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

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15 December 2020

By email: ConsumerInvestmentsCFI@fca.org.uk

Dear Sir/Madam

Financial Services Consumer Panel (the Panel's) Response to the Call for Input: The Consumer Investments Market

The Panel welcomes the opportunity to respond to this consultation.

This is a wide-ranging consultation that touches nearly every aspect of consumer investments, from pre-sales activity through to scams and redress. We have given our response to each question, however we thought it might also be useful to share our vision for the consumer investments market.

We begin by stating that we do not believe investments and investing are, or should be, right for every consumer or that those who have investments should necessarily be investing more. There are numerous reasons behind this, ranging from some consumers being uneasy taking risk or unable to sustain losses, to others being uncomfortable making a long-term commitment and various other concerns in-between.

For those that do choose to engage in the market, our vision for this market is:

- A market where more of the population with investible assets, and where the decision is right for them, make an active and informed choice to invest, or not, maximising their own returns and supporting the real economy
- a common industry-wide definition of consumer segments (such as 'high net worth', 'novice' or 'able to sustain losses') which is used to inform product design, set purchasing channels, target marketing and ongoing engagement. This would help to ensure that firms deliver on their duty to act in the best interest of consumers
- The overall regulatory landscape is modernised in the way envisaged by the Digital Markets Unit and the Online Harms Bill so that interlocking rules better protect people from misleading promotions and illegal scams
- Where information, education, guidance and advice is readily available and tailored to the consumer to ensure they are supported in taking decisions both pre-investment and on an ongoing basis whilst holding the investments. This will require re-engineering of current thinking to better integrate these aspects together and blend them throughout the customer's investment life-cycle. Only in this way will trust be established and consumers supported through, what is, an inherently complex set of decisions.
- The use of guidance or advice should be the gateway to anything other than a range of default-based, simple, tax-efficient investments. There should be

better alignment of the experiences across pension based and non-pension-based investments with regard to the use, and availability, of defaults, pathways and 'universally suitable' solutions.
- All firms must have a duty of best interest with regard to the consumer, building out the requirement in COBS2.1.1 and raising standards above fair treatment. They must ensure that investments are not promoted to consumers for whom they are inappropriate and must take responsibility and accountability for ensuring consumers are eligible for specific products. The use of client self-certification must cease.
- Products must be better designed, labelled and described to enable consumers to better understand fully the opportunities, risks and costs involved and easily compare these across options.
- The regulator should increasingly use wider market intelligence and Reg-tech to target focus on areas of the market, firms and promotions of concern and should have the powers to act swiftly, always erring on the side of the consumer, to prevent consumer harm.
- When harm does occur, there must be easily accessible and efficient redress and compensation solutions. The FSCS proposition in retail investments needs a fundamental and radical re-think to ensure it remains appropriate and is sustainable in the long term.

Our responses to the specific questions are detailed below.

Yours faithfully

Wanda Goldwag, Chair Financial Services Consumer Panel

Consultation Questions

Have we prioritised the right issues and questions? Are there other things you think we should be looking at?

This is a wide-ranging consultation which we believe covers the key issues.

Q2: Are there other underlying issues which have an impact on the consumer experience in this market that you think we should consider? What are they and how do you think they affect consumers?

The investment market is complex and difficult for the average consumer to navigate. Consumers who are savers often say they are aware of the investment market, and that the returns would often beat cash, but that they don't know where to start.

In your background statements, you say (1.15)

- "people should understand what type of investment they are buying"
- "people should understand ….. the level of protection which goes with that investment"
- "when people choose not to engage with authorised firms they should understand they will have less protection"

We agree that these questions are some of the basics to which consumers often don't know the answer, find it difficult to work out or find the answer and can lead to consumers unknowingly making poor decisions or not engaging with the market at all.

We do not believe that all people engaging with unauthorised firms 'choose' to do so with knowledge to hand. To understand that a firm is unauthorised the consumer needs to understand that:

1. Investment firms (and their products) are either authorised or not authorised
2. They can identify the authorised firms by the use of certain phrases (e.g. *Authorised by the FCA*) although this can be used fraudulently, so consumers may need to check a firm's status on the FCA Register (which is not always available, and has itself been cloned on occasion)
3. Unauthorised firms are not identified by any 'marker' or phrase – but by the absence of positive, confirmatory, labels and phrases.

It is clear to see how a consumer, without this knowledge, can read a promotion without knowing that key phrases are missing. Consumers can therefore remain unaware that the firm is unauthorised and consequently make a poor choice right at the start of their decision-making process.

Undoubtedly consumers should better consider firm provenance and investment risk. But these subjects are so alien to an accustomed 'saver' they are unlikely to occur to them in their normal decision process.

The other key underlying issues to be considered are therefore:

1. Regulation to date has been based on the assumption that 'people should understand' x, y or z, where it is clear that many new entrant consumers to the market do not.
2. The market is based on the process of labelling the 'good' players, rather than the 'bad' whereas consumers have been life-trained to look for 'warnings'
3. In the absence of any other knowledge, the consumer can (justifiably) assume that all providers and products are authorised and regulated. If not, why would they be allowed to operate anyway? Surely [for example] Google must check firms?

The current approach, which can be summarised as 'assume everything is unauthorised until you find out differently', clearly isn't working because consumers do not think this way.

The focus should therefore be to make the operation and visibility of the regulation clear, unambiguous and so obvious that consumers who are engaging for the first time, or the n^{th} time, are left in no doubt as to what they are doing, what the risks may be and what protections exist without making assumptions.

Q3: What role could or should 'just in time' consumer education play in helping consumers make more effective investment decisions?

With a lack of financial awareness and behavioural biases preventing consumers from accurately assessing the cost and risks of different investments, whilst the panel agrees that 'just in time' education could be beneficial, we believe 'just in time' guidance would prove more useful and deliver a better consumer outcome.

Both 'just in time' guidance and education should be delivered in parallel around the same topics. This would appeal to the widest range of consumers from those who prefer the passive approach of reading, watching and learning to those that prefer a more interactive experience with tools, worksheets and Apps that guide them through choices and let them make a final decision.

