

Financial Services Consumer Panel
response to

Cm 8083 - a new approach to financial
regulation: a blueprint for reform

September 2011

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Response to Cm 8083 - A new approach to financial regulation: a blueprint for reform¹

Introduction

The Financial Services Consumer Panel welcomes the opportunity to comment on the questions posed in Cm 8083 and would be happy to discuss further any of the points raised in this response. Getting the regulation of financial services right is a crucial element in revitalising the economy, supporting an efficient and effective industry, and above all protecting and supporting the rights of consumers. As a statutory body under the Financial Services and Markets Act 2000 the Panel advises the current FSA on the interests and concerns of consumers and reports on the FSA's performance in meeting its objectives, and is therefore well positioned to comment on the proposals for future regulation.

In summary, the main points of this response are:

1. The Panel believes consumers would be best able to take responsibility for their decisions if the authorised persons with whom they deal have an explicit fiduciary duty towards them and if all matters relevant to the conduct of such firms are disclosed.
2. The FPC should have a duty to consider representations made to it by the Consumer Panel.
3. The PRA should have a specific 'have regard' to the need to minimise the adverse effects on competition that may arise from anything done in the discharge of its function.
4. The Consumer Panel must retain its function for the PRA, in order to advise on prudential matters in general and the interests of with-profits policyholders in particular.
5. The Panel proposes there should be a statutory requirement for the PRA and FCA to estimate both the costs and benefits of proposed new rules. The new legislation should be taken as an opportunity to improve rather than water down the evidence base used in consultations.
6. Relying on increased disclosure of information is not sufficient to ensure consumer protection and the FCA must be mindful not to rely on this in carrying out its consumer protection obligations.
7. Relating to competition powers, the existing proposals are excessively complex. The starting point should be the assumption that the FCA is the lead on competition issues in financial services. It should refer to the Competition Commission (or its successor) only if structural change needs to be considered.
8. We welcome the proposed new powers relating to financial promotions, which in conjunction with the product intervention power will assist the FCA in preventing inappropriate products reaching the market. We

¹ <http://www.official-documents.gov.uk/document/cm80/8083/8083.pdf>

- believe there should be a presumption in favour of publication of specific and identified action in the case of misleading promotions.
9. The FCA should have the ability to publish information of disciplinary action without consultation with the firms involved, where it considers there is a risk of serious consumer detriment.
 10. The FCA should have the ability to publish information received for the purposes of its functions under FSMA, where it considers this appropriate.
 11. Memorandum of Understanding provisions between the PRA and FCA must give detailed provision on ensuring coordination with the European Supervisory Authorities (ESAs) of which they are not members, as well as the ESAs of which they are members, to ensure that both prudential and conduct of business issues are addressed across all sectors.

1. Proposed principles of regulation for the PRA and FCA - fiduciary duty

The Regulatory Principles in clause 3B of the Bill include 'the general principle that consumers should take responsibility for their decisions'. It is recognised that different consumers have differing degrees of experience and expertise (clause 1C(2)(b)). Given this, it would help consumers take responsibility if authorised persons had an explicit fiduciary duty towards their clients.

A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. Fiduciary duty implies a stricter standard of behaviour than the comparable duty of care at common law. The fiduciary has a duty not to be in a situation where personal interests and fiduciary duty conflict, a duty not to be in a situation where his fiduciary duty conflicts with another fiduciary duty, and a duty not to profit from his fiduciary position without express knowledge and consent. A fiduciary cannot have a conflict of interest.

The recent US Dodd-Frank Act² provides authority for the Securities and Exchange Commission (SEC) to impose regulations requiring "fiduciary duty" by broker-dealers and investment advisers to their customers. Although the Act does not create such a duty immediately, the Act authorises the SEC to establish such a standard and requires that the SEC study the standards of care which broker-dealers and investment advisers apply to their customers and report to Congress on the results within 6 months. The SEC is due to propose rules later this year.

