



Financial Services Authority

*Smaller Businesses
Practitioner Panel*

Annual Report 2007/8

www.sbpp.org.uk



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The FSA Smaller Businesses Practitioner Panel

1. CHAIRMAN'S FOREWORD



This will be the last report of the Smaller Businesses Practitioner Panel that I will introduce as Chairman as my term finishes on 31 May 2008.

It is produced at a time when many regulatory developments have a huge impact upon the operation of a smaller firm in the Financial Services Authority's regulatory environment. Over 90% of regulated firms are considered 'smaller' by the FSA.

Smaller firms will often feel overwhelmed by communication about regulatory matters – so why should they read this report?

Well firstly, it captures the most obvious points all in one place. It describes those issues succinctly and then expresses the views and representations of a group of practitioners – drawn from smaller firms – that the FSA Board and Senior Management have consulted, engaged with and allowed unique access to the regulatory thought process.

The FSA itself is going through organisational change. Some of that change directly impacts upon smaller firms – in particular, the enhanced small firm strategy, which the Panel fully endorses. Greater contact with the FSA can only assist smaller firms to comply with a complex regulatory framework.

The FSA is also dealing with the post Northern Rock fallout. The regulator has been open and honest about its failings around that matter, and for this it should really be congratulated. Going forward, the FSA should be allowed – with input from the industry – to address those shortcomings identified.

As my term on the Panel has progressed I have become more and more impressed by a sense that good, well run firms and the FSA are not polar opposites. Instead they are both trying to achieve the same thing – successful, compliant and properly managed financial services firms.

The Panel is comprised of senior people from a number of sectors regulated by the FSA. As Chairman I would like to express my gratitude to all that have served on the Panel and also to the very professional members of the secretariat that the FSA provides to support the Panel in its efforts.



The chairmanship of the Panel will now pass to Simon Bolam. Simon has extensive experience, enthusiasm and natural leadership - all of which qualities will help ensure that the Panel continues to interact constructively with the FSA; is focused on the issues that matter; and remains an important and influential voice for the smaller firm community.

I commend the Panel's Annual Report for 2007/8 to you.



Mark Rothery
Panel Chairman
May 2008



2 . E X E C U T I V E S U M M A R Y

This is the Annual Report of the FSA Smaller Businesses Practitioner Panel (the Panel) for the year 2007/8.

Background

The Panel was established by the Financial Services Authority (FSA) in 1999 to represent the views and interests of smaller regulated firms; and to provide advice on policy, strategic and operational developments in financial services regulation.

The Panel seeks to ensure that the FSA – and others – impose an overall regulatory framework which is proportionate; and which takes due account of the day-to-day impact on and challenges faced by the smaller regulated firm community.

Smaller firms make up around 90% of the FSA's total regulated population. The Panel strongly believes that such firms have a crucial role to play in a vibrant and competitive financial services marketplace – and in providing consumers with choice, service and flexibility.

The Panel's membership is drawn from senior practitioners across smaller firms operating in all the main sectors of regulated business – for example, building societies; credit unions; general insurance and mortgage intermediaries; insurance companies; stockbrokers; investment managers; banks and independent financial advisers. In addition, the Panel Chairman serves, ex officio, on the Financial Services Practitioner Panel.

The Panel is treated by the FSA in the same way as the Financial Services Practitioner and Consumer Panels – even though it does not itself have the same statutory status.

Further information about the role, work and membership of the Panel can be found on its website: www.sbpp.org.uk

Key Issues

The Panel has welcomed the FSA's intention to increase regulatory contact and engagement with smaller firms, as announced in October 2007, through the **Enhanced Small Firms Strategy**. The FSA has now started to implement its new strategy by introducing an ongoing programme of structured visits, including telephone assessments, to test the progress made by smaller firms towards, in particular, embedding the Treating Customers Fairly (TCF) initiative into their business culture.



The Panel is continuing to work closely with the FSA on this initiative to evaluate its effectiveness and monitor how smaller firms are experiencing its application in practice.