The topics covered should include: basics of investing and investments, are you ready to invest, how much to invest, the benefits of diversification and the risks of not doing so, the risks of investing over different timeframes, behavioural ways to deal with losses, the fees and charges of investing, how are your investments protected, what to do when something goes wrong, how to complain etc.

For those consumers less confident with investing the access to guidance and education may be the primary and final way for them to ensure they understand the product they are about to select, its features, risks and benefits and the protections and possible redress open to them.

'Just in time' guidance and education would additionally provide a degree of friction in the consumer journey, helping not only those who need further information or help but also vulnerable groups e.g. those at risk of financial abuse or fraud.

We envisage this guidance and education being provided by either the firm or by a central organisation, such as MaPS or the Investment Association, or both. MaPS is already reviewing its strategy, including how to help consumers better understand savings and investments, and we would encourage the FCA to continue to work with MaPS on this agenda.

Guidance and education can play a vital role in helping consumers make better informed, better considered, decisions, however, it needs to be positioned carefully as part of the journey in a way that helps without overly encouraging or discouraging the consumer or giving a false sense of confidence.

When considering this guidance and education we believe

- It should be accessible, factual and balanced giving as much prominence to what may happen on the downside as it does for the upside. It shouldn't be overly time consuming or burdensome for the consumer.
- It should form a greater part of the journey for those consumers either identified , or self-identifying, as having low knowledge or being particularly vulnerable, especially to making poor or rash decisions.
- It should be more than just a link to some education and a check box to verify that the consumer has read the information. These 'check boxes' are often perceived as something that has to be ticked to continue, rather than information or guidance specifically designed to help the consumer with their buying decision.
- It should be at a level that doesn't shock consumers into inactivity. For example, the recent FCA FAMR/RDR report showed that consumers are 'visibly shocked' when they see fees expressed in pounds and pence.

Critically, it must not give the impression that it is advice. The consumer needs to understand that they are making the decision and therefore will be accountable for it, especially if the investments do not perform as expected.

We would suggest that this guidance and education should be developed beyond 'just in time' intervention during the sales process. A consumer that benefits from this when investing is likely to also benefit from ongoing support. Subjects such as dealing with volatility, accessing savings, adding to investments, how to make a complaint etc. should all be accessible.

There is scope to learn from others here, such as France, Norway and Canada who have much higher levels of financial knowledge, behaviour and attitudes. [1]

Q4: What more can we do to help the market offer a range of products and services that meet straightforward investment needs?

The panel believes that investing is not necessarily the right solution for everyone. Whilst it can offer better returns than cash-based savings, this does come with additional risk and complexity.

There is little segmentation of consumers on this basis and that which does exist has mainly been developed on a provider by provider basis.

The market currently lacks a well-thought through, common, set of consumer profiles (or segments) that better describe and define which consumer groups may, or may not, benefit from investing and which type of products and services are more appropriate for each segment.

We would welcome debate between the FCA, the Investment Association (IA), providers and consumers groups that would add clarity in this area and set some common parameters for these consumer profiles. We believe the result of this would be better informed and designed solutions targeted at the appropriate consumer profiles leading to a better likelihood of a positive outcome for investors.

Even with this approach, for many consumers, especially savers looking at investment products for the first time, the range of products (accounts/wrappers/platforms) and investments can prove confusing and daunting.

We have heard consumers tell of the frustration and confusion when, having gone through a process and the steps required to open 'an account' (such as an ISA) they are then presented with a further journey and set of decisions to select the investments (both the type of investment, such as stocks or funds, and then the actual investment itself) to be placed into the account.

The Panel envisages a market where the consumer is presented primarily with the products and services both appropriate and designed for them supported by education and guidance to help them through a simple account opening and investment-choosing steps.

The spectrum of products could range from simple tax-efficient or ISA accounts leveraging risk based, well defined and diversified default investments right through to the more esoteric, complex and risky investments sought by sophisticated, often wealthy, investors, with each consumer being presented with the part of the spectrum appropriate and relevant for them.

Underpinning this approach should be better designed journeys, education, guidance, 'robo' type online help, investment pathways and default fund suggestions (appropriately governed and regulated) helping to simplify the investment journey while ensuring the consumer better understands the product and the risks and benefits of the choices they are about to make.

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[1] see graph on p8 http://www.oecd.org/daf/fin/financial-education/G20-OECD-INFE-report-adult-financial-literacy-in-G20-countries.pdf

We believe this approach would help ensure the consumer secures and achieves the outcome they [reasonably] expect.

Q5: Could clearer, consistent labelling of investment products help consumers make effective decisions? Please provide examples where this approach has/has not been successful.

We believe, and have argued for some time, that clearer and consistent labelling and information is an obvious pre-requisite to consumers making effective decisions. But we do not think it will be sufficient on its own, and will need to be accompanied by measures to ensure products meet certain standards.

Our concern with labelling alone is that: the complexity of investments and investing; the variability of returns; the risk to capital and the suggested longevity of investment; etc, doesn't lend itself to a simplistic 'traffic light' or 'icon based' approach (such as food contents) on its own. This is especially true for consumers either new to, or less confident, about investing.

Whilst tools such as these can play a part in informing consumers the hurdle must remain that the consumer fully understands the investment and the possible outcomes of the decision they are making. Whilst 'ISA', 'Low Cost', 'Tracker' type flags may be useful to the consumer in their initial screening we are not convinced a consumer could fully comprehend the choices they are making by such labelling on its own.

As an example of a recent failure of labelling, the recent research paper by Warwick Business School[2] identified that when consumers were comparing choices between higher-risk products, the participants preferred the riskier product (mini bonds) over the less risky stocks and shares ISA.

The team suggested that whilst this may have been a genuine product preference, it may also indicate that mini-bonds, for whatever reason, were wrongly perceived as less risky.

This is an area where a robustly applied, comparable labelling system may have helped.

Q6: What are the potential risks and benefits of standardised labelling requirements for consumer investments?

The use of standardised labelling could make it easier for consumers to understand the type of product they are reviewing and its key features in a way that is easy to understand and compare and contrast with other products (see example in Q5).

This may enable consumers to more easily remain within the product and investment ranges they understand and are more comfortable with, without inadvertently straying into unintended choices.

