

Mark Hoban MP
Financial Secretary to the Treasury
1 Horseguards Road
London
SW1A 2HQ

2 February 2012

Dear Mr Hoban

We congratulate you on the introduction of the Financial Services Bill to Parliament and very much welcome the consultative approach the government has taken on this proposed legislation.

This is a once in a generation opportunity to create a regulatory framework that fosters a robust and vibrant financial services market providing a range of valuable goods and services for consumers.

As the voice of consumers in the UK we agree that there is much to welcome in this Bill and wanted to share with you, and other interested parties, our views on the Government's proposals.

We welcome the provisions in the Bill that enable regulation of Consumer Credit to pass to the FCA. An early statement from Government setting out next steps in the reform of consumer credit regulation would be very helpful in clarifying how this will be taken forward.

We also particularly welcome:

- The inclusion of a new operational objective for the FCA to promote effective competition in the interests of consumers;
- Proposals to enable consumer bodies to make Supercomplaints to the FCA;
- The principle that, in all activities, the regulators should exercise their functions as transparently as possible;
- The inclusion of specific powers, for the FCA, on product intervention;
- Provisions to allow the FCA to publicise details of actions taken against misleading financial promotions;
- The additional proposals in the consumer protection objective, especially in relation to the requirement on the FCA to have regard to the needs of consumers for the timely provision of information and advice that is accurate and fit for purpose.

FCA Strategic Objective

Markets function best for consumers when they work for consumers - a healthy market should reward firms which provide valuable and useful products for a wide variety of consumers and discipline those firms which cause detriment. We welcome the move away from defining the strategic objective in terms of "confidence". However, we believe that, to improve clarity, the strategic objective should make it clear that the regulator should focus on ensuring that markets

are "fair, transparent and efficient" and function well for consumers. This would be in line with the recommendation from the Joint Committee.

Access to essential products and services

We believe the FCA, when fulfilling its statutory duties, should have regard to the ability of consumers to access financial services and therefore propose an addition to the FCA's general duties.

1(B)(5):

'HMT may, by order, specify financial needs of different consumers that are to be considered to be essential. Where it becomes apparent that the essential needs of some or all consumers are not being adequately met, the FCA must consider what action will be necessary to ensure that suitable products and services are available to meet those essential needs.'

Consumer responsibility

In the explanatory notes published with the Bill, the Government clarifies that the general principles do not place burdens or requirements on consumers or firms but rather sets out the role of the regulators. However, having regulators base their actions on the principle that consumers have "responsibility to look after their own interests"¹ neglects the significant knowledge and information asymmetries in this market. Products may also have a long term nature where potential problems are, almost, impossible for consumers to anticipate at the point of sale.

In the UK empirical levels of financial capability, functional literacy and numeracy remain extremely poor:

- over 5.2 million UK adults lack the basic day to day competencies of functional literacy;
- 6.8 million lack functional numeracy;
- more than 20 per cent of adults, asked to choose between receiving £30 or 10 per cent of £350, opt for the lower figure;
- one in five gave the wrong answer to a question in a recent FSA survey² which asked *'if the inflation rate is 5 per cent and the interest rate you get on your savings is 3 per cent, will your savings be worth as much in a year's time?'*

Compounding this lack of basic understanding is the complex nature of many financial product contracts, despite years of effort by regulators to improve disclosure. Research shows it can take 55 minutes to read a standard consumer credit agreement, let alone understand it³.

In our opinion, the evidence supports amendment to the consumer protection objective and the regulatory principles such that 1(C)(2)(d) and 3(B)(1)(c) would both now read:

'the general principle that consumers are responsible for acting reasonably in their dealings with financial services providers and their intermediaries.'

¹ Financial Services Bill Explanatory Notes; HMT, (Jan 2012); pg 25

² <http://bit.ly/r3Ydnc>

³ *Warning: Too Much Information Can Harm*; Better Regulation Executive/NCC, available at <http://bit.ly/oUP3lj>

Consumer interest and The PRA

In fulfilling its objective of promoting the safety and soundness of PRA-authorized persons, the actions of the PRA could have a significant impact on consumers. The PRA will have responsibility for with-profit business and the £330bn of assets held in these funds. There are currently 25 million with-profit policyholders in the UK and the PRA's actions in this area will have a direct impact on the investments and pensions held by many consumers.

