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Dear Gareth

## **Guidance consultation: Payment protection products**

This is the Financial Services Consumer Panel's response to the joint FSA/OFT Guidance Consultation on payment protection products.

This guidance consultation document is significant in a number of respects. The guidance itself is of course an important aid for firms that produce and distribute payment protection products, but on a broader level the approach adopted by the FSA gives a clear indication of one type of regulatory early intervention envisaged in this year's FCA Approach document and the Discussion Paper on product intervention (DP11/1). We are also supportive of the joint approach by the OFT and FSA as there is a clear overlap between products and regulatory responsibility in this sector of the market.

We have set out below our views on the guidance consultation document. We have not commented on the detail of the OFT guidance, which relates to non-insurance based protection products.

## **Policy and approach**

The Panel fully supports the FSA's earlier intervention approach and the inclusive process of stakeholder engagement that the FSA has put in place to enhance this particular consultation process. The seminars that have been organised will provide a useful forum for questions and feedback on the guidance. It is helpful too that guidance from the FSA and OFT has been encompassed within the same document.

Given the overlap between the products we think consumer interests would be best served by continued co-ordinated working by the FSA and OFT in this area. Amongst other things this would also help to identify any instances of regulatory arbitrage, with firms moving towards non-insurance products where the OFT's regulatory remit and sanctions regime is often perceived as more light-touch than that of the FSA.

Given the significant levels of detriment that consumers suffered as a result of the PPI mis-selling scandal we are concerned that there may be a need for prescriptive rules to be put in place to protect consumers in the payment protection market. Although we agree that in a developing market guidance provides a necessary degree of regulatory flexibility, it is vital that any potential detriment is addressed before it has crystallised, rather than after. While we were pleased to see confirmation within the guidance consultation that the FSA will continue to monitor developments in the market, and that this could ultimately lead to the imposition of specific, detailed rules, we urge the FSA to be ready to act promptly to address any early indicators that problems may be emerging.

## **Enforcement**

As we have indicated, we are pleased that the FSA intends to monitor developments in the payment protection market. We were disappointed however that the guidance talks only in terms of 'consideration' of enforcement action in cases of breaches of the Principles/rules on which guidance has been provided. This seems too tentative. We believe the FSA should be saying that once the guidance is in place there are no more excuses for non-compliance, and that breaches will be vigorously pursued.

As already stated we think consumers would be better protected if the FSA and OFT were to continue to work together on monitoring and compliance. For example, if a firm authorised by the FSA were to breach OFT requirements for non-insurance based payment protection products, the FSA would be in a position to consider the implications of the non-compliance for the authorised firm in terms of treating customers fairly and other FSA principles for business.

## **Consumer communications**

We support the use of a tailored consumer communications programme to deliver key messages about protection products and we are pleased to have been able to contribute to the development of this work. It is of course in the interests of consumers to buy protection products that meet their individual needs. Payment protection insurance has unfortunately become tainted by previous mis-selling and one of the consequences has been a reluctance on the part of some consumers to consider taking out protection insurance. A targeted communications strategy, reminding consumers of both the benefits of protection and some of the pitfalls they need to bear in mind, will benefit both consumers and industry alike.

## **Detailed comments on guidance**

We are supportive of the overall content and format of the document, with the guidance set out around clear messages, TCF outcomes and the identification of key risks. We would like to see more emphasis on the need for consideration to be given at the time of contract renewal to any limitations or exclusions on cover that might begin to 'bite' from that point. It is easy for both firms and policyholders to lose sight of this risk once the initial decision to buy the policy has been taken.

The section in the consultation on governance (from paragraph 1.37) encompasses a suitably broad range of issues and we have only two comments. The first relates to the possible nomination of a 'TCF champion' as a means of ensuring appropriate

consideration of consumers' interests. We can see the appeal of such an approach, but we are concerned that this might engender a tick-box type methodology within the governance arrangements, when in fact a culture of TCF should be embedded throughout an organisation. Second, as a matter of good governance, responsibility for product design should go up to board level.

Given the scale of the PPI mis-selling scandal we would have liked to have seen greater emphasis in the draft guidance on the risks presented by certain types of reward strategy, illustrated by specific examples.

Finally, we would like the FSA to undertake a review of the effectiveness of the guidance in 2013, or at an earlier stage if there is an unexpected rise in the number of policies being written or the products become a disproportionately significant source of revenue, as was the case with PPI.

Yours sincerely

Adam Phillips  
Chair  
Financial Services Consumer Panel