

THE FINANCIAL SERVICES
PRACTITIONER PANEL
ANNUAL REPORT

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This is the third Annual Report of the Practitioner Panel (previously known as the Practitioner Forum) and the first since the Panel gained statutory status, in June 2001, under the Financial Services and Markets Act 2000.

The Panel has had a busy and productive year, reflecting the workload placed on the industry and the FSA in the preparations for N2.

I would like to thank our outgoing Chairman, David Challen, for his skill and success in establishing the Panel. I would also like to thank my colleagues on the Panel for the considerable time and support they have given to our work during the year.

Donald Brydon
CHAIRMAN

FEBRUARY 2002

THE PANEL'S THIRD YEAR

INTRODUCTION

This is the third Annual Report of the Practitioner Panel (previously known as the Practitioner Forum).

The Practitioner Panel was set up, as the Practitioner Forum, by the Financial Services Authority in 1998 to create a high-level body to which it could turn for opinions on matters having an impact on regulated firms. Subsequently, the Financial Services and Markets Act 2000 ('the Act') established the Panel as a statutory body, alongside the Consumer Panel which represents the interests of consumers to the FSA. This was in recognition of the important role of both Panels in the accountability and regulatory framework established under the Act. Both the Practitioner and Consumer Panels became statutory on 18 June 2001, from which date the Panel adopted the name of Practitioner Panel, as it is called in the Act, rather than its previous name of Practitioner Forum.

More detail of the implications of statutory status is set out below, and sections 8, 9 and 11 of the Act, which set out the requirements for the FSA to consult practitioners, are attached as Appendix 1.

MEMBERSHIP

The membership of the Panel, including members who retired during 2001, is at Appendix 2. Membership of the Panel is constructed to represent the various sectors within which regulated financial businesses operate, based mainly on nominations made by trade associations. Members are drawn from the most senior levels of the industry. The Act only specifies two sectors which must be represented, these being recognised clearing houses and recognised stock exchanges. Members are formally appointed by the FSA, and the Chairman must have the formal approval of the Treasury.

The Panel aims to rotate its membership to ensure a balance between consistency and new input. Six new members have been welcomed to the Panel in 2001, including Clara Furse and David Hardy of the London Stock Exchange and London Clearing House respectively, thus satisfying the membership requirements of the Act in advance of statutory status.

David Challen retired as Chairman at the end of September 2001, having led the Panel's work since it was first set up in 1998. The Panel is grateful to him for his work in ensuring that the Panel has become an effective and robust body, as is evidenced by its being taken into the provisions of the Act. Donald Brydon became Chairman on 1 October 2001. He has been a member of the Panel since its inception.

ROLE OF THE PRACTITIONER PANEL

The Panel has not seen a need to change significantly its terms of reference in anticipation of or since statutory status. Its remit remains to represent the interests of practitioners, and to provide input to the FSA from the industry in order to help it in meeting its four statutory objectives and seven principles of good regulation. Its four principal functions therefore remain as set out in the two preceding annual reports:

- to monitor the FSA's effectiveness as seen by the industry;
- to communicate to the FSA issues of general concern to regulated businesses about regulation in practice;
- to respond when requested to by the FSA with a practitioner view of key regulatory issues; and
- to contribute a broad financial industry view on the formulation of FSA policy and on the response the FSA proposes to make to representations it has received during any formal consultation process.

The Panel takes care to ensure it does not duplicate the important work of the trade associations in representing the views of their members. These associations generally have the staff and resources to promote the interests of their respective members in response to the impact of FSA regulatory policies on the sector they represent. The Practitioner Panel aims instead to speak across all sectors in offering input at a strategic level on important policy issues. We continue to consider, as the FSA moves from the making of policy to its implementation, that most can be achieved by exercising influence in a low profile way at a senior level. If however a higher profile were ever necessary, we would not hesitate to take it, and now have the appropriate powers under the Act to make formal representations to the FSA and to receive a written response. Details of this are covered in the next section below.

