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Dear Karen,

Financial Services Consumer Panel (FSCP) response to CP18/9: Second consultation on remedies following the asset management market study

The Panel welcomes the opportunity to respond to this consultation.

The Panel welcomed the opportunity to participate in the FCA's Fund Objectives Working Group. We are also represented on the Investment Association's Investor Communications Working Group. The need to improve fund disclosures was highlighted in research published recently by VisibleThread¹ which found that 98% of the 69 asset management firms they tested failed to meet "basic standards of readability".

The FCA has highlighted the harm to consumers (e.g., lack of appropriate information for making investment decisions, and payment of fees on fees because of the current practice of calculating performance fees against gross returns instead of the more transparent net of fees). The outcome of the harm is the deterioration of amounts available to consumers from their savings and investments for their financial goals and retirement.

The Panel agrees with most of the proposals. We have provided specific responses to the questions. However, we also want to stress that the FCA should take bolder steps to require firms to improve the quality of disclosures and information, and to help retail investors make sense of the broad range of fund products on offer.²

The FCA's Occasional Paper 32 and the Policy Statement published alongside this consultation paper provide useful context. Although the OP focuses on consumer behaviour relating to disclosure of costs and charges information, it also suggests that using colour, graphics and plain language can make information more noticeable and more likely to be acted upon³.

Presenting investment information using clear, jargon-free and illustrative information helps consumers make decisions. Ideally, industry would do this voluntarily. However, it appears challenged by 'first mover paralysis'. The Panel hopes the forthcoming Investment Platforms Market Study will consider these concerns in more depth.

¹ <https://www.visiblethread.com/company/published-reports/>

² "Firms write terms and conditions to protect their own interests, not to enlighten consumers."
https://www.fs-cp.org.uk/sites/default/files/final_position_paper_-_consenting_adults_-_20180419_0.pdf

³ According to OP32, "...making information available does not necessarily mean that investors will take notice of or understand it. **Previous research has shown that the way information is presented can affect how consumers access, assess or act on it.** For example, information located on the top of a page is likely to be more effective than that at the bottom of a page (Bergstrom & Schall, 2014). **In addition, presenting information using simple language or images and graphics can help consumers to understand the information** (Pinker, 1990 and Bhargava & Loewenstein, 2015)."

MiFID II, PRIIPS and eventually the updated UCITS KIID are a step in the right direction, but the FCA should be more ambitious in addressing how investment information is communicated to investors, and encourage the industry to innovate through use of available technology. Firms appear to spend too much time writing investment information as part of a regulatory 'box-ticking' without enough focus on whether the information will help consumers make informed decisions.

Yours Sincerely,

Sue Lewis
Chair, Financial Services Consumer Panel

Questions for discussion

Q1. Do you agree with our draft guidance on fund objectives?

The Panel does not object to the proposed guidance but the 'no rule change' proposal will not be enough to correct the harms identified in the AMMS.

The manager's need for flexibility so that they can react to market conditions is important. However, too much flexibility means that consumers can't assess whether a manager has done what they said they would do. Investors need to understand exactly what a manager is aiming to do, so that they can hold them to account.

Investors must be able to compare fund products if competition is to stand any chance of working. This requires standardisation.

The existing rules are not working, as evidenced by the recent closet index tracking scandal. There would appear to be a need for more prescriptive restrictions and discipline for managers.

Q2: Do you agree that we should introduce a 'requirement to explain' with regard to AFMs' use of benchmarks?

Yes, investors must have clear and objective criteria for assessing an AFM's performance. The FCA should stamp out the practice of using benchmarks that flatter performance in an ex-post analysis of returns, but where the benchmark was not in the original fund objectives or described to investors as the manager's target.

This practice is detrimental to consumers, who may not possess the technical expertise or resources to challenge a manager's claim to performance fees. The proposal for an AFM to explain why they have used a target or comparator is a helpful move to address the gaps in UCITS disclosure requirements.

Q3: Do you agree that we should introduce rules and guidance to require consistency in references to benchmarks across the same fund's documentation?

Yes.

Q4: Do you agree that we should introduce rules and guidance on which benchmarks should be displayed against a fund's past performance, where past performance is shown?

Yes. It is not fair that managers should have discretion to use criteria more favourable to their reporting on an ex-post basis.

Q5: Do you agree that we should remove the possibility that performance fees could be taken on gross performance?

Yes. The gross method does not represent the true cost of investing.