

Consumer Panel response to the Commission's Green Paper on Consumer Collective Redress

The Consumer Panel was established under the Financial Services and Markets Act 2000 by the Financial Services Authority to represent the interests of consumers. The Panel is independent of the FSA. The main function of the Panel is to provide advice to the FSA, but it also looks at the impact on consumers of activities outside the FSA's remit. The Panel represents the interests of all groups of consumers.

This is the Panel's response to the Commission's Green Paper on Consumer Collective Redress.

Overview

The appropriate starting point in this debate is to consider what consumers need in an effective collective redress system. The key aspects include:

- Consistent standards
- Effective procedures
- Cost should not be a barrier to access
- Both the procedures and the outcomes should be binding on the industry
- Representative action should be permitted
- Collective action should be opt-out, not opt-in
- Consumers should have access to both judicial and alternative dispute resolution systems
- Availability of collective redress should be promoted to consumers as a valuable 'safety net'.

The Panel supports a combination of options 3 and 4 set out in the Green Paper, as this is most likely to deliver the necessary outcomes. It is important that the Commission makes use of binding instruments to achieve this as Member States might otherwise be dissuaded from addressing some of the practical challenges that will have to be overcome in putting the necessary arrangements in place.

Detailed Questions

Question 1: What are your views on the role of the EU in relation to consumer collective redress?

The EU has a critical role to perform in ensuring that the necessary changes are driven through to put in place an effective consumer collective redress facility in all Member States. The Panel acknowledges that this is likely to involve legal, contractual and practical issues and in our view, the EU is in a unique position to address these complex questions.

Question 2: Which of the four options set out above do you prefer? Is there an option which you would reject?

We would reject Option 1 as EC action is required if a consumer collective address remedy is to be made available in Member States and accessible cross-border. Overall we would prefer a combination of Options 3 and 4. This would enhance existing alternative dispute resolution schemes such as the UK's Financial Ombudsman Service, which we strongly support, but would also ensure that a collective redress judicial mechanism was in place in all Member States. This approach is most likely to deliver, we believe, what consumers need in terms of flexibility of approach, accessibility and consistency. Cost should not be a barrier to consumers wishing to join or pursue a collective claim and representative action by consumer groups and other bodies should be permitted.

Question 3: Are there specific elements of the options with which you agree/disagree?

We believe that binding rather than non-binding tools should be used to ensure consistent standards for consumers across Member States. We favour an opt-out procedure as opt-in could present significant practical difficulties for consumers and consumer organisations, as identified in the Green Paper. Provided that consumer organisations are adequately resourced, we do not believe that there would be insurmountable burdens for these organisations in terms of identifying individual consumers and assisting in distributing compensation if necessary. We recognise that the level of support for national consumer organisations is a matter for Member States, but we urge the Commission to encourage adequate support and to monitor and report on the capacity of national consumer bodies to act under collective redress mechanisms.

Question 4: Are there other elements which should form part of your preferred option?

We have no specific recommendations at this stage.

Question 5: In case you prefer a combination of options, which options would you want to combine and what would be its features?

Please see our answers to questions 2 and 3.

Question 6: In the case of options 2, 3 or 4, would you see a need for binding instruments or would you prefer non-binding instruments?

As we have said, we believe that the use of binding instruments is required. Realistically, non-binding instruments would not deliver the Commission's aim of promoting the retail internal market by making consumers as confident shopping cross-border as in their home countries. Consumer confidence will be based to a large extent on consumers knowing that if they have a problem their rights will be enforced and redress provided. Unless binding instruments are used to ensure that this is the case in all Member States, consumers will not be encouraged to participate actively in the single market for financial services.

Question 7: do you consider that there could be other means of addressing the problem?

We are not aware of any other means of addressing the problem of achieving effective collective redress.

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

Adam Phillips
Acting Chairman
Financial Services Consumer Panel

27 February 2009