For consumers with limited experience and expertise, dealing with a provider of financial services which has a fiduciary duty would reduce the chances of detrimental outcomes when such consumers take responsibility for their decisions.. It would be desirable to extend this approach to the generality of relationships between consumers and authorised persons.

An important outcome of the FSA's Retail Distribution Review is that independent financial advisers will no longer be able to take commission from product providers but will be paid a fee agreed by their clients, so that the adviser acts clearly as agent for the client.

The Panel proposes that a further sub clause be added to clause 3B(1):

'the principle that, where appropriate, authorised persons should have a fiduciary duty towards the consumers who are their clients'.

The reference to 'where appropriate' allows the fiduciary duty principle to be disapplied in certain cases if, after consideration, it were to be judged by the FCA to be inappropriate, for example on account of unintended consequences.

² [Dodd-Frank Wall Street Reform and Consumer Protection Act 2010](#), H.R. 4173-453

2. Responses to specific questions

1. Do you have any specific views on the proposals for the FPC as described in paragraphs 2.6 to 2.24 and in Chapters 3 and 4

The Panel has concerns about the structure and functioning of the FPC as currently conceived, and in particular the lack of diversity in the membership, in that the majority of members are directly connected to the Bank of England. A more robust structure would include a wider range of experience, with the majority of members not from the Bank, in combination with an adequately resourced independent secretariat.

The FPC will seek to achieve its main objective by identifying, monitoring and taking action to remove or reduce systemic risks. These systemic risks include in particular unsustainable levels of leverage, debt, or credit growth, where 'credit growth' is defined as the growth in lending by the financial sector to individuals and businesses in the UK, and 'debt' is debt owed to the financial sector by individuals and businesses in the UK.

As part of its concerns about the breadth of knowledge and experience of the FPC, the Panel believes it should have adequate information from a consumer perspective on factors which may be influencing the levels of debt and credit growth and which contribute to the sustainability of these levels. The relatively narrow objective of the FPC, focusing on financial stability, should not restrict its ability take account of the wider impact on the economy and society of its actions.

As it stands, there is no direct consumer representation on the FPC. This could be resolved by requiring it to consider representations made by a body such as the Consumer Panel, in the same way the FCA will be required to do. It proposes the following section to be inserted into the Bank of England Act:

'The FPC must consider representations that are made to it by the Consumer Panel in accordance with arrangements made under section 2J of FSMA.

The FPC must from time to time publish in such manner as it thinks fit responses to the representations'

The Panel has a unique position in that it can represent consumer issues while regulation is being developed, before that regulation reaches the public domain. In the case of the Mortgage Market Review, for example, the Panel has been supportive of the principles of the Review, but voiced concerns about the thrust of the FSA's original proposals, including questioning the FSA's proposals on responsible lending, the role of macro-prudential tools and the scope and quality of its economic analysis. As a result of the work of the Panel and others the FSA was persuaded that it should proceed with greater care and deliberation.

The Panel also has a breadth of experience in the areas of consumer debt and credit. It has in the past carried out its own research into, for example, mortgage arrears³ and the experiences of consumers with overdrafts⁴, as well as providing input and advice to the FSA and others on the consumer credit regime, mortgages, insolvency, banking services, credit and store cards. A list of recent public responses is attached as an Appendix.

As a consequence of lack of consumer orientation, the Panel is concerned that the FPC may not take adequate account of the consumer interest when making important decisions about the mortgage market. The Panel has previously suggested⁵ that instruments, such as loan-to-value caps, may be effective in stabilising the financial system but may additionally have serious adverse consequences for some consumers, limiting their options.

The Panel proposes that the FSA should pro-actively engage with the interim FPC to subject each macro-prudential instrument to a rigorous cost benefit analysis which takes account of the goals of financial stability and consumers' welfare. This preparatory exercise would facilitate the selection of preferred macro-prudential tools that would contribute most to financial stability while inflicting least direct damage on consumers, judged in terms of the impact on the availability and cost of financial services, including mortgages. Except in circumstances of immediate crisis, we would also expect the FPC, once fully operational, to consider in consultation with the FCA the consumer welfare implications of macro-prudential interventions.

