Consumers must be at the heart of the new regulatory structure

Speech by Adam Phillips,

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to the FSA Annual Public Meeting.

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Thursday 23rd June 2011

Thank you chairman.

As has already been mentioned, the Consumer Panel's work this year has been heavily influenced by the planned changes in the structure of regulation. Roughly 20% of the Consumer Panel's resources have been devoted to evaluating the proposed changes and representing our views to the FSA, the Treasury and Parliament. At the overall level, the Panel welcomes the move to a twin peaks model, but there needs to be a lot more work on the detail to ensure that the changes do not lead to an ineffective and inefficient version of the current FSA. I shall return to the Panel's views about the future shape and style of regulation towards the end of this talk, but before I do I will cover key elements of our work over the past year.

The Panel has undergone substantial change in the last year. We have sharpened our focus to concentrate our work on five key issues in response to a much increased workload and an independent review of our effectiveness. This year's report reflects this new approach. The key areas we focused on were; the shape of future UK regulation of financial services, the effectiveness of the FSA in regulating retail banking, the implementation of the Retail Distribution Review (RDR), the FSA's Conduct of Business Strategy and the Mortgage Market Review (MMR). These key priorities took up about half of the Panel's time. We spent the other half of our time on our regular agenda. This relates to topics the Panel has pursued in the past and issues raised by the FSA and other organisations in the course of the year. This included 'with-profits' funds, savings, annuities, pensions, mortgage arrears and repossessions, financial crime, authorisations and general insurance. In addition, there were a number of other issues that arose from consultations, the media and the Panel's scoping of emerging consumer risks.

Our work on banking concentrated on reviewing the improvements brought about after the first year of the FSA's Banking Conduct of Business (BCOB) regime. This was the regime which replaced banks' self-regulation by the Banking Code Standards Board. While we are pleased that there has been considerable progress, more remains to be done to get better outcomes for consumers. We were pleased that the issues around responsibility for mis-selling of Payment Protection Insurance (PPI) were finally resolved when the banks decided not to appeal the Judicial Review. It was very unfortunate that it took such a long time to resolve this scandal. PPI is a good example of how an area of emerging consumer detriment should have been subject to early intervention to stop it turning into a major disaster for both consumers and the industry. Lack of clarity about the most effective way to regulate this market and the respective roles of the Office of Fair Trading (OFT), the Competition Commission and the FSA contributed to the delay. We are, therefore, pleased that in the forthcoming regulatory restructuring it is proposed to give the FCA competition powers to intervene in a market where competition is clearly not working to deliver products which meet consumer needs and that are good value for money. However, until the detail is clear about how the FCA will work with the OFT, there remains the potential for a regulatory failure on the scale of PPI.

The Panel has continued to support strongly the FSA's Retail Distribution Review (RDR) despite increasing criticism from some sectors of the industry. We believe that the abolition of commission and the raising of professional standards for advisers will deliver considerable benefits for consumers and the industry. Inevitably, the effect of the RDR in raising professional standards for advisers and the cost of delivering good quality independent professional advice means that people with limited savings and young people will find it hard to justify the cost of obtaining advice. The panel has always argued that there is a need for the widespread availability of good quality generic advice and lower cost services which can provide limited, or simplified, advice. We have undertaken work in the past year on simplified advice and straightforward outcome products to encourage discussion of the emerging middle market gap and to try to ensure that all consumers have access to good advice channels.

Our recent research on platforms has demonstrated the importance of ensuring that the regime for removing adviser commission in retail distribution is extended to eliminating rebates for platforms. We were the only consumer body to respond to the consultation on platforms and we have continued to argue publicly and privately for significant changes to the regime for platforms, including a requirement for much increased clarity about the various costs the consumer is paying and the payments to the platforms by product providers. Until this happens, consumers and their advisers have no way of exercising informed choice about which platforms offer the best value for them, and platforms have little incentive to promote low cost funds and investments which are unwilling to pay fees to appear on the platform.