Certain labelling may change some investment products for the better. For example, if there was a mandated traffic light label for 'value for money' this may lead to providers

[2] Choosing wisely: preferences, comprehension and the effect of risk warnings on financial promotions for investment products Maura Feddersen, Cameron Gilchrist, Lucy Hayes, Timothy L. Mullett, Helena Robertson, Laura Smart Neil Stewart, Jonathan Titley. June 2020

developing new and existing products to offered better, more competitive value, as those products labelled 'Red' may be harder to sell.

However, we see a number of risks associated with this approach

- Consumers may become too reliant on the labelling (which is unlikely to fully convey the risks and features of an investment) and therefore may make decisions without fully understanding their chosen option
- The use of labels may oversimplify the market and instil a false sense of confidence in consumers
- Products may be designed that 'hit' and deliver the right labels but suffer elsewhere in their proposition, to the detriment of the consumer
- As has been observed recently, scammers may use the labelling to create a halo for their product and mislead consumers into not looking in more detail at the investment

Q7: What are the barriers to firms providing simple investment products for consumers?

In our opinion, there are no barriers to firms providing simple investment products, that offer simple and easy to understand investments and good value for money to consumers.

However, as in our response to Q4, we question whether without a common, industry wide, set of consumer profiles there is consensus on what 'simple' means, what 'simple investments products' look like or for which consumers they are most appropriate.

To define 'simple' with the spectrum we have previously outlined would prove useful for the FCA and firms and lead to better outcomes for consumers.

Q8: Do you think financial guidance can help consumers make effective investment decisions? Why?

We believe that well-structured and client-focused guidance can help consumers make better and more effective decisions.

Consumers can find themselves confused with the sheer amount of information provided, can find it difficult to distinguish between what information and decisions are important, or not, and at times do not know where to start in selecting a product.

In the absence of affordable and accessible advice, leading to only 8% of UK adults receiving regulated financial advice in 2020[3], well drafted guidance tools can help the consumer by:

- Filtering the available options based on the consumers input
- Helping the consumer consider if they are ready to invest. Do they understand the risks and opportunities? Have they thought about other financial priorities such as debt repayment and rainy-day-savings?
- Prompting the consumer through both thinking and decision making in areas such as: what can they afford, what is their attitude to risk, how able are they to sustain loss etc

[3] Evaluation of the Retail Distribution Review and the Financial Advice Market Review. Consumer research to inform the FCA's Review. FCA & Ignition House. December 2020

- Presenting consumer's own inputs back to them highlighting risks to be considered or inconsistencies in thinking

Guidance, such as highlighted above, can prompt the consumer to consider and think about their choices in a broader manner than the consumer may have done un-guided. Good guidance can also offer routes to more information or education to help fill any identified gaps or areas of uncertainty or concern. In this way guidance can help the consumer understand and consider all the key information and details, for themselves, before making any decision, the outcome of which could be not to proceed at all with the investment.

There is a risk, however, that the guidance could be more focused on the investing journey or outcome, rather than the consumer, and be created with the aim of helping the consumer feel confident with the decision to invest, rather than give the consumer all the information they require to make a decision that is appropriate for themselves.

Q9: What are the barriers to firms providing financial guidance services?

No comment.

Q10: Do you think straightforward financial advice can help consumers make effective investment decisions?

The Panel believes that straightforward financial advice can help consumers better understand the options, opportunities and risks that an investment offers and therefore, potentially, help them make better decisions.

There are, however, some concerns with one-off advice which need to be considered.

First, it is important that the adviser knows all the relevant facts and has the right information to hand when giving advice to a client. In the traditional 'ongoing model' this information and understanding can be built over a number of meetings and is an ongoing process. Indeed, this understanding will be added to and developed, even after the first piece of advice has been given and acted upon.

To ensure that one-off advice is appropriate and suitable the adviser and client will need to go through a process to understand the client, their needs, hopes, fears and reasons for wanting to invest. It is vital that this step is not curtailed due to either time or cost pressures.

Secondly, whilst we believe that one-off advice could help a consumer make better investment decisions we recognise that this may not be sufficient to equip and support the consumer through the ongoing management of their investments, especially through times of significant market volatility or on the approach to, and during, redemption. This need could be met by access to guidance or robo-type services once the consumer has been placed into the appropriate investments or by occasional reviews on a pay as you go basis. (Although we note the FCA's own research that those consumers who might best benefit from robo-advice are the least likely to trust it[4].)

In this scenario, it is important to ensure that the consumer understands the likely long-term fee comparison between a relationship based on ongoing service and a series of

[4] https://www.fca.org.uk/insight/robo-advice-%E2%80%93-will-consumers-get-programme

one-off pay as you go interventions, and doesn't unknowingly select a series of one-offs that end up costing more in the long run.

Finally, the regulations and consumer should be clear about the responsibilities and liabilities of the adviser. Consumers, rightly, would expect when paying for one-off advice that the advisor has their best interests in mind and carries the same liability for that advice as in the current model, and that they [the consumer] have access to the same redress and remediation options if required. Any limitations on the liability, be they around amount limits or time limits etc. need to be clear, transparent and easy to understand.

Q11: What are the barriers to firms providing simple advice models?

No comment.

Q12: Should the redress model for simple advice be any different to standard financial advice? If yes, please explain.

The Panel would expect the redress model to be the same as with standard financial advice.

The consumer is making a decision between one-off and ongoing advice. They are not making a 'quality of advice' decision, they will rightly expect the quality of the advice to be the same in either model. In the same way the consumer is also not making a choice around the level of access to, and the format and scope of, any redress.

The advice to a consumer to do 'Action X', whether given through an ongoing service or through one-off advice should be based on the appropriate facts and information on the consumer and should be suitable and appropriate to their needs and circumstances. The advice should not differ and neither should the access to, and quantum of, redress should that advice, or the advice process, be proven to be flawed or unsuitable.

Q13: What do you think are the main causes of unsuitable financial advice e.g. weak competition, complex products, etc?

The Panel notes that it is unlikely, and indeed difficult, for a consumer to 'shop around' and go through more than one advice process and therefore compare the advice before committing to a choice and acting on advice, or indeed paying for it.

Therefore, the consumer needs to trust that the advice received from one adviser is not only appropriate and suitable, but also good value for money and largely the same answer that they would have been given had they have used a different provider.