2. Do you have any specific views on the proposals for the Bank of England's regulation of RCHs, settlement and payment systems as described in paragraphs 2.32 to 2.40 and in Chapters 3 and 4?

The Panel believes there is scope for significant improvements in payment options in financial services, and has already commented on this in its response to the ICB interim review.⁶ In particular, the current payments system acts as a barrier to new entrants to the banking system. On this basis, the Panel recommends that the payments system be the responsibility of the FCA, in line with its competition remit.

3. Do you have any comments on:

- *the proposed crisis management arrangements; and*
- *the proposals for minor and technical changes to the Special Resolution Regime as described in paragraphs 2.41 to 2.44 and in Chapters 3 and 4?*

No comment.

4. Do you have any comments on the objectives and scope of the PRA, as described in paragraphs 2.46 to 2.61 and in Chapters 3 and 4?

³ [Mortgage Arrears, Financial Services Consumer Panel, June 2009](#)

⁴ [Overdraft Complaints, Financial Services Consumer Panel, June 2008](#)

⁵ [Six point plan for a sustainable and healthy mortgage market](#), Financial Services Consumer Panel, 1 June 2011

⁶ http://www.fs-cp.org.uk/publications/pdf/response_icb_report.pdf

Insurance objective

The Panel welcomes the proposals that the PRA's objectives will now make specific reference to its responsibilities with regard to insurers.

This reflects the different priorities, timescales and business models of the insurance industry when compared to the banking industry. It particularly welcomes the requirement to secure an appropriate degree of protection for those consumers who are or may become policyholders.

Regarding the PRA's objective to regulate policyholder reasonable expectations (PREs) for with-profits policies, the Panel has in the past been broadly supportive of the FSA's approach to protecting the interests of with-profits policyholders⁷. However, the reference to the term 'policyholder reasonable expectations', is unhelpful in this context. There is no universally accepted definition of the term, and its use could lead to potential confusion. We would recommend the following change;

3F(1) In relation to PRA-authorized persons carrying on the activity of effecting or carrying out contracts of insurance, responsibility for contributing to the securing of an appropriate degree of protection for ~~the reasonable expectations of policyholders as to the distribution of surplus under with-profits policies~~ is that of the PRA rather than the FCA.

Competition

The Panel agrees that competition should not be a primary objective for the PRA, but does have concerns that its actions could potentially have a damaging effect on competition and consumer welfare. It is important that issues such as barriers to entry are considered, as well as the concerns of large institutions. Therefore it proposes that the PRA's regulatory principles should include:

"The PRA must have regard to the need to minimise the adverse effects on competition that may arise from anything done in the discharge of its functions".

5. Do you have any comments on the detailed arrangements for the PRA described in paragraphs 2.62 to 2.78 and in Chapters 3 and 4?

Consultation

The Panel agrees that there should be no significant reductions to the existing FSMA requirements to consult on rules. It is appropriate that regulators will continue to conduct cost benefit analysis of rules originating from Europe, on the basis that there are in practice few, if any, instances where there is

⁷We have previously commented on this area in our response to CP11/5*** 'Protecting with-profits policyholders' http://www.fs-cp.org.uk/publications/pdf/cp115_with_profits_final.pdf

absolutely no discretion or room for interpretation when implementing such rules.

The Panel strongly believes that the existing FSMA requirement to conduct a cost benefit analysis, where this is defined as an estimate of the costs together with an analysis of the benefits that will arise from a new rule, is a sounder foundation for regulation than the proposals for an analysis of costs and benefits, which may well lead to less quantification and worse decision making. At the very least, the existing definition of cost benefit analysis should be retained.

Our preference would be for a statutory requirement for the PRA and FCA to estimate both the costs and benefits of proposed new rules: the new legislation should be taken as an opportunity to improve rather than water down the evidence base used in consultations.