The Panel has no directly employed staff and has requested no budget from the FSA. Ad hoc expenditure, such as the cost of this annual report and of the survey of regulated firms to be conducted later this year, is agreed with and paid for by the FSA. We keep under review whether this continues to be the most effective way of operating, but for the present consider this the right approach since regulated businesses ultimately pay for the costs of the FSA. This approach does require the generous support of members of the Panel and we would like to acknowledge this alongside the administrative support of the FSA Secretariat. The latter has been supplemented this year by the appointment of a policy liaison officer to support both the Practitioner Panel and Small Business Practitioner Panel in their dealings with the FSA.

STATUTORY STATUS

On 18 June 2001 the commencement order giving statutory status to both the Practitioner and Consumer Panels under the Financial Services and Markets Act 2000 (FSMA) came into force. This did not bring with it significant change for the Panel's remit, as we had structured ourselves in anticipation of statutory status.

Section 11 of the FSMA brought into effect an important part of the formal accountability of the FSA to the Practitioner Panel. This was signalled in last year's Annual Report, when we reported that we had prevailed in our insistence that, should the FSA ever reject formal advice offered by the Panel, it should have to explain its reasons in writing. This was included in the Act and came into force on 18 June 2001. The same also applies to the FSA's relationship with the Consumer Panel, and both Panels have therefore agreed a common process for managing these 'section 11 representations'. We felt it important to strike a balance between ensuring that section 11 can be applied effectively, whilst at the same time not weighing down free and frank debate by unnecessary formality or bureaucracy. Neither Panel expects that formal representations under the Act will be made often, and none have been made to date since the provision was brought into effect. This is nonetheless an important facility: whilst we have no fear that the present FSA administration would ever seek to sideline the Panel or its views, it is important to protect against such a possibility in the future.

ACCESS TO THE FSA

The Panel Chairman meets regularly with the Chairman of the FSA, through whom we have access to the FSA Board, and these meetings provide the opportunity to communicate issues of particular import and emerging concerns. We met the FSA Board formally once during the year. There are frequent more informal and ad hoc contacts between the Panel members and Directors and senior executives of the FSA. Managing Directors regularly attend Panel meetings to update the Panel on current issues within their responsibility and generally impacting on the FSA's work. Senior FSA executives regularly attend meetings to present on policy developments, seeking the Panel's views before going out to wider formal consultation.

ACTIVITIES OF THE PANEL DURING THE YEAR

We have met monthly and been engaged in regular consultation, formal and informal, on issues, primarily with the FSA but also with other parties such as the Financial Ombudsman Service. A full list of matters considered by the Panel at its meetings during 2001 is at Appendix 3.

a) Consultation

The FSA's consultation programme during 2001 has remained heavy, in particular with the large volume of rule making as N2 approached. This has continued to require considerable effort by regulated firms and their trade associations in considering proposed policies that will impact profoundly on the way they operate. The Panel, nevertheless, welcomes the openness that this consultation manifests. As stated in our previous annual reports, in order to be able to make the most effective contribution to the consultation process, we have agreed a procedure with the FSA. The main principles of this procedure are that the Panel is first informed and consulted on the FSA's emerging and developing policies. Secondly, the Panel reviews formal consultation documents prior to their publication in order to be able to advise the FSA if there are

key issues that would be unworkable. The Panel does not provide formal comments during the formal consultation period, as this is far better left to the trade associations and individual firms. Lastly, we then receive feedback from the FSA, before the policy or feedback statement is published, in order to inform us of the key issues raised during consultation and how the FSA proposes to deal with these, including any issues raised by the Panel itself.

