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Dear Mike,

CONSUMER PANEL RESPONSE TO OECD CONSULTATION ON FINANCIAL CONSUMER PROTECTION MAY 2013

The UK's Financial Services Consumer Panel is pleased to respond to the draft of the Effective Approaches to Support the Implementation of the G20 High Level Principles of Financial Consumer Protection. Given the short timescales for the consultation we have restricted our comments to a few high-level observations on specific issues.

1. Principle 4 – Disclosure and Transparency

The Panel supports the underlying assumptions in the report, particularly the concept that information must be 'full, clear and not misleading' and the idea that information must be presented in the format, time and volume that best facilitates informed decision making by consumers. We would also add that there should always be consideration of the medium of delivery, and that any rules should be drafted in such a way that they are flexible enough to accommodate different delivery channels, such as electronic or phone-based, and it is not assumed that disclosure will be paper based. Otherwise such rules risk becoming obsolete even before they are implemented.

We believe that effective point of sale disclosure should include the nature and extent of charging and the nature of 'advice'. Additionally, there should be information for the consumer about what to do when things go wrong – how to complain, what forms of redress are available and how to access alternative dispute resolution systems.

However, the Panel does not believe that the concept of disclosure alone is sufficient to protect consumers from conflicts of interest. Practically, it is unrealistic to expect an average consumer to understand fully the implications of links between financial services providers and distributors, particularly in a situation where the customer may be purchasing cross border. For this reason, the Panel has argued for financial services firms to have a duty of care to their customers based on the common law Fiduciary Duty. For further information on its views in this area, please see the Panel's paper produced in the context of the Financial Services Act 2012¹.

¹ 'Fiduciary Duty - Consumer Panel Position Paper', February 2012

The Panel strongly supports the use of consumer research, both before and after implementation, and in particular the use of mystery shopping and behavioural research to identify what approaches to disclosure are most effective.

2. Principle 6 – Responsible Conduct of Business

Following on from the previous section, the Panel supports conduct of business measures to protect consumers from conflicts of interest, and is very supportive of the underlying assumption that *'duty of care is necessary in addition to improved transparency because consumers have bounded rationality and therefore cannot be expected to always make decisions that are in their own interest'*.

There is evidence that misalignment of incentive structures and poor managerial oversight drive widespread mis-selling in the financial services industry. Recent research by the UK's Financial Services Authority across a variety of types of firm showed that in many cases management did not properly identify how their incentive schemes might encourage staff to mis-sell, and that in fact many firms did not understand their own incentive schemes because they were so complex².

On these grounds, the Panel particularly supports the banning of commission payments for advisers. During the debate around the Markets in Financial Instruments (MiFID) Directive last year, the Panel, along with a number of other consumer organisations, wrote to key MEP's, stating:

*'Commission creates a clear conflict of interest between consumers and advisers. Adviser remuneration based on sales targets and commission creates a bias towards the products paying the highest levels of commission and a bias away from courses of action that are right for the consumer'*³.

Initial training of financial services staff in technical, commercial and administrative aspects is a starting point for a well-regulated market, but the Panel believes in stronger rules including compulsory Continuous Professional Development. It has also called for a mandatory and independent professional standards body for bankers, to provide credible deterrence for unacceptable behaviour and risk taking⁴. Such a body should also set an ethical code to impose robust standards of behaviour and, in particular, address reckless misconduct.

A further strengthening of professional standards would provide support for whistleblowers, and the Panel favours the use of monetary rewards for whistleblowing, subject to effective screening of reports.

3. Principle 9 – Complaints Handling and Redress

The Panel is strongly in favour of access to strong Alternative Dispute Resolution (ADR) structures and has said so in a number of consultations at EU level. It has for some time been concerned about the fragmentation of cross-border ADR and believes that this should be a priority area for action by the European Commission so that rights to provide financial services cross border are accompanied by obligations

² *Guidance Consultation 12/11: Risks to customers from financial incentives*, Financial Services Authority, September 2012

³ *Letter to MEPs from the Consumer Panel, Which?, VZBV, BEUC, Danish Consumer Council, Norwegian Consumer Council*, 26 September 2012

⁴ *'Bankers should be licensed by professional body says Panel'*, press release 26 September 2012

and mechanisms to deal with complaints from consumers when problems arise. It also strongly believes that ADR bodies should be independent (as is the case with the Financial Ombudsman Service in the UK) rather than industry led and that decisions of the ADR body must be binding on the industry.

The Panel also supports the publication of meaningful complaints data. This should include named firms, published within the context of their peers, as well as an indication of which products attract the most complaints. Examples of this type of reporting are given in the annual review of the UK Financial Ombudsman Service⁵.

We look forward to seeing the final version of the report and would be happy to discuss any of the points discussed above in more detail.

Yours sincerely,

Adam Phillips
Chair, Financial Services Consumer Panel

⁵ *Annual review of consumer complaints about: insurance, credit, banking, savings and investments: financial year 2012 | 2013*,
Financial Ombudsman Service