The Panel's main concern is therefore that unsuitable advice may come from inappropriately trained advisers, poor processes, conflicts of interest and/or poor management of conduct risk that exploit this trust.

We fundamentally believe that firms giving financial advice have a duty of best interest to their clients, as enshrined in COBS2.1.1R, and should be held to account for how they meet this standard, not simply for "fair treatment". It is therefore vital that firms ensure that advisors are appropriately trained (on an ongoing basis), remunerated, monitored and given the time, tools and support, to ensure that they focus <u>only</u> on the suitability of the advice and the consumer outcome. Furthermore, it is critical to ensure there is no conflict in terms of: volume of clients advised, efficiency targets (such as hours billed or hours per client) asset accumulation, product choice, investment choice, asset retention etc. or any other metric which puts the benefit or interest of the firm or the adviser before that of the consumer.

Q14: How can we target and prevent unsuitable advice without imposing additional requirements on firms which provide suitable advice?

The Panel assumes that the FCA will continue to use a mix of: company and market reviews, mystery shopping, analysis of data and firm returns, consumer feedback to the FCA helpline and analysis of the data held by the FOS, FSCS and TPR to identify potential unsuitable advice and the firms providing it.

Due to the scale of the market we would encourage the FCA to increase its use of reg-tech, tools and 'Big Data' to help it identify potential cases of unsuitable advice and therefore enable its more business-as-usual reviews to be targeted toward these.

The use of newly emerging tools such as mapping consumer sentiment to advisers on social media (and even advisor sentiment to their employer), Big Data analysis such as advisor movement between firms, ratios of assets to clients, meetings per advisor, client per advisor etc may be a way to identify outliers that can be targeted for more specific and frequent monitoring and reviews.

We encourage the FCA to take swifter action when alerted to potential wrongdoing. This not only removes the harm, but also helps maintain confidence in the regulatory system, confidence that not only keeps consumers engaged in the market but also encourages whistle-blowers who observe action being taken.

Q15: What role do you think there is for direct sales in a well-functioning consumer investment market?

The Panel believes that with the right regulation, supervision and safeguards in place there is a wide remit for direct sales. From offering a simple and low-cost platform to experienced investors to providing information, guidance and easy to use and understand products to novice investors, we believe that direct channels and platforms have a role alongside advised channels.

Q16: What protections are necessary for consumers buying direct?

The Panel has two main concerns with direct channels.

First, it is vital that consumers are given the information, tools and most importantly the time to fully consider and understand the decisions they are making and the likely impacts and outcomes of these decisions.

Good user-centric design and user experience should not be about enabling consumers to purchase/commit to an investment in the smallest number of clicks (which appears to be the current focus of platforms and market commentators), but should instead be focused on ensuring the consumer understands all they need to enable them to achieve the right outcome.

Consumers need to be presented with all the information needed to make a considered decision in the 'normal' journey, they should not need to find the right buttons to click or search other parts of the digital experience to find the information they require. Where relevant, links to third party sites offering further, often independent guidance, should be clearly presented or signposted to the consumer and highlighted as such (e.g. promoting Pension Wise to consumers exploring pension freedoms).

Key information must be presented in a way that consumers can't miss, ignore or just click through. This must be placed as a natural part of the investing journey, and not positioned below-the-fold[5] or in 'small print' or 'regulation text' that can be perceived as getting-in-the-way.

If a consumer decides to leave or exit the platform without investing or finally committing funds, it is important that the provider does not chase or hound the consumer (via emails, texts, adverts placed on their social media feeds[6] etc) to finalise the transaction or return to their 'basket' or buy journey. Consumers should be allowed the time and space to consider their decisions without the pressure of chaser emails or time-limited offers.

Secondly, it is vital to ensure that when consumers go through an online, direct journey, whether through a platform or other digital experience that they understand the basis under which they are engaging with the provider and therefore the protections and redress options available to them.

There are now a wide range of digital experiences offering the consumer options that vary from an unaided execution-only basis, through guidance options where the consumer makes the final decision to digital and robo-advice solutions where machine learning and algorithms advise the consumer on the actions to be taken.

This guidance and advice can be either independent or restricted and must be described appropriately, and with prominence, so that the consumer is under no-doubt about what is being offered.

Additionally, as these models look and feel very similar to many consumers, just labelling them as 'guidance' or 'advice' without providing a wider, consumer focused definition, won't provide the level of clarification required. Direct channels must ensure, and test, that consumers completely understand the basis of the relationship between them and the firm, and the risks and protections that this relationship provides before committing to a purchase.

Q17: What safeguarding requirements should apply to those who distribute products to consumers through online platforms?

Firms that distribute products to consumers through online platforms should be required to prove (beyond just asking customers to tick relevant boxes) that the consumer has been given the information and time to consider and has therefore understood:

- The products they are engaging with, their key risks, features and opportunities and how these may affect the final outcome
- The likely returns to the consumer and the costs associated with the investment
- The access that the consumer will have to their funds once invested

[5] The research underpinning our discussion paper on Digital Advertising in Financial Services found that often key Information was often below-the-fold (i.e. consumers have to scroll down from the initial screen to find it. https://www.fs-cp.org.uk/sites/default/files/fscp_final_digital_advertising_discussion_paper_20200630.pdf

[6] One responder in our discussion paper on Digital Advertising in Financial Services, ibid, said "As soon as you're even thinking about it, the cookies come for you"

- The service being provided to the consumer, be it execution-only, guidance or advice, and the responsibilities and accountabilities of the provider and the protections and redress options available to the consumer
- What to expect, how to complain and how to take the complaint further, such as to the FCA, the FOS/TPR and the FSCS.

This proof needs to be specific to each investment journey by each customer and should, and be able to demonstrate that it has, take any specific customer concerns and vulnerabilities into account.

Where a provider / distributor is not able to prove that consumers understood the product and associated outcome any complaint should be handled on the basis of favouring the consumer, for example if the provider cannot prove that the consumer (1) understood that the service being provided was 'guidance' and (2) that the consumer understood what guidance is, then the assumption should be made that the consumer was given advice.

Q18: Are there any products or investment decisions which bring greater or specific risks of harm when consumers buy them directly?

