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Dear Clare,

Quarterly Consultation No10 Chapter 5 – Consumer Redress Schemes

The Financial Services Consumer Panel welcomes the opportunity to comment on the FCA guidance on section 404.

The ability to provide appropriate consumer redress in cases of widespread unfair business practices is an important part of the FCA's toolkit and it is essential that the provisions work fairly for consumers. The Panel hopes that this updated guidance will also lead to wider use of s404 powers.

Traditionally, the FCA has used a complaints-led approach to redress where consumers are encouraged to try to resolve their complaint at first instance with the provider, and turn to the Financial Ombudsman Service (FOS) if this does not lead to a mutually satisfactory solution.

The FOS therefore plays an important role in providing compensation to consumers who have been treated unfairly by their financial services provider. The Panel strongly supports the right of recourse to the Ombudsman for individuals. However, where the regulator has identified widespread failings, we believe it is right for the FCA to consider a more pro-active approach to redress which ensures that all affected consumers are compensated in the most efficient way possible.

There have been various examples of widespread failings or mis-selling by firms, where the regulator has opted for a complaints-led approach that relies on the FOS, such as payment protection insurance (PPI) mis-selling, or ad-hoc arrangements, such as for small businesses that were mis-sold interest rate hedging products.

The most high-profile example of the FCA using S404 to deal with the mis-selling of a particular product is the Arch Cru case. However, the scheme was subject to an opt-in that investors had to exercise in order to be eligible. The Panel would in principle prefer section 404 schemes to be subject to an opt-out, with all affected consumers included in the scheme unless they explicitly indicate they do not wish to take part.

Given that a S404 consumer redress scheme would ensure adequate, efficient and timely redress for all consumers affected, we would therefore like to see the FCA make greater use of its powers under the section. We hope the increased clarity being proposed in the updated guidance, will help with this.

However, the Panel is concerned that the existence of a redress scheme could tie the hands of the Ombudsman. The FOS should have the discretion to depart from the terms of the scheme where it considers it essential to provide a claimant with fair compensation.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'S. Lewis'.

Sue Lewis
Chair, Financial Services Consumer Panel