The Panel has been supportive of **more principles-based regulation** (MPBR) and has engaged in regular dialogue with the FSA on this issue. However, some smaller firms still tend to prefer the certainty provided by prescriptive rules. So, although many strive to adapt to a more principles-based approach, the Panel continues to stress the need for the FSA to provide better support for and information to those smaller firms that are finding it harder to do so.

The Panel has been supportive of the FSA's commitment to upgrade the structure and quality of the **Firm Contact Centre** (FCC) as, for many smaller firms, this is their first point of contact at the FSA.

The **Retail Distribution Review** is an extensive piece of work and the Panel has been supportive of the FSA's decision to look at the distribution framework. However, there are aspects which continue to cause the Panel concern – not least its potential impact on the IFA sector.

The Panel welcomed the FSA's decision to delay the next formal stage of the RDR until October 2008, to allow time for careful and critical deliberation, and looks forward to playing an integral part in assisting the FSA in reaching some firmer policy conclusions leading up to this date. In any event, clarity of communication and open engagement with smaller firms continues to be imperative.

The **cost of regulation**, particularly fees, is a considerable concern to smaller businesses, and the Panel has advised the FSA that continuous increases will cause some smaller firms problems and, at the same time, has urged the regulator to monitor and control its budget more effectively. The overall **burden of regulation** also continues to present practical difficulties for smaller firms, especially the pace and cumulative impact of change.

The Panel feels that the FSA should place greater emphasis on supervising and enforcing smaller firms' adherence to existing rules rather than continue to create new policy and/or propose any further regulatory changes.

The Panel remains supportive of the **Treating Customers Fairly** (TCF) initiative, but continues to be concerned about its direction; and also the consistency and proportionality with which it is being applied to smaller firms. The Panel has worked with the FSA to ensure that clear and practical guidance is being made available to smaller firms.

The FSA's report against the 31 March 2008 TCF deadline – expected shortly – is awaited with interest by the Panel.

The Panel has received regular updates from the FSA in relation to the **Quality of Advice (Outcomes) Project**, but remains unconvinced that the benefits from this work will justify its cost.

This pilot is now drawing to a close and the Panel strongly feels that unless it proves possible to undertake this exercise in a way that will produce credible and valuable conclusions, then the FSA should decide not to proceed to the next stage.

The Panel has had regular and constructive meetings with the FSA on the **insurance selling and administration** framework. Among other things, while agreeing with proposals to retain stricter rules for certain higher risk products, the Panel has urged the FSA to critically review those aspects that continue to be super-equivalent to the prevailing EU legislation.

The Panel has raised concerns about the results of various FSA thematic reviews in relation to the **mortgage market**. We have stressed the need for the regulator to take swift and decisive action to improve standards, in particular in the mortgage intermediary sector, and have also continued to urge the FSA to ensure it communicates thematic findings in a balanced, controlled and proportionate manner.

In October 2006, the FSA announced its intention to undertake thematic work to review commission disclosure in the **commercial general insurance market**. The Panel was opposed to any introduction of mandatory commission disclosure and, in December 2007, the FSA announced that its analysis indeed showed that such disclosure was not justified – in line with the Panel's view.

The Panel was therefore disappointed at the FSA's subsequent decision to publish a formal Discussion Paper on this issue; but will nevertheless work with the FSA to help ensure a credible, pragmatic and objective outcome is reached insofar as smaller firms are concerned.

2007/8 saw the culmination of the discussion process into the operation and funding of the **Financial Services Compensation Scheme**.

The Panel expressed reservations about the appropriateness of smaller firms being expected to cross-subsidise the liabilities of larger businesses. In addition, further research into the underlying reasons for firm insolvencies, and measures that could be taken to ameliorate these, was recommended.



The launch of the fifth **Survey of Regulated Firms** by the Financial Services Practitioner Panel took place earlier in 2008, which will give smaller firms an opportunity to provide their input – in confidence – on topical issues as well as on general regulatory performance and effectiveness.

The results are due to be published in the last quarter of the year and the Panel would very much encourage smaller firms to take part if they are invited to do so.