The more complex the product, the harder to understand and therefore the greater likelihood of risks and loss materialising which the consumer didn't expect. These type of products can include, among other things, investments with lower liquidity (such as unlisted companies or property/infrastructure type funds) investments with high volatility or risk, investments with significant exposure to other types of risk (such as currency exchange rate risk), leveraged investments (where the potential for loss may hugely outweigh the possibility for growth) and investments where the price is affected by more than just the movements of the underlying net asset value (NAV).

As outlined in our response to Q4 we believe it is vital that products are designed for and only targeted at those consumers where it is reasonable to expect them to fully understand the risks and make a considered judgement as to whether the investment is therefore appropriate for their own circumstances and needs.

We would therefore not expect to observe complex or high-risk products targeted at or promoted to novice or mass-market investors using direct channels.

It is also important that the consumer (whatever their experience level, including insistent clients) is presented with the risks and has the chance to understand these. The firm should also assess the knowledge level and 'alignment' of the consumer and the product and customise the journey, warnings, education and guidance accordingly.

If the risks cannot be clearly, and unambiguously, communicated easily in a direct journey with a fair expectation that the consumer will understand these and the likely outcomes of their decisions, then the product should be viewed as unsuitable for direct purchase and the consumer guided to other, non-direct, purchase channels.

Q19: How can we better ensure that those who have the financial resources to accept higher investment risk can do so if they choose, but in a way that ensures they understand the risk they are taking?

We believe that the promotion of higher risk investments needs to be controlled to prevent these messages being communicated to consumers less able to fully understand the risks involved or sustain the potential losses associated with such investments.

We have seen promotions for high risk investments distributed via email or digital channels that will reach all consumers. These promotions specify that the investment is 'only for sophisticated investors', in the regulatory wording and footer text, in an attempt to circumvent the current regulations. This approach is clearly not good enough.

This type of promotion needs to be restricted so that it can only be used when the firm can design the process in such a way, and prove, that only those consumers for whom the high-risk investment is appropriate will see the promotion.

Secondly, even without a promotional nudge, consumers may find such high-risk investments or the websites selling them so, the purchase journeys need to be developed to make it absolutely clear to the consumer, beyond any doubt, of the risks, costs and potential for capital loss associated with the investment and that these products are intended for a subset of high-net-worth and sophisticated investors.

The journey must be developed in a way that takes consumers through all the relevant information, tools, guidance and education prior to the investment decision. Firms may, as they do currently, choose to ask consumers to confirm that they have read and understood the information and so believe that the investment is appropriate for them, however we do not believe this removes the firm's duty of best interest with regard to the consumer and the firm should carry the responsibility and accountability for the appropriateness of the sale of such higher risk investments. (See our response to Q23).

Additionally, we do not see why there should be any urgency in the purchase of these type of higher risk investments. We would therefore support the implementation of a dual step investment journey, especially for a consumer's first investment (potentially after which the consumer knowledge can be assumed as being 'grandfathered') giving the time for the consumer to reconsider their actions as observed in some foreign regulatory jurisdictions[7].

We envisage this (initial investment) journey where the consumer goes through the direct purchase, engaging with the relevant information about the investment to develop their understanding of the opportunity, risks, diversification of the investment etc. The second step would need to occur after a minimum 24-hour 'cooling off period', at which time the consumer would again go through the investment journey and at this stage commit/ transfer funds for the investment.

These steps would go some way to ensuring that (1) any promotion is only seen by those consumers with the understanding and financial resources to accept higher investment risk, and (2) ensure that should a consumer for whom these investments are unsuitable, unwittingly access the direct investment journey for such investments that the appropriate information and delays are put in place to deter them from investing, whilst allowing the intended consumers to proceed.

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[7] The bank said ….. [it] had neglected an internal rule requiring staff to confirm twice that customers aged 70 years or older were in good health and had a good grasp of its products before making any sales. - https://fr.reuters.com/article/us-japan-post-bank-misconduct-elderly-idUSKCN1VY0GL

However, we consider that even these steps are not sufficient and would reiterate our view that the firm has a duty of best interest and therefore the burden for compliance and the accountability for the sale remains with the firm. These firms should be required to prove that the investment was only promoted to eligible consumers, was appropriate for them (without the use of a consumer's self-certification), and that all the appropriate information and warnings were understood by the consumer.

Q20: How can we and the industry help consumers understand the benefits of diversifying their investments?

The FCA and the industry can help consumers via, upfront and ongoing communication with investors through education, guidance or the like (please see our response to Q3) that conveys the important of diversification and the risks of not doing so.

The industry has been, to varying extents, relatively successful at communicating the need to consumers to diversify their investments at the point of purchase. Where the industry has not been so successful is in (1) conveying the risks of not diversifying and also in (2) the ongoing communication of, not only the need to diversify, but also in giving the consumer an overview of how well diversified their investments are.

We wish to see the regulator work with the industry to develop a suite of information and nudges that can be presented to consumers through their statements, online journeys and bespoke communication as required.

The basis for this communication should be an analysis of the consumer's portfolio demonstrating, in an easy to understand way, how diversified their portfolio is, or isn't, and what the likely outcome would be of a market shock.

The industry has been good at regularly showing their customers the potential upside of investing but not necessarily outlining the impact that certain market events (such as the 2008 crash or the recent pandemic) could have on their portfolio. Clearly this is an area where the regulator, the provider and the consumer need to understand the basis on which the information and any potential nudges are given – be it advice or guidance – and the accountabilities, protections and redress associated with pursuing these prompts.

Q21: Would more investments benefit from 'prospectus-like' disclosure, and/or the disciplines involved in this? If so, in what circumstances?

The Panel supports any initiative that enables consumers to help them make better decisions. However, when it comes to the provision of more information this is a fine balancing act.

There are many shortcomings of disclosure measures in financial services, which are, for example, highlighted in the report conducted by the Australian Securities and Investments Commission (ASIC) and the Dutch Authority for the Financial Markets (AFM).[8] Just providing more information is not an answer in itself, and can risk

[8] *Disclosure: Why it shouldn't be Default, https://download.asic.gov.au/media/5303322/rep632-published-14-october-2019.pdf*

overburdening the consumer with so much information that they cannot easily digest and understand it[9].

