



Financial Services Authority



*Smaller Businesses  
Practitioner Panel*

**Annual Report 2008/09**



# Chairman's Foreword



This is my first Annual Report as Chairman of the Smaller Businesses Practitioner Panel, following my appointment in June last year. This document is shorter than previous versions to make it more focussed and certainly not as a result of the Panel doing less over the last 12 months.

During that period the Panel has continued to meet frequently and has considered a number of significant issues of relevance to the smaller businesses community offering both support and challenge to the FSA as appropriate. The Panel continues to value its independence from the FSA but enjoys regular frank and positive discussions with FSA senior management.

I am delighted that the Panel's Secretariat has recently re-started a programme of regular communication with Trade Associations and, while continuing to value our close working relationship with the Practitioner Panel, I continue to look for ways in which the Smaller Businesses Practitioner Panel can work more closely with the Consumer Panel on matters of mutual interest.

I would like to take this opportunity to thank my fellow members of the Panel, all of whom are senior practitioners within the financial services industry, and who have generously given their time and expertise in order to make what I believe to be a very positive contribution to the work of the FSA in the interests of smaller businesses.

I commend the Panel's Annual Report for 2008/09 to you.

A handwritten signature in black ink, appearing to read 'S. Bolam', with a horizontal line underneath.

**Simon Bolam**  
**Panel Chairman**  
**July 2009**



## Introduction and 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.

Membership of the Panel comprises senior practitioners drawn from smaller firms operating across the main sectors of regulated business. These currently include building societies, credit unions, general insurance and mortgage intermediaries, insurance companies, stockbrokers, investment managers, banks and independent financial advisers. The Panel Chairman, since June 2008, has been Simon Bolam, who has sought to introduce a number of changes which, it is hoped, will help the Panel to operate more effectively and, in turn, to add more value to the FSA and to the smaller businesses community.

## Panel Effectiveness

On his appointment as Chairman, one of Simon Bolam's first considerations was to increase the effectiveness of the Panel to offer greater support and challenge to the FSA. In this regard, a number of strategic measures were introduced, supported by a series of specific actions and processes:

- the Panel has aligned its agendas more closely with those of the FSA Board, Executive Policy Committee and the Practitioner and Consumer Panels so that similar issues can be identified and discussed at the same stage. In parallel to this, however, the Panel also proactively sets its own agenda in order to enable consideration of what, in its view, are the key smaller firm issues at any time. This is done both at meetings of the full Panel and through sub-groups when, for example, the issues are relevant only to a specific sector;
- in more recent months, the Panel decided to discontinue submitting monthly reports to the FSA Board as it did not consider this to be the most effective means of communication. As an alternative the Panel decided to rely on regular liaison with senior FSA management and, exceptionally, sending a note to the Executive Policy Committee if urgent high level attention is required. The Panel has considered this approach to be a more effective and efficient form of communication.

However the attendances of Adair Turner, the FSA Chairman and Brian Flanagan, a Non-Executive Director, at the April Panel meeting did raise concerns that there should still be some form of direct communication with the Board highlighting issues of significant importance such as "early warnings" on market issues of a particularly significant nature. As a result the Secretariat is actively considering more effective methods to keep the Board advised of the principal/significant issues being discussed by the Panel;

- the Panel also no longer replies to Consultation Papers unless the subject contains significant smaller firm issues which have not been taken forward by the relevant trade bodies or where market controversy persists; and
- instead, the Panel seeks to be involved, “under the radar” with any relevant regulatory proposal from the point of its conception to the point before which the final proposal is presented to the Board. The Panel’s role is, however, advisory and it completely accepts that its views will not always accord with those of the FSA, and will not always be accepted. Having said that the Panel is greatly encouraged that its expertise is being increasingly called upon at the very early stages of emerging projects, with its views being seen as helpful and supportive. Such positive engagement has had a very positive effect on the motivation of Panel members who now sense that their individual and collective contributions can make a real difference.