The Panel's view is partly informed by its experience of the FSA's current Mortgage Market Review. The statutory requirement on the FSA to estimate costs, which it had failed fully to do in its July 2010 consultation, puts the Panel in a far stronger position to press the FSA for a "robust and credible CBA", a request to which the FSA has now responded.

Consumer Panel

The Consumer Panel believes its function should be retained for the PRA. The justification given for its removal is that PRA will be taking decisions on prudential matters, and that the PRA will be required to consult the FCA to take advantage of its expertise on consumer issues.

We believe this reasoning is flawed on two counts. First, we believe that prudential matters are as valid a subject for direct consumer input as conduct of business issues. This is particularly the case given that the PRA will have sole responsibility for insurance and for securing an appropriate degree of protection for with-profits policyholders.

Additionally, although the FCA will have consumer expertise, in its relationship with the PRA it will inevitably be balancing a number of different viewpoints, including industry as well as consumer. There is serious risk that the consumer interest will not be given proper consideration.

The PRA will have a statutory duty to put into place arrangements for engaging with practitioners (although what form this will take has still to be decided) – to delegate responsibility for consumer input to the FCA is to place the interests of consumers on a lower footing than that of the industry.

The Panel has in the past been acknowledged as a credible, authoritative and constructive body advising the FSA on prudential as well as conduct of business issues. As mentioned in the context of the FPC, it is currently in a unique position in that it can represent consumer issues while regulation is being developed, before that regulation reaches the public domain. To

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discontinue a relationship which already exists is to leave a gap in the regulatory jigsaw.

The example of intervention of the Mortgage Market Review was given in the answer to question 1. Other examples of significant interventions by the Panel in the prudential area include:

With profits

The Panel has conducted various research and reviews into the with-profits sector, and has advised the FSA on issues such as a lack of advice available from financial advisers, poor information provided by companies to consumers, inconsistent treatment of different investor groups and concerns about with-profits governance, leading to a steady improvement in the minimum standards of treatment of customers.

Forbearance and Impairment Provisions – Mortgages

The Panel was asked for its advice on the FSA's June 2011 guidance consultation on forbearance and impairment provisions. This resulted in a better balance in the final document between the conduct issues associated with forbearance and the prudential risk issues.

On the basis of the evidence above, the Consumer Panel proposes the following additions to FSMA Chapter 2, 'The Prudential Regulation Authority'.

Arrangements for consulting practitioners *and consumers*

- 2K The PRA must consider representations that are made to it in accordance with arrangements made under section 2J *and by the Consumer Panel, as established in section 1L.*

It is anticipated that the Consumer Panel's primary relationship will be with the FCA, including arrangements for establishment and maintenance, and that the bulk of its resource will be used for FCA-related business, but that strategic input to the PRA would be an important part of the regulatory process.

6. Do you have any views on the FCA's objectives – including its competition remit - as set out in paragraphs 2.80 to 2.90 and in Chapters 3 and 4?

Consumer protection objective

The consumer protection objective is of particular relevance to the Panel. It agrees with the requirements for the FCA to have regard to risk issues, experience and expertise. It particularly welcomes the requirement to have regard to consumers' needs for advice and accurate information, but would point out that information disclosure in itself is not sufficient to ensure consumer protection. Information must be supplied in a format, and quantity, that consumers need and can use to make informed decisions.

We would not argue with the need for consumers to read key information and answer questions honestly, but there is an unacceptable view in some sectors of the industry that complex and potentially detrimental products can be widely promoted, provided they are transparent through good disclosure. This is accompanied by an expectation that consumers can, and should, acquire the skills, knowledge and understanding required to deal with this complexity and choice, which places an unreasonable burden on the consumer and is not an approach adopted by other industry sectors.