A concern with widening of the use of current prospectus-like disclosures is that many of the existing prospectuses are often written for a professional or institutional audience. To benefit more consumers these would need to be more concise, easier to understand, and presented in a simple format that the average consumer can engage with, understand, and feed into their decision-making process. They should be designed for the targeted consumer segment and are likely to include diagrams, charts, infographics, and the like, to make it as easy to understand as possible. They should also align with and reiterate any 'just in time' education or guidance provided during the investment journey.

The information provided, however, should be regarded as less important than the actual impact it has on the consumer: how did they engage with and interpret the information supplied, what do they understand and what is their perception of the product and its features. Firms would, in accordance with Principle 7 and TCF outcome 3, need to constantly test these communications with consumers and adjust them as appropriate.

Q22: Should more investments be subject to continuing disclosure requirements after they are issued, and what liabilities should be attached to these disclosures?

The Panel would welcome increased continuing disclosure requirements for all investments after they are issued. However, it is important that these are written with the end consumer in mind, being simple to access and easy to understand as stated in our answer to the previous question.

The liabilities attached to these disclosures should be identical to those attached to current upfront disclosures.

Q23: What do you think about how the current high net worth and self-certified sophisticated investor exemptions are working in practice and the level they are set at?

The Panel is uncomfortable with the current high net worth and self-certified exemptions that exist for a number of reasons.

First, there is clear evidence that promotions that should be limited to this audience are being presented, either intentionally or unintentionally, to other investors with the issuer utilising a method of stating that the advert is only intended for only sophisticated investors to sidestep the regulation.

Secondly, we believe the current approach of self-certification and the current definition of high net worth to be inappropriate. Neither the current income level or the value held in net assets really reflects a consumer's ability to sustain significant loss, and self-certification, without all the appropriate risk warnings, could be viewed as a mere tick-box needed to progress to the next step.

We would argue that consumers should not self-certify or be asked to do so, but instead, firms should be required to assess that such consumers are sophisticated investors, high

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[9] Report on a study of how consumers currently consent to share their financial data with a third party. Dr Whitley and Dr Roser LSE March 2018 https://tinyurl.com/y3697ac9

net-worth individuals and able to cope with capital loss and therefore the liability for this appropriateness reside wholly with the firm.

We would question whether those consumers that do correctly identify themselves as high-net-worth or sophisticated really appreciate that the investment they are about to make sits outside the current regulatory perimeter and therefore they will not have the benefit of the protections and redress options that they have with their other more mainstream investments.

Finally, we are concerned about marketing that implies that you are a VIP or a special category person and so can invest in certain products making self-certification seem like a badge of status to some consumers.

Q24: Firms: Have you relied on the exemptions recently to communicate promotions? Why did you do so? Consumers: Have you categorised yourself recently as high net worth or sophisticated? Why did you do so and what was your experience?

No comment.

Q25: What more can we do to help consumers understand the high net worth and sophisticated investor exemptions and what they mean for them in practice?

Rather than attempt to make what is clearly a flawed approach work, the Panel would prefer to see these exemptions removed.

The challenge with such exemptions is they always appear attractive to firms, and scammers, looking to sidestep current regulation at the expense of the investor.

Complex, high-risk investments (such as investments in unlisted securities) should be defined only as appropriate for, and therefore restricted to, high net worth and sophisticated investors who should enjoy the same regulatory oversight, protections and access to redress as they do with other less high-risk investments.

Q26: How can we make it easier for people to understand the risks of investment and the level of regulatory protection afforded to them when they invest?

The Panel notes and is very supportive of the work done in this area to date by the FCA. However, we are concerned about the low level of awareness among consumers of protections. For example, the FSCS found in a 2018 survey that only 5% of respondents were aware of the protection for pension funds transferred into an investment product[10].

We would encourage further research and investigation into the use of regulatory phrases, keywords, symbols and even icons to better and easier communicate the risks of investment to consumers.

We would suggest the learnings be taken from other industries that have used language and symbolism to communicate complex issues, opportunities and risks in both a positive perspective (such as energy efficiency labels on electrical goods, and 'low fat',

[10] https://www.fscs.org.uk/media/press/2018/dec/fscs-protection-pensions/

'low salt' and 'low sugar' type labelling on food) and a negative perspective (such as the medical warnings and imagery on tobacco products).

Success here should be viewed as an approach or system that enables consumers, with minimal understanding or effort, to quickly understand the level of risk associated with a particular investment as part of their overall research into the product.

It would appear that one of the criteria to successful communication in this space is the evolution, and use of a wide range, of messages so that the consumer doesn't see these as just 'wallpaper' and become complacent to the underlying warning.

An ongoing process of test and learn, with both the industry and consumers would seem appropriate.

In terms of consumers understanding the level of regulatory protection afforded to them we would note the following;

1. We would propose that where an authorised firm approves the marketing of an unregulated product that the product should be clearly described as "unregulated" in the promotion with the same significance as other messages. This description should also summarise that consumers may not enjoy the same protections as they would with regulated or authorised products.
2. We are concerned that consumers may misunderstand the protections on offer to them due to the use of other regulatory phrases. We believe some recent inappropriate promotions have included the term '*Regulated by the FCA'* in an attempt to mislead, give more legitimacy to the product and sit under the halo that the use of the FCA name provides. We are therefore very supportive of the ongoing focus on financial promotions and supervision in this area[11].
3. We are concerned / believe that the current mix of regulators, ombudsman and providers of protection and redress is overly confusing for consumers. As an example, the FCA's Financial Lives survey 2017, revealed that 3 in 8 current account holders had not heard of the FSCS[14.]

   Any and all improvements in the labelling of products to show what is and isn't regulated, who the regulator is, what ombudsman support may be available and what compensation scheme coverage exists would be welcomed.
4. Even if consumers do understand the level of protections afforded to them, they may be discouraged from seeking redress due to a lack of clarity of the processes involved[12].

This area of the communication and understanding of oversight, protections and redress is a key concern and focus for the Panel and something we are likely to publish a view on in the near future.

[11] One respondent in our discussion paper on Digital Advertising in Financial Services, ibid, stated "Having the 'FCA Regulated' right there makes it more trustworthy"
[12] as noted in the FCA Mission: Our Future Approach to Consumers

Q27: What can be done to help consumers to better understand the circumstances in which they will be able to claim on the FSCS?