The Panel has had regular contact with the **Financial Ombudsman Service (FOS)** during 2007/8 and, more recently, has been pleased to note the proposal to increase the number of “free” cases from 2 to 3 – which should be beneficial for smaller firms – and the FOS’s creation of a dedicated taskforce to deal with smaller firm issues in a more focused way.

Lord Hunt recently published his review of the FOS, the conclusions and recommendations from which the Panel is currently in the process of reviewing.

In terms of **Panel effectiveness**, and in discussion with the FSA, we will in future operate with a slightly smaller membership of approximately 11/12 rather than the traditional 14/15.

This is with a view to Panel members becoming more focused and strategic in their contribution. This, in turn, will hopefully produce better and more influential engagement with the FSA (and others) in support of those smaller firms whose interests the Panel seeks to represent.



3. THE PANEL'S YEAR IN REVIEW AND PRIORITIES FOR 2008/9

This section summarises the issues which the Panel considered to be of greatest importance to smaller firms during 2007/8 – that being, the period from April 2007 to March 2008. Those issues which are likely to feature prominently on the Panel's agenda during the year ahead are also included.

The Panel also spent considerable time discussing a much wider range of strategic, policy and operational issues of relevance to smaller firms. Those other issues and activities are listed at the end of this section.

During 2007/8 the Panel responded formally, in writing, to many public/industry discussion and consultation papers issued by the FSA and other relevant bodies. A summary of these responses is located on the Panel's website – www.sbpp.org.uk.

3.a. Enhanced Small Firms Strategy

In his speech at the FSA's Annual Public Meeting in July 2007, Chairman Mark Rothery spoke of the Panel's belief that those firms which enjoyed a closer "person to person" supervisory relationship with the FSA were more likely to understand their regulatory responsibilities than those that did not. Specifically, he called on the FSA to dedicate additional resources to the supervision, support and interaction with smaller firms.

So the Panel welcomed the FSA's intention to increase regulatory contact and engagement with smaller firms, as announced in October 2007.

While these efforts will not come without some additional cost, the Panel felt that this initiative presented something of a win/win proposition. In particular, the Panel believes that the enhanced strategy should serve to incentivise those smaller firms trying to comply, and act as a meaningful deterrent to those who seek to do otherwise or try to fly under the FSA's radar.

Since the beginning of 2008 the FSA has started to implement its new strategy by introducing an ongoing programme of structured visits, including telephone assessments, to test the progress made by smaller firms towards, in particular, embedding the Treating Customers Fairly (TCF) initiative into their business culture.

The Panel will continue to work closely with the FSA, as part of this initiative, to evaluate how smaller firms are coping with TCF and to see if there are any lessons to be learnt from the findings.



Hopefully, as levels of compliance improve, the need for future fee increases to pay for such major initiatives will reduce in line with corresponding regulatory costs for smaller firm supervision and enforcement. Monitoring and measurement of the enhanced strategy in operation will therefore be particularly important if it is indeed to deliver those benefits for the smaller firm marketplace that the FSA aspires to.

3.b. More Principles-Based Regulation

The Panel has been generally supportive of the implementation of more principles-based regulation (MPBR).

Whilst the Panel has engaged in regular dialogue with the FSA on this issue, the fact remains that many smaller firms tend to relate better to the reassurance provided by prescriptive rules rather than focusing on outcomes.

One of the biggest challenges facing smaller firms is that they operate in highly competitive marketplaces with tight margins; as a result the available time to absorb, what is perceived to be a complex regulatory approach, is very limited. Many smaller firms, without internal compliance departments, have no option but to incur high consultancy costs. Even then firms may still not have certainty that they are compliant until their businesses are reviewed by the FSA.

Unfortunately, disparity continues to exist between rules and MPBR. As an example, the Panel notes that the FSA issued its six TCF outcomes as a guide to firms – but, in practice, imposing these outcomes has had the effect of creating a rule.

Nevertheless, many smaller firms have been striving to adapt to a principles-based approach and the Panel continues to work with the FSA to provide better support for those smaller firms that are finding it harder to do so.