There is evidence indicating that providing more information can be counterproductive. The FSA's 2008 report on behavioural economics⁸ suggests that 'attention is a scarce resource and processing power is limited' and makes reference to research that indicates that introducing additional information, even if accurate, may lead to worse decision-making outcomes. Further evidence⁹ suggests that 'information overload' can lead to procrastination and poor decisions. Therefore the Panel would strongly recommend rigorous testing of any initiatives involving consumer-facing information to ensure it achieves its desired outcomes.

The Panel welcomes the requirement that the FCA must have regard to information supplied by the consumer financial education body (Money Advice Service (MAS)) in the exercise of the consumer financial education function. In support of this it recommends that the Financial Capability Baseline Survey¹⁰ be rerun, either by the MAS or the FCA. However, the presence of the MAS should not absolve the FCA from responsibility in improving the financial understanding of consumers and helping them to engage with the market.

It is no longer possible to function outside the financial services system, not only in relation to transactional services but increasingly in pensions and insurance, as responsibilities in these areas pass from the Government to consumers. Access to financial services is a precondition of functioning in society and needs to be intermediated. The Panel believes that the FCA's third operational objective should be amended to:

'promoting efficiency, access and choice in the market for certain types of services'

The FCA will be well placed to drive real progress in this area.

The definition of 'consumers' in the Bill is extremely broad. In this context, it is the provision in section 1C(2)(b), requiring the FCA to have regard to the differing degrees of experience and expertise that consumers may have which will be the key to ensuring that consumer protection is appropriate and fair, and which can be the means of addressing the potential and actual information asymmetries between providers and customers.

⁸ [Financial Capability: A Behavioural Economics Perspective, FSA July 2008](#)

⁹ [Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective, Decision Technology Ltd for European Commission October 2010](#)

¹⁰ [Financial Capability in the UK: Establishing a Baseline, FSA March 2006](#)

The Panel has already voiced its concerns¹¹ about the position of SME's, and in particular the existing regulatory gap for non-financial businesses that are not given protection by the Consumer Credit Act, by competition policy or by redress mechanisms such as the Financial Ombudsman Service. This gap appears likely to be continued under the new proposals and will need to be addressed if the responsibility to regulate consumer credit falls to the FSA, and ultimately the FCA.

Competition objective

The Panel has previously stated¹², that it believes the FCA should have an objective to promote effective competition that improves consumer outcomes in retail and wholesale markets. We have concerns that section 1B(4), requiring the FCA only to discharge its general functions in a way which promotes competition, when this is compatible with its other objectives, is not a strong enough obligation.

We believe that in order to exercise a competition function effectively the FCA's powers and authority have to be equivalent to those of the sector regulators. The fact that this will not be the case, or the potential for there not to be a super-complaint process, seems a retrograde step, inconsistent with a strong competition mandate. The case for the FCA to have concurrent powers, as do other industry regulators, is to use its expertise to carry out market investigations, with reference to the Competition Commission only if structural change needs to be considered.

7. Do you have any views on the proactive regulatory approach of the FCA, detailed in paragraphs 2.91 to 2.110 and in Chapters 3 and 4?

Product intervention power

In its response¹³ to the FSA's recent discussion paper, the Panel set out the consumer outcomes we would like to see from a system of regulatory product intervention:

1. Consumers should be able to buy straightforward outcome products that deliver what they promise including value for money, through all distribution channels including execution only.
2. Those unable or unwilling to pay for a full independent advice service should have access to a process for delivering simplified advice with appropriate levels of consumer protection.
3. Consumers should have access to a wide range of financial products that meet a diverse set of needs and aspirations, that have been subject to appropriate internal and regulatory scrutiny both at the

¹¹ [FSCP response to "A new approach to financial regulation: consultation on reforming the consumer credit regime"](#), March 2011

¹² [Financial Services Consumer Panel Response to 'A new approach to financial regulation: Building a stronger system'](#), April 2011

¹³ [Financial Services Consumer Panel Response to DP11/1: Product Intervention](#), April 2011

design stage and during subsequent product development, such that regrets and complaints to FOS are minimal.