The Panel believes that the work done by the FSCS, certain firms, and commentators such as Money Saving Expert have helped consumers better understand the FSCS scheme and how it may apply to them.

However, we also note the FSCS 2018 survey found that only 5% of respondents were aware of the protection for pension funds transferred into an investment product and the FCA's Financial Lives survey, 2017, showed that 3 in 8 current account holders had not heard of the FSCS, so there is still some way to go.

As in our answer to Q26 the Panel would support more clear labelling of products in the pre-purchase journey to outline if FSCS cover exists and, if so, what the level of protection would be and when it could be used. Banks, building societies and credit unions are required to inform new and existing customers of FSCS protection for their deposits and deposit takers must prominently feature FSCS materials in their branches and this has resulted in reasonable awareness of deposit protection. This approach should be extended to all covered investments.

It is important that consumers understand what is and isn't covered by the FSCS. We are very supportive of firms using (possibly being required to use) the FSCS badge in consumer journeys and literature. We also believe the FCA should, build on existing research to, explore whether it is possible to design reliable and impactful messages to ensure consumers are aware that certain purchase journeys are not covered by FSCS (e.g. some execution-only journeys).

This approach would require careful and ongoing monitoring by the FSCS and the FCA to ensure that the labelling and messaging was not misused. However, a well-designed and correctly used label/badge should become as important in the consumers' mind and as easy-to-understand as the ABTA and ATOL labelling on package holidays.

Q28: What more can we do to ensure that when people lose money because of an act or omission of a regulated firm, they are appropriately compensated?

The Panel believes that the current system with complaints being reviewed initially by the regulated firm with the client having the option of going to the ombudsman, as required, if they are not happy with the outcome of their complaint, is working fairly well. However, we do question whether all consumers who should, do raise complaints directly with firms, or whether they are put-off by concerns about

1. whether the complaint will make a difference,
2. difficulty in compiling the complaint, having to pull all the information together (some of which they may not have, or
3. the time taken to get an answer (with the current 8-week response time).

Additionally, some consumers who are unwilling to navigate the claims process may engage claims management companies which come with associated charges.

We suggest that better alignment of compensation limits across products would make the system easier for consumers to understand. Additionally, we have previously called for periodic reviews of compensation limits to ensure that they remain appropriate to cover potential losses of consumers in mass-market products.[13]

We know it is current practice for the FCA to review the data of FOS and others, to better target reviews into financial promotions and supervisory activities on identified regulated firms, but we would welcome greater focus and collaborative working in this area.

For us the key question here is '<u>how does a consumer know that they have suffered harm or loss because of an act or omission of the firm</u>?'

It is therefore important that both pre-and post-sales communication is clear, simple and easy to understand so that a customer can have a clear understanding of what they are buying and a reasonable expectation of how it should perform and of the service they should receive. Moreover, when a firm identifies an issue with one customer, through either an internal or FOS complaint, that they ensure that no other customer has been likewise affected. If any consumers are identified the firm must proactively contact these customers with the intention of compensating them.

Ensuring consumers understand there is an issue and therefore receive appropriate compensation is an area where many bodies have a role to play. Market commentators such as MoneySavingExpert.com, Which? and BoringMoney.com along with organisations such as MaPS and the FCA should take a strategic approach to work together to identify and highlight where consumers haven't been treated fairly and may have lost money. The recent approaches such as;

1. the formal and 'commentator-led' campaigns and communications around consumers' right to claim for mis-sold PPI policies, and
2. the FCA taking the lead in pursuing a High Court case relating to Business Interruption Insurance during the COVID pandemic

demonstrated the significant effect that these organisations can have in helping consumers either unaware or unable to seek redress.

Finally, we would encourage the use of mystery shopping and the ongoing review of firms' processes and files by the FCA to ensure that regulated firms are acting appropriately, handling complaints accurately and applying the learnings to other customers, both existing and new.

Q29: What more can we do to ensure that compensation is paid for fairly by those that cause the loss?

The Panel is hugely supportive of the work of the FSCS and agrees that this is not only about compensating consumers when they have suffered a loss (when the firm can no longer pay compensation) but, when correctly positioned, can provide additional confidence to consumers making investments.

The Panel is concerned that we are at a tipping point with regard to the operation of the FSCS in the consumer investments market. The current approach doesn't command the support of the sector (due to many issues including both the cost and the fact that the good actors tend to pay for the errors of the bad) and is having unintended and perverse

[13] https://www.fs-cp.org.uk/sites/default/files/fscp_response_to_fos_award_limit_final_20181221.pdf

consequences for consumers by causing some players to remove products or exit the market completely to minimise levies.

We cannot see, at the current time, how this can be improved within the current parameters of the scheme.

There have been many suggestions over the years with the aim of addressing these issues including the use of product levies (which would be borne by the consumer), the creation of longer-term funding levies, extension of PII cover or the creation of another collective insurance scheme or the use of public funding, to list but a few.

We suggest, given the breadth of this consultation that the FCA focus on the other issues it raises until it is ready, with the Government, to explore a more radical, and longer term, change to the FSCS.

Q30: What do you think should be done to help ensure that the 'polluter pays' for unsuitable advice?

Please see our answer to Q29 – this issue should be address as part of a more fundamental and radical review of the options available.

Q31: What do you consider to be the right balance of approaches to ensure we provide an appropriate level of protection to consumers?

The Panel's vision is that firms should have a duty of best interest with regard to their customers, ensuring that products and services are developed for the target consumer segments, delivered with the right amount of, timely, information, education, guidance or advice as required and achieve the outcomes intended and expected, therefore minimising consumer harm.

There should be the appropriate degree of regulatory supervision and intervention, using market intelligence and big data to target those firms more likely, either intentionally or unintentionally, to cause harm.

This would be supported by the backstop of an appropriately funded compensation scheme that is sustainable in the long term.

This vision would provide the appropriate level of protection to consumers by reducing the harm caused in the first place and then compensating as required.

Our primary concern at the moment is that not all firms and activities appear to be bound by a duty of best interest with regard to consumers. The level of harm caused does not appear to be reducing and the good actors in the market are paying for the outcomes from the bad actors through the current, arguably unsustainable, FSCS model.

Q32: Do you have any views on how the AR regime is working in practice?