We wish to see the return of a healthy mortgage market and were concerned last year that the Mortgage Market Review (MMR) was taking a rather narrow approach to assessing the consumer welfare impact of its proposals. We are pleased that the FSA has been persuaded to move more slowly and to carry out further analysis of the costs and benefits of its policy. We are also looking forward to the results of their work on transitional arrangements which we hope will ensure that those mortgage holders who are solvent and currently posing no threat to the system will not be unfairly disadvantaged.

As I mentioned earlier, the Panel has pressed for years for widespread access to unbiased free generic advice and education for consumers. We were very pleased with the establishment this year of the Money Advice Service (MAS). However, the focus of the Money Advice Service on the Financial Health Check means that there remain issues about meeting the broader advice needs of consumers. Also, as effective as the Money Advice Service may prove to be, its presence must not absolve the FSA and its successor bodies from engaging effectively with consumers and from taking any responsibility for improving the knowledge and financial understanding of consumers.

The Panel is continuing to increase the resource it devotes to Europe. As has already been remarked, Brussels is of central importance in prudential regulation and it is now having a serious impact on business conduct and retail markets. The Panel finds itself having to engage much more frequently with European institutions, officials and MEP's in order to discuss emerging policy, as well as to respond to consultations. We are pleased that the Panel's Vice-Chair, Kay Blair, was recently appointed Vice-Chair of the reinsurance stakeholder advisory group of EIOPA the European Insurance and Occupational Pensions Authority. It is worth noting that this group has only five consumer representatives out of a total of 30 members. And that across the four stakeholder groups of the European Supervisory Authorities there are a total of 13 consumer representatives of whom two come from the UK. Inevitably the industry will have a louder voice than consumers.

At the start I said that I would return to the Panel's views about the new regulatory architecture. This is already the subject of widespread discussion, so I will restrict myself to commenting on the issues about which the Panel has most concern.

The move to more intensive regulation of business conduct over the last two years has been consistently encouraged and supported by the Panel. The regulatory philosophy, information systems and supervisory tools needed to deliver more effective conduct regulation are still being developed. And the Panel has been closely engaged in the discussions about the best way to achieve this. Getting conduct supervision right will be vital if the FCA is to help the industry rebuild trust, by encouraging it to provide better service, better value and beneficial innovation through effective and intelligently regulated competition. There is still some way to go before it will become clear whether the benefits of the transition to 'twin peaks' will be realised in practice. We believe it is critical that in the run up to the new structure the shadow FCA explains clearly its purpose and expectations and how it intends to be different to the FSA. This should include an appetite to use new powers, a willingness to intervene before problems get serious and a recognition that the root causes of detriment need addressing as well as the symptoms. I am looking forward to reading the first statement of their regulatory philosophy when it is published tomorrow.

The public debate so far has tended to focus on avoiding a repeat of the last crisis and the failure of the banking industry. These are both serious issues, but there is a risk that in concentrating too much on these we will fail to learn from the things the FSA has done well, to understand the reasons for its failure where it has failed and that we will rely too much on the willingness of people in different organisations to work constructively together. The Panel is concerned about the restrictions on the FSA's ability to use the information it holds on companies as a regulatory tool which appear to be written across to the new legislation establishing the FCA. We also question the effectiveness of the governance structure at the centre of the system. This seems to us to replace the narrow and very industry based experience of the Board of the FSA until 2009 with the Bank of England based experience of the proposed Financial Policy Committee and Prudential Regulation Authority. The remit of FPC is planned to be; "the identification of, monitoring of, and taking of action to remove or reduce, systemic risks with a view to protecting and enhancing the resilience of the UK financial system”. We question whether a Board made up of 11 people containing a majority of executive management of the Bank plus an observer from the Treasury has sufficiently broad experience to administer this objective wisely for the benefit of everyone in the UK when there is no crisis. The MMR highlights the issues - as Adair has just pointed out. The Panel believes that it is essential that there is greater consumer input into the FPC and the Prudential Regulation Authority than is proposed in the White Paper. We will continue to engage actively in the debate as the Bill goes through Parliament.

I would like to end by thanking my colleagues for their support and hard work in what has been an even busier year than last year. I would also like to acknowledge the contributions of Tony Hetherington who left the Panel in April, Nick Lord who left the Panel in December and Carol Stewart who left the Panel in May l