4. Consumers should have access to fair redress and compensation if things go wrong.

The Panel notes that any FCA actions will need to avoid conflict with those of the European Supervisory Authorities, which also have product intervention powers, and recommends that details of arrangements to avoid such conflict are detailed in the MOU outlining the UK approach to international coordination.

The Panel has responded separately to the FCA approach document. It has concerns in some areas – in particular that the FCA regulatory toolkit will be restricted and will not cover areas such as product kitemarking, product approval, and product authorisation other than for those products authorised under the current FSA regime. This seems contrary to the desire to take full advantage of the opportunity to develop a new approach to conduct regulation.

New financial promotions power

The new provisions to give the FCA powers to take action in the case of misleading financial promotions, and to have a duty to publish the fact that it has done so, are a significant move towards improving regulatory transparency and enabling early action to prevent detriment which the Panel supports. It believes that the regulation of financial products should be no different in this respect to the regulation of other products. Early publication of action would encourage good consumer outcomes within the market and act as deterrent to poor behaviour.

A presumption in favour of publication of specific and identified action in the case of misleading promotions should be included in the Bill, with appropriate timescales.

Early publication of disciplinary action

The Panel supports the new power to enable the regulators to disclose the fact that a warning notice has been issued in relation to proposed disciplinary action. It is important that the wording of this power, as outlined in Schedule 8, paragraph 24 ('after consulting the persons to whom the notice is given'), does not imply that consent must be obtained to publish information from the party under investigation.

It is also important that the requirement to consult, and to allow firms to make representations, could slow the process and allow consumers to continue making potentially irreversible decisions based on unsuitable or misleading information. We therefore propose there should be a mechanism for the FCA to initiate, and publish details of, immediate regulatory action without consultation with the firms involved, where it considers there is risk of serious consumer detriment.

In addition, we believe the FCA should be able to use information collected in pursuit of its regulatory objectives, (such as complaints data) where appropriate, to inform consumers and promote good behaviour. Section 348 of FSMA currently restricts the FSA's ability to publicly disclose confidential information which is not already lawfully publicly available, relates to the business or affairs of any person and is received by the FSA for the purposes of its functions under FSMA. Currently a person who contravenes s.348 can be fined or imprisoned for a period of up to two years.

The Panel believes the threat of such action acts as an excessive restraint on publication of information which should be in the public domain, and conflicts with the Government's commitment to transparency of the new regulatory organisations¹⁴. It is difficult to see how this principle can be exercised while the existing s.348 exists, therefore while publication should still be subject to rigorous safeguards the Panel believes the regulator should have the discretion to publish such information where appropriate.

Additionally, we would seek assurance that regulations could be made under s.349(1), in the light of the principle of transparency, that would allow the FCA to publish information it considers would assist consumers to accept responsibility for their actions and would encourage firms to avoid misconduct for fear of disclosure and reputational damage.

8. What are your views on the proposal to allow nominated parties to refer to the FCA issues that may be causing mass detriment?

and

9. What are your views on the proposal to require the FCA to set out its decision on whether a particular issue or product may be causing mass detriment and preferred course of action, and in the case of referrals from nominated parties, to do so within a set period of time?

The Panel believes the FCA should be the lead on competition issues in financial services. In line with this, it welcomes proposals to give specific bodies a statutory role to bring issues of mass consumer detriment to the FCA's attention, and believes it appropriate for all the statutory Panels to have this function. In an environment where consumer bodies are currently under review it is important that an organisation already in place, such as the Consumer Panel, with experience and a specific financial services consumer remit is able to raise issues where others might in future not have the flexibility to use or divert resources in this way. In conjunction with Clause 5, section 1M(2), requiring the FCA to publish a response to representations received from the Panel, this would underline the importance of the consumer voice.

