

Financial Services Consumer Panel response to BIS consultation:

‘Empowering and protecting consumers:
Consultation on institutional changes for
provision of consumer information, advice,
education, advocacy and enforcement’

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

The Financial Services Consumer Panel welcomes the opportunity to comment on the questions posed in the consultation on Empowering and Protecting Consumers¹. As a statutory body under the Financial Services and Markets Act 2000 the Panel advises the FSA on the interests and concerns of consumers and reports on the FSA's performance in meeting its objectives. This response focuses in particular on the consumer representation, empowerment and protection aspects of the consultation.

Key points

- We can see the merit of reducing the potential for duplication, strengthening the evidence base, and concentrating scarce resources on a trusted and universally known 'brand', but are concerned that reducing the number of consumer advocates may limit the extent to which the range of consumer views and concerns are represented. Whilst Which?, Age UK, and Shelter will still be in the environment, Consumer Focus has been an effective advocate on financial services issues.
- We have great respect for the quality and depth of Citizens Advice's evidence-based advocacy and the major contributions it has made to improving protection for the consumers of financial services. However, whilst recognising that some change may be necessary, we are not convinced that the case has been made for concentrating future resources for consumer advocacy on Citizens Advice.
- Its current work, drawing on evidence from its client base, focuses on the needs of the most vulnerable. The consultation document is silent on how it will reposition its work in order to provide effective consumer advocacy for the whole range of consumers.
- The consultation is also silent on the subject of resources. Citizens Advice is a charity and its membership consists of Citizens Advice Bureaux which are under considerable financial pressure in the current environment and will look to their national body for support. An overall reduction in resources may lead to financial services consumer advocacy being sidelined. This is particularly likely for subject areas which are not of central concern to those who currently use CABs. The document provides no information on how to protect against this happening.
- We believe the Government should start from the point of view of asking what structure would best represent the consumer advocacy needs of all customers, and resource it appropriately.
- In the light of the abolition of the OFT and the creation of the CMA, we believe that the best way of ensuring effective protection for consumers of financial services is give the forthcoming FCA both concurrent competition powers and responsibility for the sort of market studies carried out by the OFT.

¹ <http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/e/11-970-empowering-protecting-consumers-consultation-on-institutional-changes.pdf>

Introduction

The Consumer Panel is not convinced that the current consultation addresses the fundamental issues relating to the consumer landscape. It believes that the Government should consider the following three objectives before agreeing which bodies are appropriate to achieve these objectives.

Representation

- Any review of the consumer landscape should address the need to retain diversity of voice, reflecting the diversity of consumers in all socio-demographic sectors, whilst using resources more effectively by removing duplication. It is important to at least retain, if not improve, the depth and breadth of advocacy available in the current consumer landscape.
- There is little evidence in the consultation document that 'simplifying and streamlining' the consumer landscape will produce better outcomes for consumers. If the current landscape is perceived as too complex, and we would welcome evidence that this is the case, the document should have evaluated the benefit for consumers of a range of possible solutions.
- The Panel is concerned that there is little detail of how the Citizens Advice and Consumer Focus advocacy functions will be combined, and how they will be resourced. We would wish to see a commitment that mainstream financial services issues will remain an explicit priority and will be adequately resourced, including both at domestic and international (particularly EU) levels.
- The merging of the CAB and Consumer Focus bodies may have the potential to improve consumer representation. This is likely to be best achieved by building on the strengths of both organisations. There is not enough detail in this document to see how this will be achieved and without it the Panel is not in position to make a judgement about the likely outcomes for all consumers.

Empowerment

- Although financial services are not explicitly included in the remit of this review, the Panel believes that financial wellbeing is part of the consumer wellbeing agenda, and that failing to consider consumer financial education, alongside information, advice and advocacy, in this document, is a missed opportunity
- The Panel has frequently warned of the danger that increased consumer education can be seen as a panacea for the problems consumers face in purchasing financial products. However, there is room for improvement in this area and this review offers an opportunity to achieve greater impact by improving coordination.
- This could be done by means of a consumer education liaison group, incorporating organisations such as Citizens Advice, FSA/FCA, Money Advice Service and the Office of Fair Trading (OFT). Such a liaison group would help to avoid duplication and ensure adequate coverage of all sectors.

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- Given forthcoming policy decisions in the consumer credit and competition regimes, it's difficult to make specific recommendations, but we are keen to see outcomes from these decisions that maintain or improve on current levels of consumer power.