We are concerned that the Bill, as currently drafted, does not require the PRA to consider the views of consumers. We believe the PRA's duty to consult should be extended beyond PRA-authorized persons to include consumers. We therefore propose the PRA's general duty to consult 2(K)(1) should be amended to read:

'The PRA must make and maintain effective arrangements for consulting consumers and PRA-authorized persons or, where appropriate, persons appearing to the PRA to represent the interests of such persons on the extent to which its general policies and practices are consistent with its general duties under sections 2B to 2H.'

In addition, we believe the requirement for the FCA to maintain, consult and consider representations from the Consumer Panel should be extended to the PRA. A Consumer Panel that considers the cumulative impact of prudential and conduct regulation on consumers would be uniquely placed to highlight unintended consequences of proposed regulation at an early stage.

Transparency

We agree with the government that transparency and disclosure can be a powerful regulatory tool⁴ – allowing consumers to have confidence that firms, and their products and services, are sound.

The Government has announced a review of section 348 to be completed during the passage of the bill and it is essential that *this* legislation enables the regulator to be transparent on warning notices: consumers should be alerted to the regulator's concerns about a firm's behaviour and be able to either switch or even avoid a product altogether.

The regulator also needs to be able to ask for and publicly disclose market share in order for complaints data to be shown against market share, allowing consumers to better judge firms' commitment to fair treatment and preventing complaints occurring. The FOS and FSA have tried before to gain this information but under the current regulations useable data has proved elusive.

Additionally, we think it would encourage more transparency by the regulator if the criminal penalty for releasing information collected from firms were to be abolished⁵.

⁴ A new approach to financial regulation: securing stability, protecting consumers; HMT, (Jan 2012); pg 39 available at www.hm-treasury.gov.uk/d/fin_fs_bill_policy_document_jan2012.pdf

⁵ We are seeking the abolition of the criminal penalty under s348. Article 54 of the Markets in Financial Instruments Directive (MiFID) does not specify the penalties which will apply and the Treasury's consultation on the Money Laundering Directive aimed at removing the criminal penalty is a precedent for removing the criminal sanction in section 352 FSMA.

FCA rule making power and misleading price structures

We welcome the recognition in the January 2012 policy document from HMT⁶ that the FCA should look at comparative price. 'Behind-the-scenes' prices can weaken effective competition between firms, in particular reducing direct price competition as apparently low 'headline' prices mask the true costs once ancillary and default charges are accounted for.

Discovering the 'true' price raises consumers' search costs, especially if price structures are frequently altered. This will distort consumer decisions leading to inefficient economic outcomes. Consumers should have the confidence that once they have entered into a contract, they will not be subjected to any unexpected charges or, if they are, such charges are fair and proportionate.

Better regulation of price disclosure in financial services is essential and the FCA must have effective powers in this regard. However the FCA must also have effective powers to ensure that pricing structures in retail markets are fair and reasonable.

If the FCA's powers over ancillary charges are not clarified by legislation, then we see a clear risk of a long and expensive legal process, similar to the bank charges test case, if the FCA tries to make rules in this area in a significant way.

We are grateful for the opportunities in recent months to help enhance this legislation and look forward to continuing to play an active and constructive role in the creation of robust, future-proof legislation. In the interests of openness and transparency, we will make this letter publicly available.

Yours Sincerely

Christine Farnish
Chair
Consumer Focus

Michelle Mitchell
Charity Director General
Age UK

Gillian Guy
Chief Executive
Citizens Advice

Adam Phillips
Chair
Financial Services Consumer Panel

⁶ A new approach to financial regulation: securing stability, protecting consumers; HMT, (Jan 2012); pg 33 available at www.hm-treasury.gov.uk/d/fin_fs_bill_policy_document_jan2012.pdf