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23 March 2016

Dear Sir/Madam,

EBA/CP/2015/29 - Draft Guidelines on remuneration policies and practices related to the sale and provision of retail banking products and services

This is the response of the Financial Services Consumer Panel to the European Banking Authority's consultation on remuneration of sales staff.

The Consumer Panel is an independent statutory body, which represents the interests of all groups of financial services consumers in the UK. The emphasis of the Panel's work is on activities that are regulated by the Financial Conduct Authority (FCA), although it may also look at the impact on consumers of activities that are not regulated but are related to the FCA's general duties (including the work of the European institutions). The Panel welcomes this consultation on the Draft Guidelines for the remuneration of sales staff. However, we do not believe the focus should be solely on sales staff. Mortgage brokers, staff in collections departments and those employees responsible for arrears management, for example, can also have incentives that are in conflict with consumer interests and result in poor consumer outcomes.

It is important that the design and governance of remuneration policies and practices are aimed at ensuring fair treatment of consumers. There must also be appropriate risk management and controls implemented by firms to monitor any risks which might arise to consumers from remuneration policies and practices. Where risks are identified, firms should make changes to the design of remuneration policies and practices to mitigate them. To ensure that the Guidelines tackle all risks associated with remuneration policies and practices they should apply to both financial and non-financial remuneration schemes including performance management schemes.

Research by Consumers International identified that both financial and non-financial sales incentives schemes were an important root cause of mis-selling and contributed to financial instability.¹ The research found that inappropriate incentive schemes had led to mis-selling of Payment Protection Insurance in the UK and hybrid securities in Spain. They also contributed to the failure of DSB bank in the Netherlands, HBOS in the UK and Banco Espirito Santo in Portugal.

Remuneration and incentive schemes have a direct impact on behaviour and are also an important driver of the 'culture' within a bank. Inappropriate sales incentives schemes create unfair pressure on retail staff, who may be trying to avoid disciplinary action and

¹ Consumers International, Risky Business: The case for reform of sales incentives schemes in banks, Dominic Lindley, October 2014: http://www.consumersinternational.org/media/1529404/sales-incentive-report_riskybusiness_final2_151014.pdf

safeguard their job or who may rely on bonuses to earn a decent wage. The schemes can conflict with their responsibility to do their best by customers.

Comments on definitions

The definition of remuneration should be expanded to include performance management systems such as those covering disciplinary action, enhanced monitoring and dismissal. These performance management systems are capable of having a similar detrimental effect on customers and staff as financial remuneration schemes. Indeed, negative effects can be greater with performance management systems where the threat of losing their job can place banking staff under significant pressure to disregard their customers' interests to meet targets. In some countries, banks have taken action to reform financial incentive schemes, but staff in some banks still feel under pressure to sell products.

As part of the Consumers International research Trade Unions from Ireland reported that prior to the financial crisis, delivering certain targets could result in pay increases or bonuses. However, subsequently, failure to deliver sales targets has, in some cases, resulted in disciplinary action, including dismissal. In other words, incentives have been used in a negative, not positive, way. In the UK, the Financial Conduct Authority found that "the changes to reward structures may not have been accompanied by a genuine shift away from a sales-focused culture. Instead, there are indications that in some cases the progress made on financial incentives may have led to an increase in pressure being placed on staff through other means, to achieve sales." It concluded that "inappropriate performance management can sometimes lead to an excessive emphasis on sales results. This type of undue pressure may be hidden, which means there is a risk that the reality of daily life for some sales staff can be very different from the tone set at the top by senior staff or Boards."²

Consumers International identified the following rewards and punishments given to bank staff. It is important that all of these types of rewards and punishments are covered by the Guidelines.

