

Consumer Panel response to the Call for Evidence: Single Market, Financial Services and the Free Movement of Capital¹

The Consumer Panel is a statutory body under the Financial Services Act 2012. It was initially established by the Financial Services Authority in December 1998. The Panel advises the FCA on the interests and concerns of consumers.

The Panel's membership is drawn from a broad range of backgrounds with expertise including market research, law, financial services industry, financial inclusion, European Regulation, financial regulation, consumer advice, campaigning, communications, compliance and later-life issues.

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

1. *How have EU rules on financial services affected you or your organisation? Are they proportionate in their focus and application? Do they respect the principle of subsidiarity? Do they go too far or not far enough?*

No comment.

2. *How might the UK benefit from more or less EU action? Should more legislation be made at the national or EU level? Should there be more non-legislative action, for example, competition enquiries?*

and

3. *How have EU rules helped or made it harder to achieve objectives such as financial stability, growth, competitiveness and consumer protection?*

In many areas the UK leads the way in terms of consumer protection. This is partly due to the campaigning of consumer groups, but also as a result of a number of scandals and serious shortfalls in the provision of financial services to consumers. In particular, the UK consumer benefits from:

- Access to the Financial Ombudsman Service, an independent out-of-court redress service which is free to use and binding on the industry;
- Access to the Financial Services Compensation Scheme, a free to use and independent statutory fund of last resort;
- The existence of an independent Financial Services Consumer Panel, a statutory body with rights of access to the Financial Conduct Authority and Prudential Regulatory Authority in the interests of consumers;
- The statutory right of a number of consumer bodies, including Which? and Citizens Advice to raise 'supercomplaints' with the regulators.

The key consumer objective and negotiating priority for the UK authorities at EU level should therefore be to protect such consumer rights as currently exist. The current (December 2013) negotiations relating to out of court redress in the revised Insurance Mediation Directive are an example of such a potential erosion of rights. Currently in the UK decisions of the Financial Ombudsman Services (FOS) are binding on the industry if the consumer agrees. A possible outcome of the IMD negotiations could be that the

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251514/PU1568_BoC_FSF_MC_CfE_proof4.pdf

decision would only be binding if both industry and the consumer agree, opening the process to uncertainty and additional expense for both parties. This is in no one's interest.

There is scope to increase protection that goes beyond that which already exists, by adopting best practice or by taking on elements of consumer-supporting legislation from elsewhere. An example of this is the wording of the revised MiFID directive (Art. 24) which requires a firm covered by the Directive to act '*honestly, fairly and professionally in accordance with the best interests of its clients*'. The Panel was keen that such wording was incorporated into the Financial Services Act 2012, and still believes there is scope to include such wording in UK legislation.

There is also scope to increase protection for UK consumers by addressing issues at EU level, particularly where the nationality of a company is not clear, where the consumer may be travelling or working outside the UK, or where a business is operating cross-border.

4. *Is the volume and detail of EU rule-making in financial services pitched at the right level? Has the use of Regulations or Directives and maximum or minimum harmonisation presented obstacles to national objectives in any cases?*

As the volume of rule-making at EU level is substantial, it must be subject to rigorous cost-benefit analysis, particularly in the case where the need for review is written into the original legislation. The Panel considers, for example, that the review of the European System of Financial Supervision was required to be carried out too soon after implementation to provide a particularly constructive assessment of whether the system is working.

5. *How has the EU's approach to Third Country access affected the ability of UK firms and markets to trade internationally?*

No comment.

