

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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James Sergeant (Ref: CP09/21)
Financial Services Authority
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30th October 2009

Dear James

CP 09/21: Transparency as a Regulatory tool and Publication of Complaints Data

The Consumer Panel has long believed that greater transparency could engender higher levels of compliance with regulatory requirements. Through greater disclosure, consumers are more able to take an informed view about the firms with which they are dealing. We therefore welcome the proposals in the consultation paper that firms be required to publish their own complaints data. Taken together with the FSA's and the FOS's own initiatives in this area, this is a considerable increase in information at consumers disposal. However we do not want the debate on transparency to end here. We would encourage the FSA to be proactive in identifying further areas where consumers might benefit from improved disclosure.

The Feedback statement makes the point that responses from the industry and those from consumer groups were diametrically opposed. This is unsurprising. Consumers have a great deal to gain from increased transparency and poorly performing firms have much to lose. In addition industry has much more resource to direct to lobbying the FSA. We would like to be satisfied that the FSA is giving the consumer interest due weight in the face of pressure from the industry. We would like to encourage the firms that do perform well to embrace the opportunity afforded by transparency as the performance of good firms will be highlighted.

We note that the FSA will not publicly disclose information that it believes would infringe statutory restrictions, including those set by FSMA. We appreciate that the FSA is constrained by the powers given to it in FSMA but we believe that there are issues to be explored with regards to the statutory prohibition in FSMA. Section 348 of the Act prevents the FSA from disclosing confidential information. However s349 of FSMA allows regulations to be made by the Treasury for the purposes of exercising a public function. We believe that where the FSA is taking action against a firm, consumers deserve to know this before the enforcement process has run its course. We would therefore like the FSA to make better use of this provision in the act as a vehicle for facilitating further disclosure in the public interest and we would

also challenge whether the FSA is fully making use of the powers contained in FSMA.

We broadly support the proposals to publish complaints data. The differences in performance between firms in this area can be significant and publishing this information will enable the FSA to better achieve its statutory objectives by encouraging firms to improve their performance as regards complaint handling. We believe this will encourage higher levels of compliance. The proposals for contextualisation will enable customers to make a fair comparison. However, in our response to the DP we argued that information needs to be presented in a way which consumers understand and therefore needs to be presented by brand, not simply by firm. We are disappointed that the FSA has not been more prescriptive about this.

We are disappointed that the FSA has backed off from 'naming and faming' and we believe that alongside 'naming and shaming', this also has a role to play. We note that the FSA has received strong opposition from the industry. This is no reason not to do it. FSA needs to be seen to be doing its job. In the wake of the financial crisis, it is important that the FSA does not appear ineffectual as this will damage public confidence in the system. At the same time as the FSA is increasing enforcement penalties, naming and shaming could also be an effective tool for credible deterrence. We would encourage the FSA to take visible and tough action against firms and individuals who are in breach of their obligations. Similarly we continue to support the creation of a financial promotions register for reasons which we have explained in the past and will continue to urge the FSA to introduce one.

We welcome the decision to publish OIVOPS but would ask that the FSA do so in a more visible way. We also note that where a firm voluntarily varies its permission, this would not be publicised. In practice we expect that firms who suspect that the FSA might impose an OIVOP may vary their permission voluntarily (VVOP) in order to escape censure. We would ask the FSA to consider this point and to make a highly visible note on the Register entry of any firm with varied permission.

We also see a role for the new consumer education authority to explain the published complaints data to consumers. Money made clear can provide useful advice to consumers to enable them to interpret the data effectively.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Phillips', with a long horizontal flourish extending to the right.

Adam Phillips

Chairman

Q1: Are you content with the information to be published by firms under the proposed complaints data publication rules?

We view the proposals as an acceptable starting point, to be reviewed later.

Q2: Do you agree with the proposed application of the complaints data publication rules to firms that receive 500 or more complaints in the relevant reporting period?

It is estimated that the provisions would extend to 200 firms and 95% of complaints.

We disagree fundamentally with this. The FSA itself has recently acted against no fewer than 11 stockbroking firms over serious misconduct, yet not one of these attracted 500 complaints. We understand the case for publicising data on high profile household name firms, but believe that in setting the threshold so high the FSA has overlooked the seriousness for consumers of, say, even 50 complaints about the same broker or local IFA. Since all authorised firms are required to maintain a record of complaints, we do not see that the costs involved in making details public would be unreasonable.

Q3: Do you agree with the proposals on joint reporting, and the proposals on how groups and brands should be shown?

When publishing complaints data firms will list the brands covered but will not be required to list complaints by brand. We believe it would be advantageous for consumers to have details of complaints by brand, since despite having the same parent company, brands often have separate management and are regarded separately by customers. For example publishing complaints data of Santander would mean little to many consumers. Publication of Abbey's complaints and those of Alliance & Leicester would be much easier to understand

Q4: Do you have any requests for further guidance that the FSA could offer about which complaints should be included in firms' complaints returns?

Complaints are defined in the handbook but some firms may over report due to their own policies. We do suggest that this is monitored and reviewed in the future as consumers need to be sure they are drawing the correct conclusions from the figures they are presented with. We wish to be reassured that there is a level playing field so that consumers can draw appropriate conclusions from the information in front of them. We suggest that the FSA might wish to review the definition of complaint and ensure that firms are applying the definition consistently.

Q5: Do you agree that the rules linking the complaints reporting period to each firm's accounting reference date should remain unchanged?

We see no objection to this if it makes the system more convenient for firms, but we say this on the basis that the FSA must be alert to the possibility that firms might amend their accounting date to manipulate their position in any table of complaints, and in the event of evidence to this effect we trust that the FSA would review this provision.

Q6: Do you agree with the proposed timetable for implementation?

Figures will be published from July 2010. We are not convinced of any valid reason why this should be so late when firms are already required to submit complaints returns to the FSA, thus making the data available now. We think Q6 2010 is a more attractive option.

Q7: Do you agree with the proposed requirements on firms to provide contextualisation data alongside their complaints reports? If not, what alternative data would you suggest?

We agree with the proposals, subject to a review after a reasonable period. We would also suggest that consideration be given to reporting the type of customer, e.g. are significant numbers of complaints arising from similar groups of customers?

Q8: Do you have any comments on the cost benefit analysis?

No.

Q9: Question for firms: Is publication of complaints data likely to stimulate efforts to reduce valid complaints from arising? If so, what extra costs would action to reduce valid complaints entail? What effect on the volume of valid complaints do you expect as a result of these actions?

N/A.