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Dear Amir

Quarterly Consultation CP11/7, Consumer Redress Schemes

The Consumer Panel views the revised s.404 provisions as being a crucial part of the regulator's toolkit going forward, one that has the potential to bring about greater efficiency and fairness to the system and discourage unjust business practices. We acknowledge the changes made by the Financial Services Act 2010 have the potential to make the provisions more workable but we are still concerned that the limitations contained in the section may defeat the intentions of providing appropriate consumer redress in case of widespread unfair business practices and mass harm.

The current reform programme and its associated legislative amendments provides an opportunity to address the following issues:

- The lack of application of s.404 schemes to non-actionable breaches, leaving consumers who are disadvantaged by non-actionable unfair practices having to pursue individual cases with the Ombudsman (with the potential to create another PPI).
- The tying of the hands of the Ombudsman when a scheme is in place, limiting the Ombudsman's jurisdiction and the remedies and actions available to a consumer. We propose that the Ombudsman, like the FSCS, has the discretion to depart from the terms of the scheme where it considered it essential to provide the claimant with fair compensation.
- Where a variation of permission or authorisation operates in a similar way to a consumer redress scheme and 404B is applied the regulator should first be required to consult an independent consumer body, in a similar way to the check provided in 404 (9)

In relation to the Handbook provisions we suggest the following:

1. In the light of the PPI judicial review decision we believe there is merit in considering guidance about the application of principles in relation to consumer redress schemes.

2. The FSA needs to carefully monitor the redress schemes and their determinations to ensure these are not mass settlements at a discount rate.
3. The Ombudsman's discretion should be able to be utilised in situations where redress under a scheme seems low compared to similar issues addressed by the Ombudsman or may not cover detriment caused by unfairness.
4. There needs to be greater clarity about where firm's complaint handling obligations are "switched off". This should only occur where there are clear time limits for dealing with matters under the scheme, the time limits are not unreasonable compared to other methods of resolution, and where the information to be provided to consumers about their rights in response to a complaint is pre-approved by the FSA. The FSA should pre-approve and monitor the provision of information to consumers.

We look forward to being kept informed on further developments.

Yours sincerely

Adam Phillips
Chair

Yours sincerely,

Adam Phillips
Chairman