In the wider regulatory environment, there is a potential regulatory gap in the area of super-complaints. If the OFT is to cease to exist in its current form,

¹⁴ [Cm 8012 A new approach to financial regulation: building a stronger system](#), February 2011, para 1.29

and its responsibilities are taken over by the new Competition and Markets Authority (CMA), the question arises of which body will have responsibility for financial services super-complaints which do not relate to competition. This is an area where the FCA could potentially have a role.

10. Do you have any comments on the competition proposals for the FCA set out in paragraphs 2.111 to 2.119 and in Chapters 3 and 4?

The Panel believes that the proposals for competition are overly complex, particularly when compared with other sectors.

As stated in its response to Q 6, the Panel is disappointed that the FCA will not have fully concurrent powers. We continue to endorse the sentiments of the recent BIS consultation¹⁵ that it is necessary to maximise the ability of the competition authorities to secure working competitive markets and to promote productivity, innovation and economic growth.

The Panel recommends a more straightforward framework for the competition environment should include the following elements:

1. The starting point should be that the FCA should (in line with its duty to discharge its general functions in such a way which promotes competition), be the lead on competition issues in financial services. Like other industry regulators it has the expertise and information derived from supervision, and can utilise this information to make informed judgements.
2. The FCA should refer competition issues to the OFT/ Competition Commission when rules cannot be made to solve a problem and structural changes may be needed.
3. It should be possible to address supercomplaints regarding financial services to the FCA, with consumer bodies, including the Panel, able to apply for designated status.

11. Do you have any views on the proposals for markets regulation by the FCA, described in paragraphs 2.120 to 2.123 and in Chapters 3 and 4?

The efficiency and competitiveness of wholesale markets are critical for people with savings and pension funds invested in them. In particular, the proportionality of costs is important as higher transaction costs in these markets mean higher charges for consumers which have an adverse impact, especially when compounded over a lifetime of savings. The Panel has previously stated that the FCA needs the power to intervene to drive down these transaction costs, and remains concerned that it will still lack sufficient tools to do this.

12. Do you have any comments on the governance, accountability and transparency arrangements proposed for the FCA, as described in paragraphs 2.124 to 2.132 and in Chapters 3 and 4.

¹⁵ [A Competition Regime for Growth: a consultation on options for reform, BIS, April 2011](#)

The Consumer Panel regards its continuing input to the regulatory process as a key aspect of the new regime, and is content that the wording of section 1L is a sound foundation for such input to the FCA.

The Panel is in favour of a drive towards greater transparency of regulation, and as such supports new section 1M(2) requiring the FCA to publish a response to representations received, regardless of whether it is in favour of such representations.

However, as noted in the answers to questions 1 and 5, it believes that an similar duty for the PRA and the FPC should be an integral part of the regulatory process.

13. Do you have any comments on the general coordination arrangements for the PRA and FCA described in paragraphs 2.138 to 2.149 and in Chapters 3 and 4?

The Panel has concerns that the issues of coordination and authority in the way the FPC, PRA and FCA work together may simply replace the multiple objectives that caused confusion in the current structure. These processes and responsibilities must be clarified and resolved. The cost and effort of moving to twin peaks needs to provide something better for consumers.

Memorandum of Understanding provisions between the PRA and FCA must give detailed provision on ensuring coordination with the European Supervisory Authorities (ESAs) of which they are not members (PRA with ESMA and FCA with the EBA and EIOPA), as well as the ESAs of which they are members, to ensure that both prudential and conduct of business issues are addressed across all sectors.

The proposed new structure does not fit well with the European regulatory structure, where all three European supervisory authorities have responsibility for both prudential and conduct of business issues. A possible solution to this issue would be to have a joint European/international team which operates and communicates with both the FCA and PRA. There is a precedent for such a structure at European level, where directorates-general have been split in the past, and the new regulators could learn from these experiences.

14. Do you have any views on the detail of specific regulatory processes involving the PRA and FCA, as described in paragraphs 2.150 to 2.195 and in Chapters 3 and 4?