No comment.

Q33: How can people be better protected from scams?

The Panel is concerned not only with the number of scams in the market but also the ease with which new scams can be developed and promoted and the difficulty the regulator has in identifying and dealing with these.

This is not just a complex issue but is an area that is developing and changing rapidly and will require a multi-dimensional approach to solve, including

- Increased use of RegTech to rapidly identify promotions, social media usage, fake websites and the like being used as a scam.
- As we described in our response to the HMT's consultation on financial promotions[14] we believe the FCA, along with the government, need to better define the responsibility and accountability of digital platform providers.
  As the digital world continues to evolve, at pace, it becomes cheaper, easier, and quicker for scammers to develop and target promotions on unsuspecting consumers. We believe the digital platform owners, such as Google, Twitter etc should bear clear regulatory and legal responsibility for the financial promotions they either pass-on to consumers or host. Furthermore, we expect the digital platform to have the means, and incentives, to both identify and remove fraudulent or scam promotions quickly.
- The FCA requires the powers to quickly remove scam associated promotions, social media posts, websites and other digital collateral or instruct digital platform providers to do so. We would expect the FCA to develop a 'type I error' approach to removing or suspending suspect promotional material. It is surely better to wrongly suspend (or cause the removal of) a promotion for a few days whilst its legitimacy is verified than leave the promotion running, whilst investigations proceed, allowing unsuspecting consumers to be scammed.
- Customer journeys need to be responsive to scams and change and adapt swiftly. The use of second factor authorisation (sometimes as simple as asking a customer to call their provider just to confirm the action they are instructing online) should be increasingly used to confirm the customer is genuine and give an opportunity to pause and further engage with the customer.
- As the type of scams used evolve quickly, it is important that consumers are continually being educated as to the latest type of scams and how they can avoid these. This will require the FCA to have an ongoing budget, sufficient to support its promotional activities such as the ScamSmart campaign.
  We also encourage the FCA to continue in its use of identified search engine keywords, those being used by scammers, so that its own messages on how to avoid scams can be presented to consumers.

There needs to be a balance between making people aware of scams and scaring them so much that they stop trusting the market and therefore miss-out on the opportunities and returns that investments can offer.

There also needs to be a balance between

1. educating the consumer,
2. identifying and removing the adverts and websites etc associated with scams, and;
3. the identification and prosecution of scammers (noting that in many cases the scammers will live outside of the UK).

These three areas can best be served by cooperation between the many stakeholders involved, including: the FCA, well-respected firms in the market, the press, media market commentators (such as MSE), consumer bodies, digital platform providers, technology innovators and various government agencies both domestic and international.

[14] Financial Services Consumer Panel's Response to the Regulatory Framework for Approval of Financial Promotions Consolation, October 2020

The FCA has the key role in conducting this orchestra of stakeholders and interested parties ensuring a strategic focus, coordination and mobilisation.

Q34: What do you think are the most suitable and proportionate remedies to further tackle scams and other online investment harms?

Please see our answer to Q33.

Q35: What opportunities do you think can emerge for the consumer investment market from innovation?

We hope that innovation can make the consumer investment market simpler, easier to understand, cheaper and more predictable for consumers.

An obvious area of need where innovation can have an immediate impact is in helping consumers understand what they may need to do, how to do it and how to understand the likely outcomes and risks associated with any decision.

Most consumers are not investment experts, nor do they wish to become one, so technology innovations that provide education, guidance or advice will provide real benefit. Innovative technology should be developed that helps a consumer identify the appropriate investment solution based on their needs and risk appetite, whilst clearly explaining the product that the consumer is considering and the risks to which they are exposing themselves and their capital.

The way consumers monitor their investments needs to be a careful balancing act. On one hand consumers should stay up-to-date with their investments and their performance, but on the other hand reviewing investments too frequently can lead to knee-jerk decisions that can reduce the returns that consumers can expect. This is a space where innovation and technology should also be able to help consumers both stay on top of their investments but also think long term.

Finally, innovative product design should give the opportunity for consumers to access better diversified and managed investment portfolios that hopefully provide a better risk/return profile to the consumers' investments.

Q36: What do you think are the main risks of innovation for consumers?

As with all innovation there is a risk that consumers engage with untested or unproven innovations that lead to unexpected outcomes, including higher risk, lower returns, or even the loss of capital. With investments often only proving themselves over the medium to long-term it can be difficult for innovations around investments to be fully understood before they go 'live.'

These developments therefore need to be tested under as many scenarios as possible before being used by consumers.

Generally, innovations, especially involving technology, either present more complexity to the consumer, or simplify and make things easier. We would hope that innovation in the investments space simplifies and clarifies the process of investing and holding investments. This may make technological innovation more focused on one-off scenarios rather than ongoing relationships in initial phases.

Key to any development is that the innovation process has the consumer and their needs at its heart and develops innovations that aid and assist the consumer. In an environment where consumers' engagement with their finances and especially any investments is low, innovations should be targeted to help clients better understand their investment, make better decisions and achieve better outcomes rather than further disengaging consumers from their money.

This will require innovation beyond just the technology itself. The FCA's own research revealed how, when given robo-advice in a test scenario, in 57% of cases the robo-advice was rejected[15]. Trust was seen as a key differentiator, trust in the firm providing robo-advice and trust in the advice itself. Therefore, the delivery model itself also requires innovation and development to ensure robo-type engagement, and technical solution more widely, are better accepted by consumers.

Q37: What are the barriers to innovation and effective competition in this market?

No comment.

Q38: What more can we do to facilitate effective competition and encourage firms to develop innovative products and services which help consumers to invest?

The Panel has been fortunate in receiving updates from both the Innovate team and also the Sandbox team over the years. We believe the FCA is very focused on encouraging firms to develop innovative products and services which can help consumers invest and also better understand and manage their investments.

While we don't perceive any of the current rules getting in the way of innovation we would be supportive of changes to any potential regulatory barriers. However, we would expect the FCA to take a balanced view and ensure that any regulatory changes do not weaken the protections already enjoyed by consumers.

Q39: Have there been initiatives to promote innovation and competition in other countries that may be relevant for the UK?

No comment.

[15] https://www.fca.org.uk/insight/robo-advice-–-will-consumers-get-programme