## Relationship with the FSA

Although the Panel is, and must remain, independent from the FSA, relationships and communication with FSA senior management have continued to develop positively. Lesley Titcomb attends each monthly Panel meeting in her capacity as Director, Small Firms and Contact Division, and provides an update on the Small Firms Division’s work. When appropriate, Lesley also liaises with Panel members between meetings, either directly or through the Secretariat, to address actions raised at Panel meetings. The Panel Chairman continues to hold bi-monthly bilateral meetings with Hector Sants, the FSA Chief Executive, at which a wide range of mutually relevant issues are discussed in a highly constructive and positive manner.

An increasing number of FSA senior managers, including managing directors, have attended Panel meetings during the year and presented on a range of issues, some of which are considered in more detail later. The Panel values, in particular, the support it has received from Hector Sants, Jon Pain, the FSA’s Managing Director, Retail Markets, Lesley Titcomb and their teams.

Going forward, six-monthly bilateral meetings will now be held between the Panel Chairman, Deputy Chairman, Jon Pain and Lesley Titcomb to appraise the Panel’s performance and to look forward at forthcoming FSA initiatives which will be of specific interest to the Panel. As part of this ‘appraisal’ process, the Secretariat, at the Panel’s request, has developed a feedback form which is now being sent to anyone who makes a presentation or submits a paper to the Panel. This asks, inter alia, whether the presenters found the Panel to be informed on the subject matter, whether they found the Panel’s comments helpful and whether they intend to make any changes to their proposals in light of the Panel’s comments. This type of information is expected to be very useful when measuring the Panel’s success.



## Panel Objectives

The Panel has four main objectives:

- to utilise the Panel's expertise as a source of information as to the likely impact of any relevant regulatory proposal from the point of its conception to the point before which the final proposal is presented to the FSA Board;
- to seek to identify the real issues as they relate to smaller businesses and then work closely with the FSA, under the radar, to look for ways in which the position could be improved;
- to produce an Annual Report that is useful and relevant to its intended audience; and
- to be considered by the FSA to be 'advisory', offering both challenge and strong support.

## Panel expertise and its links with Trade Associations

The breadth of experience of the Panel's membership means that it is able to offer wide ranging expertise to the FSA as to the likely impact of any relevant regulatory proposal. The range of this expertise is increased by Panel members' links with the various trade bodies, and the FSA's willingness to engage with the Panel at an early stage on a confidential basis.

The Panel seeks to avoid duplicating the work of Trade Associations wherever possible. For this reason, as already outlined, it no longer responds to FSA Consultation Papers unless the subject matter contains significant smaller firm issues which have not been taken forward by the relevant trade bodies, or where particular market controversy persists.

To be effective, the Panel membership must be sufficiently wide to ensure that all major sectors are appropriately represented. Although the current membership is considered to be completely appropriate, succession planning continues to be an important consideration and, in liaison with the Trade Associations, the membership is continually reviewed.

## Matters considered by the Panel during the year

The Panel continues to meet on a monthly basis throughout the year (except in August) and has considered a wide range of topics. These have included:

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| • Treating Customers Fairly                  | • Enhanced Smaller Firms Strategy      |
| • Retail Distribution Review                 | • Mortgage Fraud                       |
| • Regulatory Transparency                    | • Quality of Advice (Outcomes) Project |
| • Commercial Insurance Commission Disclosure | • Retail Strategy Review               |

- Mortgage Arrears Handling, Responsible Lending and Quality of Advice
- Review of Insurance Mediation Directive
- Banking Reform
- Financial Capability Strategy
- FSA Business Plan 2009/10
- Changes to Capital Requirements Directive
- Retail Investments Policy
- FSCS Funding Tariff Changes
- Retail Mediation Activities Return
- Financial Risk Outlook 2009
- Payment Protection Insurance
- Regulating Sale and Rent Back
- Regulatory Fees for Smaller Firms
- Stress and Scenario Testing
- Supervision of Low Impact Firms
- FOS Corporate Plan and Budget 2009/10
- Global Regulatory Landscape
- Prudential Rules for Personal Investment Firms
- Mortgage Intermediaries and the Approved Persons Regime
- FSCS Limits – Temporary High Deposit Balances

The Panel was very supportive on some of these issues such as, for example, the Enhanced Smaller Firms Strategy but expressed concern at a number of others. These are considered in greater detail below.