The key to compliance is the production of clear, good quality information that is easily accessible and digestible. The Panel therefore supports the practical approach taken by the FSA through its roadshows, that have proved popular with many smaller firm practitioners, but urges the FSA to continue to provide all reasonable guidance and qualitative support for smaller firms; for example, through the FSA's Small Firms web pages.

The Firm Contact Centre (FCC) is for most smaller firms the initial point of contact with the FSA and a source through which to gain advice, including matters relating to more principles-based regulation. The Panel has been supportive of the FSA's commitment to upgrade the structure and quality of the FCC and welcomes the recent decision to amalgamate the FCC with the Small Firms Division (SFD) to form the new Small Firms & Contact Division. That formal connection between incoming contact from smaller firms (through the FCC) and the outgoing contact (through the SFD) is something that the Panel has championed.



3.c. Retail Distribution Review

The Retail Distribution Review (RDR) is an extensive piece of work with far reaching and significant outcomes for the retail investment market and, in particular, for many smaller firms. While supportive of the FSA's decision to look at the distribution process within this area, there are a number of aspects which have continued to cause the Panel concern.

At the high-level, the impact on the IFA sector could be significant, and we are working closely with the FSA to ensure it understands and manages any potentially damaging or undesirable effects. It was therefore important that FSA "messages" on this issue served to inspire and gain the support of the smaller firm sector together with the wider industry. At the moment the Panel is not convinced that the FSA has completely achieved that; despite the good level of recent engagement between the regulator and those affected sectors, many do still view this initiative – wrongly or rightly – with apprehension and uncertainty. This has had a particularly destabilising effect on the smaller firm marketplace.

The Panel also feels that not enough consideration has been given to the inter-play between the various reviews and initiatives coming from the FSA's Retail area. This has created the impression that there is a lack of coherence, planning and vision. In this regard, the Panel welcomes the FSA's decision to delay the next formal stage of the RDR until October 2008. This will allow time to complete the Retail Market Structures exercise – an FSA initiative to give strategic direction to its overall retail agenda - which the Panel hopes will bring some context and positive benefits to the final recommendations in respect of the RDR.

With regard to the connected Discussion Paper (DP07/4) on Prudential Rules for Personal Investment Firms – i.e. the levels of capital required to be held by such firms – it seemed to the Panel that this issue should more properly have been constructed to form an intrinsic part of the wider RDR work rather than be pursued under separate cover. More specifically, the Panel has not yet seen evidence from the FSA to suggest that there is a clear correlation between the capital held by firms and any propensity to give unsuitable advice. In addition the Panel would welcome an analysis of the impact on availability of Professional Indemnity Insurance and sight of evidence to support the assertion that smaller firms cause disproportionately greater consumer detriment than do larger businesses.

While the Panel has been reassured that there will be no automatic read-across to the mortgage and general insurance sectors, this question has yet to be answered definitively – something which those sectors would welcome. We shall continue to press the FSA on this point.

In its formal response to DP07/2 the Panel set out its specific views about the intention to introduce mandatory qualifications for advisers; firms' use of "independent" to describe their services; the role and cost of Customer Agreed Remuneration as a possible means (among others) of payment; and the clarity around the proposed generic and primary advice models.



In March this year, we had a helpful session with the FSA, providing the Panel with an early summary of the key themes emerging from the numerous responses to last year's RDR Discussion Paper. The FSA's work on this subject is very much ongoing and, from the nature and diversity of the nearly 900 submissions it received, it faces a significant challenge to produce an outcome that will be seen as fair and appropriate to all concerned.

Adequate ongoing engagement with the industry, most importantly from our perspective, within the smaller firm community, will be vital. Following recent publication of the RDR Interim Report, the Panel looks forward to playing an integral part in assisting the regulator in reaching some firmer conclusions leading up to the planned announcement of any specific proposals later in 2008.

As an aside, in the event that some small firms may be forced to cease operating as a result of the final recommendations emerging from the RDR, as well as serving to limit consumer choice, the Panel has expressed concern that further regulatory fee increases may be necessary in those particular fee blocks. This would put firms under even greater pressure to sustain a viable business model and, in effect, the whole issue could become self-perpetuating. This is something that needs to be monitored as we move forward.