Currently, the Bill sets out that with regard to the authorisation of firms undertaking a Significant Influence Function (SIFs) the FCA has to 'consent' to the authorisation of firms that are regulated by the PRA. However, the legislation is presently silent on the matter of individuals who exercise a significant influence function. The Panel believes that this will be one of many matters with regard to the interrelationship between the PRA and FCA which will be covered by the memoranda of understanding.

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The Consumer Panel has already raised the issue of FCA 'consent' to individual approvals with HM Treasury, as given the impact exercised by individuals on the behaviour of firms, this could represent a risk for consumers.

15. Do you have any comments on the proposals for the FSCS and FOS set out in paragraphs 2.196 to 2.204 and in Chapters 3 and 4?

The Bill proposes that responsibility for FSCS should be jointly exercised by the PRA for deposit-taking and insurance business and the FCA for all other financial activities including intermediation, and proposes a number of coordinating mechanisms. The Panel urges the Government to take an active role at EU level in the developments on guarantee and compensation schemes to ensure that consumer protections already in place in the UK are not eroded, and in fact can be used as best practice for development of schemes elsewhere.

Appendix – Consumer Panel responses to public consultations 2011

The Consumer Panel is a statutory body under the Financial Services and Markets Act 2000 and was initially established by the Financial Services Authority in December 1998. The Panel advises the FSA on the interests and concerns of consumers and reports on the FSA's performance in meeting its objectives.

The emphasis of the Panel's work is on activities that are regulated by the FSA, although it may also look at the impact on consumers of activities outside but related to the FSA's remit. More information about the Panel's work is available on its website at <http://www.fs-cp.org.uk/>

Date	Consultation
2 Sept	Response to Joint Committee on the draft Financial Services Bill call for evidence
1 Sept	Response to FCA Approach document
28 August	Response to Work and Pensions Select Committee call for evidence on NEST and autoenrolment
05 August	Response to FSA CP11/11 Quarterly Consultation no. 29 chapters 5, 6 and 8
20 July	Response to FSA CP/11/10 Consumer Complaints: Ombudsman award limit and changes to the complaints-handling rules
04 July	Response to CP11/8** data collection: Retail Mediation Activities Return and complaints data
04 July	Response to the Independent Commission on Banking interim report
01 July	Response to the Review of the UK's regulatory framework for covered bonds
31 May	Response to Guidance Consultation GC 11/10 forbearance and Impairment Provisions - 'Mortgages'
31 May	BIS competition regime consultation final
31 May	Response to quarterly consultation CP 11/7 on consumer redress
2 May	Response to the CP 11/5 Protecting with-profits policyholders
03 May	Response to FSA CP 11/3 Product disclosure
27 April	European Commission consultation on collective redress
21 April	Response to FSA DP11/1: Product Intervention
14 April	Response to the HMT consultation A new approach to financial regulation: Building a stronger system
31 March	Response to the Treasury Committee Inquiry into the Accountability of the Bank of England
25 March	Response to HMT CP: Simple Financial Products
22 March	Response to the joint HMT/BIS consultation on reforming the consumer credit regime
17 March	Response to HMT/FSA consultation document: transposition of UCITS IV

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15 March	Response to European Commission CP: on Alternative Dispute Resolution
10 March	Response to FSA CP 11/1: Proposed changes to BCOBS
28 February	Response to DG Markt consultation document: Review of the Insurance Mediation Directive
25 February	Response to HMT CP: Early access to pensions savings
21 February	Response to FSA CP 10/28*** Mortgage Market Review: Distribution and Disclosure
16 February	Response to CP10/29: Delivering the RDR and other issues for platforms and nominee-related services
4 February	Response to FSA CP 11/1: Removal of the requirement to annuitise pension savings by age 75
1 February	Response to consultation document on the Review of the Markets in Financial Instruments Directive
1 February	Response to FSA CP10/26* Pension reform - Conduct of business changes
31 January	Response to consultation by Commission Services on legislative steps for the Packaged Retail Investment Products Initiative