6. *Do you think that more or less EU-level regulation in the area of retail financial services would bring benefits to consumers?*

There is scope to raise protection for UK consumers at EU level in, for example:

- Introducing uniform levels of protection across Europe so that UK consumers can be confident when they deal with organisations not based in the UK that they will still be able to rely on the same rights they enjoy at home. This is particularly relevant in an ecommerce environment where it may not be immediately apparent where a company is based, or when travelling within the EU, as increasing numbers of UK consumers do on an increasingly frequent basis. An example of this is EU-wide deposit guarantee of €100,000, and recent agreements to strengthen the way this is funded are welcome.
- Protection from firms which may 'passport in' their services from other jurisdictions. Following the implementation of the Retail Distribution Review in the UK, it is imperative that companies are not able to offer services by passporting in from abroad, when they may not meet the standards of disclosure, training and professionalism required of UK advisers.
- Introducing clear, helpful and meaningful product information, in the form of a Key Information Document, which would be available to consumers regardless of the country in which they purchased the product.
- Improving access to a basic payment account for all European citizens as long as such an account provides certain minimum standards such as the ability to deposit money, specific payment services and access to funds. This is a basic

requirement for day to day living, and would also facilitate UK citizens moving and working abroad, by providing a right to a bank account in their host state.

7. *What has been the impact of the shift towards regulation and supervision at the EU level, for instance with the creation of the European Supervisory Authorities? Should the balance of supervisory powers and responsibilities be different?*

No comment.

8. *Does the UK have an appropriate level of influence on EU legislation in financial services? How different would rules be if the UK was solely responsible for them?*

The UK has a more significant level of influence at government and regulatory level, but lacks influence on financial services from consumer organisations. The FSCP is the only financial services-specific UK consumer organisation which seeks to influence directly at EU level, but even its remit and resources are limited. Which? is a full member of BEUC, the main EU level consumer organisation, and the FSCP is a partner organisation. Since the dismantling of Consumer Focus, Which? and the Panel are the only UK organisations with the resource and expertise to engage in influencing at all on behalf of consumers with the European institutions. This is in sharp contrast to the work done by trade bodies such as the ABI, BBA and IMA, which have dedicated teams of EU policy experts.

This problem is not restricted to the UK – consumers are generally more poorly represented than industry. The Panel has carried out research in this area (available on the Panel's website²) and made a number of recommendations about improving consumer representation at EU level, including increasing resource dedicated to ESA stakeholder groups.

9. *How effective and accountable is the EU policy-making process on financial services legislation, for example how effective are EU consultations and impact assessments? Are you satisfied that democratic due process is properly respected?*

Official consultations at EU level are variable in quality, and would benefit from a basic set of standards along the lines of the Cabinet Office consultation principles. However, access to official consultations is straightforward and the publication of submissions appears to be transparent.

The European Commission has undertaken significant positive reforms with regard to consumer representation. DG MARKT has undertaken a review of its consultative groups and as a result has disbanded a number of them, as well as reconstituted the Payment Systems Markets Expert Group with an increased number of consumer representatives. Most importantly, it has also created its own consumer and civil society advisory group by setting up the FSUG and provided the group with significant financial resources.

However, the Panel's recent research into consumer representation at EU level shows that issues remain with regard to access, transparency and accountability, including:

- a lack of transparency within the European institutions and during the policymaking process. This is evidenced by the continued use of closed

² http://www.fs-cp.org.uk/publications/pdf/consumer_representation_at_eu_level_panel_final_report_dec_2013.pdf

stakeholder hearings by the Commission as well as a lack of publication of discussions in Council on legislative proposals.

- a lack of accountability of the institutions. Currently, the Commission is not required to respond formally to opinions from its FSUG consultative group and neither do the ESAs have to do this with regard to their stakeholder groups.
- a lack of representation: consumer representatives are still a minority on the ESA stakeholder groups. There is a need to have not only a sufficient number, but a sufficient number of adequately skilled, consumer representatives on the stakeholder groups. This could be addressed by a review of remuneration and expenses to attract well-qualified applicants.

10. What has been the effect of restrictions placed on Member States' ability to influence capital flows into and out of their economy, for example to achieve national public policy or tax objectives?

No comment.

11. What may be the impact of future challenges and opportunities for the UK, for example related to non-membership of the euro area or development of the banking union?

No comment.

12. Do you have any further comments about issues in addition to those mentioned above?

No comment.