3.d. Regulatory Burden

Smaller firms are facing an ever increasing volume of regulation. Not only are they being subjected to various new initiatives from the FSA but some small firms are also being subjected to additional European requirements.

The assimilation and implementation of new or refined rules/guidance is both time-consuming and disproportionately costly to smaller firms who typically cannot afford to employ dedicated compliance staff. The cumulative impact of such change compounds that burden further still. The FSA should only propose further regulatory change where there is a clear need to do so and having taken account of the cumulative impact and burden that such change might impose on smaller firms.

The Panel feels that the FSA, rather than continuing to create new policy initiatives, should place greater emphasis on supervising and enforcing firms' adherence to existing rules.

In addition, the Panel feels that the FSA should focus much greater effort on prudential supervision instead of conduct of business issues. Given the current economic climate, under which some firms are being forced to close, the smaller business community and the FSA alike would benefit from an increased concentration on addressing liquidity and solvency aspects in the first instance.

The overall cost of regulation, particularly fees, is a matter of considerable concern to smaller businesses. Although the Panel supports the increased fees during 2008/9, to cover the costs of the Enhanced Small Firms Strategy, the Panel has made it clear to the FSA that continuous increases in fees cannot reasonably be absorbed by small firms. In that context, the Panel has also urged the FSA to monitor and control its budget – which seems to keep spiralling upwards year-on-year – more effectively.



3.e. Treating Customers Fairly (TCF)

By 31 March 2008 all firms were required to implement their TCF strategies, with a further deadline of December 2008 by which all firms should be able to demonstrate, through their management information, that they are consistently treating their customers fairly. The FSA is expected to report against that earlier deadline shortly – and the Panel awaits this news with interest.

We remain generally supportive of TCF but have always been concerned about its practical application to smaller firms.

The Panel expressed concern at the commencement of this project that the FSA had not been clear in its definition and direction of the TCF concept. However, the Panel is pleased to report that this situation improved somewhat during 2007. The Panel, with other practitioners, was pleased to be given the opportunity to work with the FSA to ensure that clear and practical guidance was being made available for smaller firms. The FSA's Small Firm web pages have been a particularly useful point of reference on this subject.

Although the Panel fully understands the need for the FSA to set deadlines for the application of new regulation, it hopes the FSA will continue to monitor TCF in a proportionate, risk-based and outcome-focused manner when dealing with smaller firms – as it is publicly committed to doing.

Our Chairman is representing the Panel at a number of TCF Summit Meetings during 2008, which give industry representatives the opportunity to engage in discussions with TCF leaders from the FSA. So far these meetings have been constructive and the Panel welcomes the FSA's continuing desire to engage and understand practitioners' concerns regarding TCF.

3.f. Quality of Advice (Outcomes) Project

The Panel is not convinced that the benefits flowing from this proposed piece of work will justify the cost of the project.

The Panel has received periodic updates from the FSA in relation to this thematic initiative, which aims to provide a baseline measure of the suitability of advice given in the mortgage and investment sectors.

The FSA commenced a major pilot exercise in October 2007 to test the methodology and help inform the decision whether to proceed with the main stage of research. The pilot is now drawing towards an end and the Panel hopes to receive sight of the results shortly. In the interim, the Panel has expressed reservations about certain practical aspects of this work and the veracity of any subsequent outputs.

Unless it is possible to undertake this costly exercise in a way that will produce credible, objective and valuable conclusions - with a clear link to other workstreams, such as the RDR – then the Panel will argue that it should not be taken forward in its current form (or at all).



3.g. Insurance Selling and Administration

A sub-group of the Panel has had regular and constructive meetings with the FSA's policy team as the regulator developed its proposals following a review of the ICOB Rules.

The Panel agreed with the proposals requiring the retention of stricter rules for higher risk products, such as Payment Protection Insurance (PPI) and other pure protection products. Equally the Panel, in principle, felt that the rules super-equivalent to the Insurance Mediation Directive (IMD) should be removed and, wherever possible, the FSA should adopt a more principles-based approach.