## Treasury Select Committee

The Panel Chairman, together with the Chairman of the Practitioner Panel and the then Acting Chairman of the Consumer Panel appeared before the Treasury Select Committee on 15 December 2008 as part of its investigation into the “Work of the Financial Services Authority 2007-08”.

## Communication with Stakeholders

The Panel recognises the importance of relevant and timely communication with its stakeholders but considers that documentation issued in previous years may no longer be the most appropriate medium. The Panel’s aim is therefore to produce better, rather than less communication, and it is hoped that the revised format of this Annual Report helps to achieve that aim.

The Panel also intends to support the FSA through continuing its regular liaison with Trade Associations. The format and usefulness of contact with the Trade Associations has been reviewed in recent months and, going forward, communication will be more structured and co-ordinated than previously. This will involve a two way dialogue so that value is added both to the Panel and to the Trade Associations. In parallel, the Secretariat is developing a communication network within the FSA to ensure that external communications are consistent and to avoid duplication. The FSA has welcomed this initiative.





The Panel works closely with the Practitioner Panel, co-ordinating agendas and feedback as appropriate. The Panel Chairman also sits as an ex-officio member of the Practitioner Panel. Jointly with the Practitioner Panel, the Panel held two Trade Association briefing events during the year. These were well attended and provided forums for open

and constructive discussions on a number of topical issues. The Panel appreciates, and greatly values, this close working relationship with the Practitioner Panel and is keen to continue this whilst also seeking opportunities to work more closely on matters of mutual interest with the Consumer Panel.

During 2009, the Panel intends to fulfil its communication objectives in a number of ways:

- more focussed feedback to the FSA in respect of policy proposals. In particular the Panel recognises that more specific comments are much more helpful than generalisations;
- more focussed two-way communications with the Trade Associations so that value is added to both the Trade Associations and to the Panel;
- through the development of a communication network within the FSA. This will help to ensure that the FSA and the Panel work more effectively together, sharing information in a timely manner and then conveying it to any third parties in a consistent and coherent manner;
- through regular liaison with FSA senior management in order to discuss items of mutual interest and also to evaluate the success of the Panel;
- through a strategic review, which is currently underway, of the Panel's website, to ensure that it meets the needs of its intended audience and provides easy access to other sources of information useful for smaller businesses. This is likely to include links to the smaller businesses section of the FSA's website; and
- through timely communication with the Executive Policy Committee or the appropriate senior management, when significant issues are identified which, in the Panel's view, could have a substantial impact on smaller businesses.

## Practitioner Panel Survey

The Practitioner Panel published the results of its Fifth Survey of the FSA's Regulatory Performance in December 2008 and, in relation to smaller firms, these highlighted a number of areas where improvements could be made:

- smaller firms in particular still perceive the FSA to offer poor value for money and tend to be less satisfied than larger firms who experience a much closer relationship



with the FSA. Smaller firms are also more likely to be concerned about retrospective regulation (as a result of the move to more principles based regulation), more inclined to agree that the FSA focussed on consumer protection to the detriment of other objectives and more likely to feel that regulation was not in consumers' interests;

- smaller firms felt that consultation documents and the monthly regulatory email were insufficiently targeted and they felt overwhelmed by the volume of material received. There was also considerable dissatisfaction with the FSA website;
- smaller firms were much more likely to perceive regulation as a burden and more likely to agree that the costs of compliance were harmful to their firm and had resulted in them reducing the types of business they conducted; and
- there was concern among smaller firms that the FSA does not show an understanding of them in developing regulatory policy and does not consider the resultant impact of regulation on them. Smaller firms are also more likely to consider the FSA to be adversarial in its approach to supervision.