Issues on which we feel our input has had a material influence on the direction of the FSA's policy include:

- mortgage regulation, including the regulation of mortgage advice;
- comparative information tables;
- FSA's performance evaluation;
- investigation of complaints against the FSA;
- the FSA's post-N2 fee arrangements; and
- whistleblowing procedures in the financial services industry.

b) Risk-based regulation

The Panel sees the important change of focus towards risk-based regulation, first signalled in the FSA publication 'Building the New Regulator', as essential to achieve the necessary proportionality in regulation. We have had the opportunity to engage in dialogue with the FSA on the Arrow programme that forms the framework for change which enables this risk-based approach. We remain concerned that there will be difficulty in translating the new approach from high-level policy to operation 'at the coalface', but have been somewhat encouraged by the commitment of the FSA's senior management to succeed in this respect. This is obviously an area we will need to monitor closely.

c) Research

We have expressed concern over the process, governance and quality of research stimulated and undertaken by the FSA. It will be important that when research evidence is used to support policy change that it commands widespread respect.

d) Financial Services Ombudsman

We met the Financial Services Ombudsman early in 2001, and will be maintaining a dialogue with him. We have some anxieties that there are perceptions that decisions of the Financial Ombudsman effectively make new rules without the same standard of preconsultation as undertaken by the FSA. We would view significant development in this direction as unhelpful.

e) Materiality

The Panel views it as important that the FSA's procedures focus on important matters. There will need to be care in respect of the interpretation of materiality. The FSA will not build its credibility successfully if those regulated find it devoting resources, or requiring the firms to do so, in areas commonly regarded of trivial importance. The handling of complaints procedures is an example of an area wherein lies this risk.

f) Strategy

The FSA has shared their strategic thinking with the Panel, and we have emphasised the importance of ensuring that regulation is both cost-effective and does not hamper the international competitiveness of the UK financial services industry.

We have anxiety about the sudden increase in the responsibilities of the FSA to encompass general insurance business just as the organisation is beginning to settle down and is working to develop a uniform culture post N2.

We are grateful to the FSA for allowing us to nominate Mark Wood, Chief Executive, Prudential Assurance UK and Europe, to serve on the FSA's advisory panel overseeing the work on the theme Harnessing Market Forces, one of two themes that the FSA is pursuing this year.

g) Performance feedback

We have asked the FSA to give thought to establishing a mechanism to allow effective performance feedback on individual regulators, without endangering the necessary working relationship between regulators and regulated.

h) Survey of regulated firms

In 1999 the Panel commissioned an independent survey of regulated firms in order to benchmark industry opinion of regulation. A summary of the results of that survey were published with our 1999 Annual Report. It was the intention that the survey should be repeated once the new regulatory framework had been implemented and in operation for long enough for the industry to be able to form a view as to how it was working in practice. We have therefore decided to conduct a repeat of the survey in the early summer of 2002, six months after N2. There was a good response rate to the survey conducted in 1999, and the Panel hopes to see a similar response rate this time, as this will enhance the value of the survey in providing a good basis for comparison. A sub-group of the Panel, chaired by Matthew Bullock, has been set up to carry forward this work.

i) Other issues

We have maintained our informal contact with the Consumer Panel, including meeting with them on one occasion over the year to share views and establish any areas of common interest. We have liaised with them – so far as possible given our different sectors – to establish common procedures following statutory status, in particular on section 11 representations, and related statutory matters.

Ruth Kelly joined a meeting of the Panel shortly after her appointment as Economic Secretary to the Treasury. We were able to raise concerns about European issues and their impact on home regulatory policies, and the burden on the industry of the number of reviews of parts of the industry currently underway. We urged the need for joined-up activity. We were also encouraged by the understanding shown that it was not the FSA's role to prevent all failures.

We have also met representatives of the Banking Services Consumer Codes Review (the DeAnne Julius review) and the Financial Ombudsman Service.

j) Future priorities

We look forward to continued active debate with the FSA and others. Although the date of N2 has passed and many of the rules and guidance are already in place, there are some major issues highlighted for discussion in future months. These include the FSA proposals on polarisation, preliminary discussions about the regulation of mortgage and general insurance advice, and a continuing watching brief on FSA budget setting.