Throughout this process the Panel expressed concern that the FSA had chosen to retain the (super-equivalent) rule relating to cancellation rights for non-distance sales to retail customers. This rule creates particular problems of abuse in relation to motor insurance which adversely affects smaller intermediaries trading in high street locations.

The Panel, on behalf of smaller intermediary firms, expressed concern that the FSA's framework, while permitted under the terms of the IMD, created an unfair playing field to the advantage of direct insurers and to the detriment of intermediaries. In consequence the Panel has urged the FSA and the Treasury, as it has done on various occasions in the past, to press the European Commission for an early review of the IMD.

The Panel is disappointed that the problems surrounding the sale of single premium PPI have not yet been resolved. The negative messages around that specific issue have led to some concerned consumers refusing to effect legitimate monthly PPI cover at a time when their homes are most at risk.

3.h. Mortgage Conduct of Business (MCOB)

The Panel has voiced its concern at the results of the various thematic reviews into the mortgage intermediary market conducted by the FSA. The Panel felt that the level of non-compliance in the mortgage intermediary market was unacceptable and urged the FSA to act swiftly in order to mitigate the reputational effect on the industry. The manner in which the media reports such findings could have unintended consequences with respect to consumer confidence – and the Panel has therefore continued to urge the FSA to communicate its findings in a balanced, controlled and proportionate manner.

Furthermore, the FSA must take, and be seen to take, swift supervisory and enforcement action to improve standards in the mortgage intermediary market, particularly in these times of heightened market uncertainty.

The Panel noted that this was a major area of risk from a consumer point of view, and feels that the FSA's Mortgage Conduct of Business (MCOB) rules do not appear to be achieving their intended objectives.



The Panel is also concerned that the FSA's supervisory and enforcement activities in this area are not being implemented swiftly enough to significantly improve standards. Nor is it convinced that the process for selecting firms for attention, under the Enhanced Small Firm Strategy, will be suitably risk-based and sufficiently "fleet-of-foot" to address the very significant problems existing in the mortgage intermediary sector. A supplementary, targeted and robust programme of action, will also be required if real improvements are to be delivered.

The position in relation to the role and practices of some unregulated introducer/packager firms is also one which the Panel has repeatedly urged the FSA to give priority. Such firms, who hold substantial sums of client money in the form of valuation and arrangement fees, could have the capacity to cause significant consumer loss. Although outside of its formal scope, the Panel feels that there are nevertheless "levers" that the FSA could pull to help mitigate this potential risk.

More generally, the Panel is aware of other ongoing projects in relation to the mortgage sector but feels it is crucial that the FSA truly addresses the underlying problems rather than undertaking yet more reviews which may well only succeed in highlighting issues that are already obvious.

Decisive, effective and authoritative action is needed now if acceptable standards of compliance are to be achieved, against what is a fast-moving economic and regulatory landscape.

3.i. Commercial Insurance Commission Disclosure

In October 2006, the FSA announced that it would undertake thematic work in order to review commission disclosure in the commercial general insurance market. The work was intended to discover if corporate customers were disadvantaged because commission disclosure is currently required only on request. The Panel was opposed to the introduction of commission disclosure in the commercial general insurance market, citing differences between how large and smaller brokers operate. The Panel urged the FSA to distinguish clearly between transparency issues impacting the 'top end' of the larger broker marketplace, and whether there were any underlying failures in the rest of the broker marketplace that needed to be addressed.

In December 2007, the FSA announced that its Cost-Benefit Analysis showed that disclosure was not justified, in line with the Panel's view. The Panel was pleased that the FSA reached the conclusion that formally mandating compulsory disclosure of commission was not required.

However, the issue rumbles on and the Panel remains concerned about the FSA's slow progress to date in delivering a swift, objective and satisfactory resolution on this issue.



Against that background, the Panel was therefore disappointed that the FSA elected to press ahead and publish a formal Discussion Paper (DP08/2) on this and other related matters. We expect that process to generate a wide range of diverse opinion from across the marketplace – and the Panel will monitor carefully how the FSA analyses those submissions to ensure that the interests of smaller firms are given due weight in reaching any final conclusions.