The Panel, however, was greatly encouraged by the manner in which Lesley Titcomb, the FSA's Director, Small Firms and Contact Division and her team are already seeking to address these concerns. At the Panel's request Lesley presented a detailed paper to its April meeting on this subject that grouped together the main areas of concern under the headings of "General", "Communications", "Burden of Regulation" and "Supervision/Understanding of Business". The Panel was impressed by the progress already made and has offered its services to help with this extremely important work.

## Current Issues

The Panel is actively working with the FSA on the following issues:

### Cost of regulation

- how best to manage the potential and significant FSCS liabilities falling upon smaller businesses. Potentially these payments could render many thousands of smaller firms insolvent and in consequence significantly reduce consumer choice particularly in the intermediary sector; and
- how to get the FSA to appreciate that fee increases, at the very high levels imposed in recent years, are simply "unsustainable" to smaller businesses operating in areas that have not contributed to the current problems. Although it is acknowledged that the smallest firms were not faced with fee increases this year, the size of the increases which other firms, with particular reference to mid-sized firms, are being asked to bear during such a severe recession, are perceived as unreasonable.



## Regulation

- to work closely with the FSA to monitor the overall burden of regulation during a period when very many smaller firms are struggling to trade through the difficult economic conditions caused by the recession.

For example in the years 2011/12, firms affected by the Retail Distribution Review (RDR), involving examinations and added costs, could additionally be faced with higher capital requirements and sizable FSCS payments. Such a convergence of major requirements could easily have serious unintentional consequences on the sector;

- to intervene where there is an apparent lack of understanding that a 'one size fits all' solution is inappropriate.

For example, within the asset management sector, small investment management firms are regulated as if they were banks because they are caught by European directive definitions; but they are also treated under the RDR as if they were IFA firms with no specific consideration of their particular sector characteristics. Consequently, they consider they are getting the 'worst' of all worlds;

- the Panel has been very aware of the difficulties facing mortgage intermediaries in the credit crisis and is particularly concerned by the large number of firms leaving the industry. The Panel therefore welcomes the FSA consultation on mortgages due in September 2009 and the debate on the Turner Review. The Panel is keen to work closely with the FSA as these important projects develop;
- the Panel urges the FSA to continue its vigilance towards the prevention of 'phoenixing'; and
- the Panel will continue to monitor the number of initiatives undertaken by the FSA. The Panel considers it vital that all initiatives are planned in a more obviously joined-up way and that a thorough cost-benefit analysis and market failure analysis be undertaken in advance of all significant initiatives even when no rule changes are proposed.

## Enforcement

- the Panel has observed the increasing number of enforcement cases against small firms and believes that these will always have a serious and direct impact on the owner of the firm, whereas for large firms it is rare to see any CEO or director named as part of the penalty action. The Panel, although understanding the difficulties in establishing corporate responsibility, is pleased to note that the FSA is increasingly bringing enforcement action against the holders of the 'apportionment and oversight' functions.

## Communications

- As already outlined, the Panel is very keen to support the ongoing work undertaken by Lesley Titcomb and the Small Firms & Contact Division towards improving communications with smaller firms. Such initiatives greatly assist smaller firms who, by their very nature, have limited resources and time to manage the overall burden of regulation. The Panel therefore acknowledges and appreciates the considerable improvements made by Lesley and her team;
- significant improvements have been made to the FSA's website, but feedback indicates there are still some navigational difficulties which would justify further attention;
- the Panel provided positive feedback in respect of a number of communications, including those relating to Insurance Conduct of Business (ICOBS), the Financial Capability programme and Money Guidance. These communications were considered to be effective because of their clarity and brevity; and
- the Panel would strongly encourage the FSA to organise more competitively priced seminars at locations that are easily accessible to smaller firms.