Reward	Punishment
Financial	
<ul style="list-style-type: none"> • Annual/Quarterly/Monthly bonuses • Increases in salary • Spot awards • Collective bonuses for teams/branches 	<ul style="list-style-type: none"> • Loss of bonuses • Decreases in salary
Non-Financial	

² FCA, Risks to customers from performance management at firms, Finalised Guidance, page 3: <https://www.fca.org.uk/your-fca/documents/finalised-guidance/fg15-10>

<ul style="list-style-type: none"> • Competitions and Prizes (either for staff who meet specific targets or top %) • Gifts - Cinema/Restaurant/Sporting tickets/vouchers • League tables • Promotion • Leaving early / Extra holiday 	<ul style="list-style-type: none"> • Performance management • Performance Improvement Plans • Enhanced monitoring • Loss of status • Humiliation / Peer Pressure • Extended working hours • Demotion • Dismissal / Redundancy
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Question 1: Do you agree with Guideline 1 on design?

Section 1 – Design

We broadly support the Guidelines under section one but believe that they should be enhanced by including the following issues:

- As part of the design of remuneration policies and practices institutions need to consider mechanisms for monitoring and managing risks which might arise from these policies and practices. These should include sales quality monitoring to determine whether regulatory requirements are being met and root cause analysis to assess the patterns of, and reasons for, complaints made by consumers.
- Where necessary, institutions should change the design of their remuneration policies and practices to mitigate any identified risks of consumer detriment, or to address any actual detriment experienced by consumers.
- Where institutions move away from quantitative targets to entirely discretionary remuneration policies and practices they should ensure that the reasons for awarding discretionary bonuses are documented clearly and that discretionary remuneration is not being used to indirectly reward sales or to put excessive pressure on staff to sell products.

Question 2: Do you agree with Guideline 2 on documentation?

Section 2 – Documentation, notification and accessibility

Institutions should disclose the risks they have considered which arise from their remuneration policies and practices alongside the action they have taken to mitigate them, including how they have complied with these Guidelines, in the operational risk disclosures of their Pillar 3 report.

The documentation referred to under paragraph 2.1 should also include:

- Disclosure of the number of occasions whistle-blowers have raised concerns about remuneration policies and practices. This disclosure should also include whether any changes to policies and practices were made as a result of concerns raised.

Question 3: Do you agree with Guideline 3 on approval and monitoring?

Section 3 – Approval and monitoring

The Guidelines should be enhanced by including the following issues:

- The institution should gather appropriate Management Information (MI) to be able to identify and manage risks from their remuneration policies and practices.

A summary of this information should be provided to the management body responsible for approving the remuneration policies and practices.

- Those responsible for sales quality monitoring, operating other controls and assessing compliance with these guidelines should be sufficiently independent to avoid influence from sales staff or sales managers.
- The institution should establish effective procedures to gather feedback from frontline staff about the operation of remuneration policies and practices. This should include effective whistleblowing or other monitoring procedures enabling staff to raise concerns about excessive pressure or bias caused by these policies and practices. A summary of feedback, including any concerns raised and how they were investigated should be provided to the management body.

Under paragraph 3.7, we do not agree that institutions should only be required to check annually whether any of the residual risks are crystallising and causing detriment to consumers. Instead, the Guidelines should require that “appropriate monitoring and controls are put in place to check whether any of these residual risks are crystallising and causing detriment to consumers”. The institution should also be required to record what action is taken in response to any detriment caused to consumers and make changes to the remuneration policies and practices to reduce the risk of consumer detriment arising in the future.

Question Four: Do you see a need for any additional requirements?

Please see our responses to questions 1-3.

Question Five: Do you have any other comments?

We believe that the EBA should add the following undesirable remuneration practices to the list that the EBA is seeking to use the Guidelines to prevent:

Cliff edges: The EBA should aim to prevent practices associated with high rewards for thresholds, for which the reward for making additional sales increases dramatically. This can occur if staff are required to meet a specific sales threshold, such as 50 sales per quarter in order to receive any bonus at all, or have to meet a specific target to receive a large bonus. For example, in the UK the FCA found an occasion where the first 21 staff to meet a specific sales target received a special bonus of up to £10,000. This was a particularly risky practice as it combined a cliff-edge with a competitive element between staff, rewarding those who achieved this threshold first, increasing the risk of non-compliant sales methods.

Performance management: Managers use disciplinary action, extra monitoring or threats of dismissal for the sole purpose of encouraging staff to meet targets for the sales of banking products by disregarding the best interests of their customers.

Yours sincerely,



Sue Lewis
Chair
Financial Services Consumer Panel