal in the UK illustrated that the longer an issue is allowed to continue, the greater the cost to the customer and the higher the levels of redress which must be paid by the industry. The current estimated level of redress is in excess of £12bn with £8.9 billion paid out already since January 2011<sup>7</sup>. Payment protection products are not unique to the UK.

#### **Conclusion**

We are at a crucial moment in the development of financial services legislation and regulation. Never before have so many major pieces of legislation which directly address consumer protection<sup>8</sup> been underway simultaneously. There is a real danger that a lack of coordination of this work will lead to poor outcomes, not just for consumers. We hope that these pillars will provide a constructive tool to guide legislators and regulators when they seek to safeguard the consumer interest, ensuring that consumer protection remains at the heart of the European-level legislative activity in financial services.

**Financial Services Consumer Panel  
15 March 2013**

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<sup>6</sup> <http://www.financial-ombudsman.org.uk/>

<sup>7</sup> [http://www.fsa.gov.uk/consumerinformation/product\\_news/insurance/payment\\_protection\\_insurance\\_/latest/monthly-ppi-payouts](http://www.fsa.gov.uk/consumerinformation/product_news/insurance/payment_protection_insurance_/latest/monthly-ppi-payouts)

<sup>8</sup> Including, but not limited to MiFID, the Insurance Mediation Directive, the Packaged Retail Investment Product (PRIPs) work, UCITS legislation, banking initiatives and the Alternative Dispute Resolution Directive.