## Good results

- Regulation of the 'sale and leaseback' sector is welcome. The Panel has asked the FSA to ensure these firms are 'fit and proper' and to enforce the rules so that customers are treated fairly and understand the arrangement they are making;
- the Panel welcomes the consultation on the regulation of personal loans, as this sector has many of the characteristics that have caused problems for first mortgage advice, such as high income multiples and a relaxed attitude to suitability and affordability;
- the Panel welcomed the changes for ICOBS and pure protection products and has complimented the FSA team for its communication work and the 'ICOBS at a glance' leaflet which sets out a refreshingly clear approach to the changes for all to understand. The Panel believes that more information should be distributed in this way and not buried in lengthy technical communications such as 'PS08/9 – extending the common platform to non MIFID firms' which, it believes, is an example of a document that was particularly difficult to read and therefore highly "indigestible" for smaller firms with few resources;



- the Panel greatly welcomes the cut back on the retail agenda;
- the Panel was asked to input into the FSA's Business Plan and, in particular, it acknowledges and appreciates the positive manner in which Jon Pain (Managing Director, Retail Markets) has since reacted to the Panel's views and concerns; and
- the Panel was grateful that its concerns associated with the draft wording of the Financial Risk Outlook were recognised at a senior level with appropriate amendments being made.

## Secretariat Support

During 2008 the Secretarial support provided to the Panel changed as a result of the integration of the Independent Panels Secretariat and Company Secretariat teams.

The improvements resulting from these changes have been significant. This is greatly welcomed.

The Panel would like to thank Stuart Mead, Secretary to the Practitioner Panels and Ann Smith, Manager, Corporate Services, in particular, for their enthusiastic and effective work towards implementing the many changes arising from the Panel's commitment to improve its effectiveness and value to the FSA.

## Panel Membership

Since the last Annual Report, there have been a number of changes to the Panel's membership. Mark Rothery, Rod Ashley, Stephen Atkins, Chris Gomm, Bella Hopewell and Philip Ireland have all left the Panel. Our thanks go to them all for their valuable contributions to the Panel's work.

The Panel has been delighted to welcome Ian Dickinson, Peter Evans, Andy Smith, Andrew Turberville Smith and Sally Laker as members and is confident that they will all make a positive contribution to the Panel's proceedings. The Panel also looks forward to welcoming Fiona McBain as a member with effect from 1 August 2009.

A full list of current Panel members can be seen at Appendix 1 below.

## Looking Ahead

At the time of writing this Annual Report, economic conditions are extremely difficult. Unsurprisingly, this has a significant impact on those issues which the Panel considers to be the most important for the foreseeable future:

- helping smaller firms to manage their regulatory responsibilities through very tough trading conditions;
- closely monitoring regulatory changes, particularly following the recent failures in the banking/building society sectors, to ensure they are not disproportionately or inappropriately focussed towards smaller businesses;
- lobbying hard for the exemption of smaller regulated businesses from having to cross-subsidise FSCS liabilities arising from the failure of institutions in other sectors;
- working internally with the FSA to manage the potentially huge FSCS liabilities falling upon smaller businesses in two/three years' time;
- convincing the FSA that it cannot, in the middle of a recession, just continue to expect smaller businesses to pay higher than inflation increases in regulatory fees;
- working with the FSA to ensure a more joined-up approach is taken when various strands of work are being undertaken by different divisions which, when implemented, are likely to affect the same regulated firms at the same time; and
- obtaining more reassurance that the FSA Board fully understands the needs of smaller businesses on a similar basis as it clearly understands the 'larger' community.



# Appendix 1

## List of Panel Members (as at 1 July 2009)

Panel Member	Position
Simon Bolam Chairman	Principal, EH Ranson and Company (insurance brokers)
Phil Gray Deputy Chairman	Chief Executive, Beverley Building Society
Gill Cardy	Director, Professional Partnerships (financial training and consultancy)
Ian Dickinson	Principal Director, The Brunson Group (insurance brokers)
Paul Etheridge	Chairman, The Prestwood Group of Companies (financial planners and investment advisers)
Peter Evans	Chief Executive, Police Credit Union
Sally Laker	Managing Director, Mortgage Intelligence (mortgage intermediary network)
Guy Matthews	Chief Executive, Sarasin Investment Funds (investment management services)
Keith Morris	Chief Executive, Sabre Insurance Company
Andy Smith	Managing Director, Cardale Stockbrokers
Andrew Turberville Smith	Chief Operating Officer and Finance Director, Weatherbys Bank Ltd



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