CONCLUSIONS

We have had another busy but productive year. Following the FSA's assumption of its full powers on 1 December 2001, we will undoubtedly be seeing a shift in focus of our activities as the FSA moves from a heavy consultation programme to implementation of its policies and rules. Having said that, with the announcement about the future regulation of mortgage and general insurance advice, as well as the outcomes of the review of the handling of the Equitable Life case, there will continue to be important and weighty issues on which the Panel will be consulted. We expect this to continue to be through the constructive relationship we have so far enjoyed with the FSA.

In order to be effective, we do need to be aware of issues that are of concern to regulated firms. Where we feel there is a significant matter on which our involvement could be productive, we shall be happy to take it up with the FSA. You are invited to contact the Practitioners' Policy Support Officer, based in the FSA (c/o 25 The North Colonnade, Canary Wharf, London E14 5HS, tel. 020 7676 9534).

APPENDIX 1

Arrangements for consulting practitioners and consumers

Taken from Part 1 of the Financial Services and Markets Act 2000

The Authority's general duty to consult	<p>8. The Authority must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 2.</p>
The Practitioner Panel	<p>9.(1) Arrangements under section 8 must include the establishment and maintenance of a panel of persons (to be known as 'the Practitioner Panel') to represent the interests of practitioners.</p> <p>(2) The Authority must appoint one of the members of the Practitioner Panel to be its chairman.</p> <p>(3) The Treasury's approval is required for the appointment or dismissal of the chairman.</p> <p>(4) The Authority must have regard to any representations made to it by the Practitioner Panel.</p> <p>(5) The Authority must appoint to the Practitioner Panel such –</p> <ul style="list-style-type: none"> (a) individuals who are authorised persons, (b) persons representing authorised persons, (c) persons representing recognised investment exchanges, and (d) persons representing recognised clearing houses, as it considers appropriate.
Duty to consider representations by the Panels	<p>11.(1) This section applies to a representation made, in accordance with arrangements made under section 8, by the Practitioner Panel or by the Consumer Panel.</p> <p>(2) The authority must consider the representation.</p> <p>(3) If the Authority disagrees with a view expressed, or proposal made, in the representation, it must give the Panel a statement in writing of its reasons for disagreeing.</p>

APPENDIX 2

Members of the Practitioner Panel in 2001

Name, Title, Organisation	Contact numbers
Donald Brydon (Chairman) <i>Chairman and Chief Executive</i> AXA Investment Managers	Tel: 020 7003 1501 Fax: 020 7003 1507 E-Mail: donald.brydon@axa-im.com
Barry Bateman <i>President</i> Fidelity Investment Management Ltd.	Tel: 017 3277 7105 Fax: 017 3277 7441 E-Mail: barry.bateman@uk.fid-intl.com
Jonathan Bloomer (joined February) <i>Group Chief Executive</i> Prudential plc	Tel: 020 7220 7588 Fax: 020 7548 3930 E-Mail: jonathan.bloomer@prudential.co.uk
Matthew Bullock (joined February) <i>Group Chief Executive</i> Norwich and Peterborough Building Society	Tel: 017 3337 2403 Fax: 017 3337 2402 E-Mail: matthew.bullock@npbs.co.uk
David Challen <i>Co-Chairman</i> Schroder Salomon Smith Barney	Tel: 020 7986 7010 Fax: 020 7986 8132 E-Mail: david.challen@ssmb.com
Amelia Fawcett (retired February)	
Clara Furse (joined May) <i>Chief Executive</i> London Stock Exchange	Tel: 020 7797 1626 Fax: 020 7588 3504 E-Mail: cfurse@londonstockexchange.com
David Hardy (joined May) <i>Chief Executive</i> London Clearing House	Tel: 020 7426 7040 Fax: 020 7667 7354 E-Mail: hardyd@lch.co.uk