Protection

- The Panel has concerns that other initiatives in the consumer environment raise questions about consumer protection that this review does not address. The starting point should be that it is crucial that at least the same level of enforcement is maintained in the future as is in place now. It is not possible to conclude that this will be the outcome of the review.
- It is currently proposed that the FCA will not have concurrent competition powers, but will have a duty to promote competition and may take responsibility for the regulation of consumer credit. Currently the OFT carries out market studies; the document proposes that this function will pass to the Competition and Markets Authority (CMA). We are concerned that because of the wide range of the CMA the sort of market studies carried out in the past by the OFT are unlikely to happen. We therefore propose that the FCA should have concurrent competition powers with the CMA and will therefore be able to conduct market studies in financial services.
- The Panel believes in future that in order to encourage effective enforcement the FCA should be represented at the Trading Standards Policy Board.

Comments on specific questions:

QUESTION 7. Do you think that the private and voluntary sectors, together with local authorities, will respond to any winding down of CCAS (Consumer Codes Approval Schemes) with effective alternative systems of accreditation?

QUESTION 8. What are the lessons learned from the operation of CCAS which may help in establishing (or revising) voluntary schemes in the future?

QUESTION 9. What is your view on transposing CCAS-approved codes into standards and related documents such as those published by BSI?

QUESTION 10. What characteristics would a Kitemark-based code certification process need to have to meet industry requirements?

QUESTION 11. What is your view on extending the Primary Authority concept to code certification?

The Panel believes there is a risk that the consumer codes process will disappear under the new regime. As a specialised and focused regulator of financial services in future the FCA should have a role in approving any relevant codes of practice. This will become particularly pertinent if it becomes responsible for the regulation of consumer credit.

QUESTION 12. Do you consider that, subject to decisions by individual Departments, the vision of combining as many sectoral advocacy functions as possible in the Citizens Advice service is the correct one?

The Panel believes its own consumer advocacy function is effective because, although independent, it is embedded within the FSA. It also benefits from being backed by statute. We are pleased to note there is no suggestion that this should change. We understand the reluctance of other sectoral advocacy functions to be included with the Regulated Industries Unit. We are concerned that the exclusion of financial services advocacy from the Regulated Industries Unit may lead to financial services issues, which can be complex and technical, not receiving the attention or level of scrutiny they require within the new body, however it is configured.

QUESTION 14. In the light of all these considerations, do you agree that Consumer Focus should be abolished and its sectoral and some of its general advocacy functions be transferred to the Citizens Advice service? What are your views on alternative approaches?

As outlined in our introduction, the Panel believes it is not appropriate to say at this stage whether Consumer Focus should be retained or abolished. First of all, questions have to be answered about what is best for consumers. The proposals in this consultation have jumped straight to the solution without considering other options, and without conducting a robust cost benefit analysis of the impact of abolishing Consumer Focus. A properly-functioning consumer landscape needs to address the issues of representation, empowerment and protection we have discussed above.

In order to ensure synergy, explicit memoranda of understanding should be in place between such organisations as remain with a consumer advocacy remit.

Additionally, the Panel believes that whatever the ultimate structure, and particularly if there are to be fewer representative bodies, that channels of communication between smaller interest groups and the consumer advocate function are maintained. It is also important that Government continues to maintain an open dialogue with other smaller representation or advocacy groups which may operate in a similar sphere, be pioneering new service methods or reaching previously unreached groups.

QUESTION 15. What do you consider to be the best way of reflecting the Scottish, Welsh and Northern Irish interests in the models for the new consumer institutional landscape?

Whilst consumer affairs and policy in areas like financial services are reserved matters for the UK Government, it is right that it funds consumer advocacy, in a way that reflects the full UK experience. The Panel believes that it is vital, whatever approach is taken, that UK-wide consumer advocacy bodies have appropriate structures within their governance to represent consumers from devolved administrations and that devolved consumer advocacy bodies build and retain appropriate links with their counterparts elsewhere. Any devolved bodies also need to be involved with UK-level consumer institutions, to reflect the fact that many organisations operate on a cross-border basis.

QUESTION 37. Do you agree that the current Supercomplaints system to the OFT should be retained in respect of the CMA if the proposed changes go ahead?

It is important that all the current facilities of the Supercomplaints system remain in the new regime, and that the ability to raise non-competition-related Supercomplaints relating to financial services is still possible. We would recommend that, along with concurrent competition powers, the FCA should have the duty to receive and act upon relevant Supercomplaints. There should also be provision to extend the range of organisations able to raise super-complaints to include representative bodies for small business as proposed in the earlier competition regime consultation ('A Competition Regime for Growth: A Consultation on Options for Reform', BIS, March 2011).

QUESTION 39. Do you think that a lead local authority could take on the OFT's estate agency and related anti-money laundering functions?

We are concerned that if that a lead local authority were to take on the OFT's estate agency and related anti-money laundering functions, these would be weakened. It is not clear how this would work in practice, and the idea, in particular, of requiring a local authority to deal with money laundering functions which may need to be national or international in scale (and require detailed knowledge of the operation of different types of money transmission mechanisms, for example), calls into question whether local authorities would have the resources or expertise to do this.