Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Clive Gordon
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Dear Clive,

CP 09 19 Enforcement Financial Penalties

The Consumer Panel is pleased to be able to comment on this Paper. The Panel has always believed that the FSA should adopt a much tougher approach to enforcement. Unless and until firms believe that they will be punished for breaching the rules they will not make compliance with the FSA's rules a priority. Too often the FSA's action is unduly slow which indicates that some consumer detriment crystallizes which could have been avoided if the FSA were able to be more fleet of foot. We therefore welcome this Paper in so far as it goes, but we still believe that the FSA has much more to do before it can say with any real credibility that it uses Enforcement as a tool of credible deterrence.

We have noted a tougher approach to Enforcement in recent months and we would wish to continue to encourage this. However we are concerned that there is not a level playing field. We therefore welcome the FSA's desire to be more transparent about how penalties are set and to become more consistent.

In particular we would like to see more action taken against senior management in large firms. Owners in smaller firms often find their permission to trade withdrawn and this can lead to the closure of the business. In practice this does not happen in systemically important firms. We believe that by holding senior management to account for regulatory failings there would be a greater incentive on those managers to ensure that the firm was compliant with regulatory requirements. We note that the only senior management penalty was levied on the Chief Executive of Land of Leather, and that was as far back as May 2008.

At the Enforcement conference in June 2008, Margaret Cole gave notice that the FSA would be directing its attention to holders of significant influence functions. She said, "a recent study by Deloitte for the OFT confirmed what we already suspected, that action against individuals has a lot greater impact in terms of deterrence than action against firms. So we know that taking enforcement action against individuals is a vital part of achieving credible deterrence overall". But we have yet to see the senior management of any financial firm be penalised for PPI sales, despite the volume of complaints and the widespread existence of poor behaviour on the part of many firms. We believe that until the FSA takes action against the senior management in a major financial firm this policy will lack credibility. We therefore encourage the FSA to take action against senior management in firms when it is clear that senior management have turned a blind eye towards business practices which ran the risk of generating consumer detriment.

We are also interested in the policy articulated at para 6.1.

"We are proposing to amend the wording in Enforcement guidance to clarify that we may publicise enforcement action in criminal cases where proceedings have not yet commenced".

The Panel would like to see this broadened so that it covers all cases handled by the FSA. Enforcement actions can often take considerable time to come to fruition, particularly where they deal with a large number of customers. We believe that customers deserve to know about how well their firm behaves and think therefore that the FSA should be able to disclose when it is referring a firm for enforcement action, where there is particularly strong evidence that the firm is guilty of poor behaviour. We would encourage the FSA to look at where FSMA may prevent them from doing so and make representations to the Treasury to address them as part of the forthcoming legislation. More generally the legislation offers an opportunity to strengthen the FSA's powers in this regard and the opportunity ought to be grasped.

Yours sincerely

Adam Phillips
Chairman
Financial Services Consumer Panel