3.j. FSCS Funding Review

The Consultation Paper (CP07/5) was the culmination to the discussion process which took place in 2006/7 regarding the operation of the Financial Services Compensation Scheme (FSCS).

The Panel was forthright in its criticism of the proposals, particularly as it felt that the consultation itself looked at remedies – once the scheme has been invoked – rather than at the reasons for firm insolvencies and the measures that could be taken to ameliorate these.

Because of the failure to conduct root cause analysis, or if it had indeed been undertaken, to ignore its impact, the Panel felt that the Consultation Paper itself was fundamentally flawed. The Panel also urged the FSA to rethink its use of the underlying research and to consider undertaking a further independent review of the design principles and scheme modelling.

The exposure of smaller businesses, particularly within the intermediary sector, to being required to cross-subsidise the failure of large businesses was seen by the Panel as unacceptable and unfair. A key concern remains the possibility that a small broker could be made to pay for the errors of a product provider. The decision to exclude the wholesale market from contributing to a wholesale pool – although taken on legitimate grounds by the FSA – compounded smaller firms' perception that larger firms were being given preferential treatment over their own more-vulnerable businesses.

3.k. Practitioner Panel Survey of Regulated Firms

This year sees the launch of the statutory Financial Services Practitioner Panel's fifth survey of regulated firms, an extensive study incorporating views from a cross-section of firms and sectors in order to provide valuable feedback to the FSA. The survey will be a good opportunity for smaller firms to provide their input – in confidence – on topical issues as well as on general regulatory performance and effectiveness.

This Panel will use the feedback pertaining to smaller firms to commence a constructive dialogue with the FSA and to recommend areas for improvement in relation to its treatment of smaller firms. In that regard, it will once again be imperative that the FSA engages positively and openly with the results from this important and authoritative study.



The marketing agency BMRB has been appointed to carry out the survey on behalf of the Practitioner Panel. The main postal questionnaire will be issued in the second quarter of 2008 - we would strongly encourage those smaller firms invited to participate to take that opportunity and provide their views.

The results are due to be published in the last quarter of the year.

3.l. Panel Effectiveness

During the course of 2007/8, the Panel, in discussion with the FSA, concluded that it could operate in a more efficient and effective way with a slightly smaller membership of (say) 11/12 rather than the traditional 14/15. As a result, it is hoped that participation from members will become more focused, strategic and valuable.

Therefore, the Panel and the FSA have begun to take a more holistic, ongoing and iterative approach to its composition. In practice, this will mean that the membership over time may vary in balance and number, as is necessary to reflect the changing shape of regulation, the smaller firm marketplace and any developing issues.

Overall, the emphasis will be on attracting and retaining the right calibre of Panel member, rather than continuing to adopt a rigid sector-based approach to membership; and then, from that, to devote more time and energy to the key issues affecting smaller firms across the piece.

This system is also designed to compliment, and not simply duplicate, the work undertaken by the statutory Practitioner Panel and the trade associations.

Clearly this means that, from time to time, there might be one or more sectors which will not have a dedicated nominee on the Panel. But that position will be subject to active and open review on a continuing basis. To ensure that any important issues do not get missed, the Panel, through its Secretariat, has reinforced its communication with all sectors to ensure there is a clear mechanism through which substantive issues can be captured.

The Panel is most grateful for the helpful support received from senior management in the FSA to facilitate these changes which it hopes will produce better and more effective engagement in support of those smaller firms whose interests the Panel seeks to represent.

3.m. Financial Ombudsman Service (FOS)

The Panel enjoys constructive contact with the FOS and has appreciated the attendance of Walter Merricks, its Chief Ombudsman, at Panel meetings.

The Panel recently reviewed the FOS Corporate Plan and 2008/2009 Budget. In particular the Panel was pleased with the decision to increase the number of “free” cases from 2 to 3 which should be directly beneficial for many smaller firms. The Panel continues to be sympathetic to the notion of “polluter pays” in the context of any subsequent consideration as to the appropriate balance between case fees and a general levy.