Name, Title, Organisation	Contact numbers
Ian Harley <i>Chief Executive</i> Abbey National Plc	Tel: 020 7612 4000 Fax: 020 7612 3091 E-Mail: ian.harley@abbeynational.co.uk
Richard Harvey (retired February)	
Roy Leighton (joined February) <i>UK Chairman</i> Credit Lyonnais	Tel: 020 7214 6408 Fax: 020 7214 5002 E-Mail: roy.leighton@creditlyonnais.co.uk
Brendan Nelson <i>Chairman, Financial Sector</i> KPMG	Tel: 020 7311 6157 Fax: 020 7311 5891 E-Mail: brendan.nelson@kpmg.co.uk
Michael Quicke <i>Chief Executive</i> Leopold Joseph & Sons Ltd	Tel: 020 7776 6801 Fax: 020 7776 6805 E-Mail: mquicke@leopoldjoseph.com
Martin Ritchley (retired February)	
Roger Sanders <i>Principal</i> Roger Sanders Associates	Tel: 020 7924 3598 Fax: 020 7924 5217 E-Mail: rogers@rogsan.co.uk
Hector Sants (joined February) <i>Vice-Chairman</i> Credit Suisse First Boston	Tel: 020 7883 5161 Fax: 020 7883 5177 E-Mail: hector.sants@csfb.com
Paul Spencer <i>UK Chief Executive</i> Royal & Sun Alliance Insurance Group	Tel: 020 7337 5001 Fax: 020 7337 5445 E-Mail: paul.spencer@uk.royalsun.com

A P P E N D I X 3

Matters considered by the Practitioner Panel in 2001

January	FSA budget 2001/02 Equitable Life – update Funding the Financial Services Compensation Scheme – issues paper
February	Pensions review – SERPS adjustment for phase 2 cases – issues paper Code of Market Conduct – CP59/CP76 response paper Financial Ombudsman Service – budget E-commerce – update paper
March	Consumer education FSA proposed questionnaire for firms: incremental costs of regulation Investigation of complaints against the FSA – CP73 response paper Money laundering – update paper
April	Mortgage regulation – CP70 response paper Skilled persons report – issues paper Comparative information tables – update Designated investments in derivatives based on energy products – issues paper Treating customers fairly after the point of sale – issues paper Best execution – issues paper
May	FSA fees post-N2 – response paper UKLA: information dissemination – issues paper Whistleblowing and the financial services industry – issues paper Consultation with Panel on possible cross-FSA themes for 2001/02 E-regulation – issues paper FSAVC Review – issues paper

June	<p>Electronic money – issues paper</p> <p>Data collection and analysis for stakeholder pensions – issues paper</p> <p>Savings and Assets for All – FSA’s approach to Government’s green paper</p> <p>Conduct of Business: transitional provisions – CP45/CP57 response paper</p> <p>Grandfathering – response paper</p>
July	<p>Funding the Financial Ombudsman Service – CP74 response paper</p> <p>Individual capital requirements for banks</p> <p>FSA performance measurement – issues paper</p>
September	<p>Meeting with Ruth Kelly, M.P., Economic Secretary to the Treasury</p> <p>FSA’s strategic planning framework – issues paper</p> <p>Report of Past Performance Task Force</p> <p>Status disclosure post-N2</p>
October	<p>‘With Profits’ review – update paper</p> <p>Treatment of windfall benefits – update paper</p> <p>Examination review – issues paper</p> <p>FSA performance measurement – revised issues paper</p> <p>Ageing population theme – update paper</p> <p>Pensions Review – PIA CP35 response paper</p>
November	<p>Future regulation of insurance – update paper</p> <p>Mortgage sourcebook – response paper</p> <p>Polarisation: Stage II Review – update</p>
December	<p>Polarisation: Stage II Review – further update</p> <p>Liquidity risk in the Prudential Sourcebook – issues paper</p> <p>FSA fees post-N2: CP111 response paper</p> <p>FSA Plan and Budget 2002/03</p> <p>FSA strategic planning and performance evaluation – issues paper</p> <p>Panel’s survey of regulated firms</p>