The Panel welcomes the decision to use a task force, specifically set up by the FOS, to deal with small firms' issues more carefully. It should not be assumed that smaller firms have the same knowledge as larger firms and we are pleased that, when appropriate, the FOS is prepared to provide extra guidance and information to such firms.

The Panel considers that the Ombudsman service should sit alongside the legal system as an informal and accessible dispute resolution service. It should not be seen to make policy or impose unhelpful precedents through its case decisions. Otherwise, there is a danger that the FOS could inadvertently undermine the FSA's ongoing shift towards more principles-based regulation.

The Panel also continues to feel that the absence of some kind of appeal process against individual decisions remains an underlying weakness in the system – a view that would be reinforced in the event of any intention to increase the prevailing FOS compensation limits.

The FOS has recently been subject to independent review by Lord Hunt who, among other things, was charged with considering the transparency and accessibility of the service in the context of its role and capabilities. The Panel invited Lord Hunt to its meeting in January 2008 at which members were able to provide input from a smaller business perspective.

Lord Hunt's report was published in April 2008. The Panel is in the process of reviewing his conclusions and recommendations – which will then be used as a basis for future discussion with the FOS and, where appropriate, the FSA.

In any event, the Panel notes that smaller firms continue to be in the overwhelming minority when it comes to FOS caseload, with the bulk of complaints emanating from the larger firm/provider sector.

3.n. Other Issues and Activities

As well as those significant issues summarised in the earlier part of this section, the Panel debated and provided input to the FSA (and others) on various items of relevance to smaller firms. A number of those topics are listed below, for information:

- The FSA's Financial Capability agenda and the concept of Generic Advice;
- State Second Pension (S2P) considerations;
- The possible development of a firm-specific Financial Promotions Register;
- The FSA's approach to Regulatory Transparency;
- MIFID implementation, communication and awareness in the smaller firm sector;
- The effectiveness of the Depolarisation regime and associated Menu/IDD issues;
- The FSA's internal review of Northern Rock;



- The FSA's enforcement strategy in respect of smaller firms;
- The FSA's approach to market failure and cost benefit analyses;
- FSA performance against published service standards;
- The Retail Mediation Activities Return;
- The FSA's Making a Real Difference (staff development) initiative.

In addition, the Panel and/or members thereof, had regular interaction with FSA staff and other stakeholders during 2007/8. For example, amongst others:

- A group of Panel members met FSA Board members;
- Individual FSA Non-Executive Directors attended the Panel as observers;
- The Panel Chairman met bilaterally with the FSA Chief Executive throughout the year;
- The Panel Chairman – alongside the Practitioner Panel Chairman – hosted gatherings of Trade Associations in June 2007 and February 2008 to discuss issues of mutual interest;
- The Panel met the National Audit Office on their respective Value for Money and Hampton Implementation reviews of the FSA;
- The Panel met the Financial Services Consumer Panel;
- The Chairman of the FSA's Regulatory Decisions Committee visited the Panel;
- The Chief Executive and Chairman of the Financial Services Compensation Scheme attended the Panel;
- The Panel Chairman spoke at the FSA Annual Public Meeting in July 2007.



ANNEX A

List of Panel Members (as at 1 April 2008)

Panel member	Position
Mark Rothery Chairman (until 31 May 2008)	Chief Executive, Ancient Order of Foresters Friendly Society
Simon Bolam Deputy Chairman (Chairman from 1 June 2008)	Principal, EH Ranson and Company
Rod Ashley	Chief Executive, Scotwest Credit Union
Stephen Atkins	Director, Freedom Finance
Gill Cardy	Nicholls Stevens Financial Services
Paul Etheridge	Chairman, The Prestwood Group of Companies
Phil Gray	Chief Executive, Beverley Building Society
Chris Gomm	Director, Gomm Insurance
Bella Hopewell	Managing Partner, C Hoare & Company
Philip Ireland	Director, TD Waterhouse Investor Services
Keith Morris	Chief Executive, Sabre Insurance Company
Guy Matthews	Chief Executive, Sarasin Investment Funds



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