Financial Conduct Authority

Transparency Discussion Paper DP13/01: Responses

(This document contains all non-confidential responses received)

Consultation Response

Transparency and the Financial Conduct Authority
DP 13/1

Ref: 1513

Date: 26 April 2013

[redacted]

[redacted]

Age UK
Tavis House
1-6 Tavistock Square
London WC1H 9NA
T 0800 169 80 80 **F** 020 3033 1000
E policy@ageuk.org.uk
www.ageuk.org.uk

As a result of changes made to The Financial Services and Markets Act 2000 by the Financial Services Act 2012, the Financial Conduct Authority (FCA) is required to have regard to two new regulatory principles relating to transparency:

i. The desirability of publishing information about regulated firms/individuals, or requiring such persons to publish information; and,

ii. The FCA should exercise its functions as transparently as possible.

This discussion paper seeks views and ideas from the financial services industry, consumer groups, trade bodies and other interested parties on what the FCA could disclose about its regulatory activities, its organisation, and what the regulator could require firms to disclose.

About Age UK

Age UK is a charity and a social enterprise driven by the needs and aspirations of people in later life. Our vision is a world in which older people flourish. Our mission is to improve the lives of older people, wherever they live.

We are a registered charity in the United Kingdom, formed in April 2010 as the new force combining Help the Aged and Age Concern. We have almost 120 years of combined history to draw on, bringing together talents, services and solutions to enrich the lives of people in later life.

Age UK provides information and advice to around 6 million people each year, runs public and parliamentary campaigns, provides training, and funds research exclusively focused on later life. We support and assist a network of 170 local Age UKs throughout England; the Age UK family also includes Age Scotland, Age Cymru and Age NI. We run just over 450 Age UK charity shops throughout the UK and also offer a range of commercial products tailored to older people.

Key points and recommendations

- We strongly agree with the FCA's guiding principle that the presumption should be towards transparency unless there are compelling reasons to the contrary.

- If the FCA wants to achieve its stated aim of placing consumers at the heart of the organisation, this must be firmly embedded in the culture and processes of all parts of the regulator.

- We welcome the establishment of the FCA's Consumer Network. The FCA must now demonstrate, at all levels of the organisation, that it is willing to embark on a genuinely open, two-way engagement with stakeholders, particularly consumer groups who have arguably been under-recognised to date.

- Providing feedback to all your stakeholders is vital, including whistleblowers.

- We welcome the FCA's intention to generate its own views on markets in pursuit of its competition objective. This objective will require the FCA to examine whether financial products and services have been designed inclusively to meet the needs of – and are *accessible* to – all consumers, including older consumers who have been poorly served by the industry to date.

- There would be real value in expanding the current suite of regulatory disclosure tools to include similar targeted communications to consumer organisations. A "Dear CEO" letter to the heads of consumer groups would be a very powerful way to convey the FCA's key messages and would significantly advance the FCA's objective of putting consumers at the heart of what it does.

- We would also welcome the publication of additional information about the FCA's new regulatory model, for example the kind of evidence required to achieve early intervention, to help consumer organisations and other stakeholders provide the most relevant data where they have concerns about financial services or products.

1. Introduction

People aged over 50 are a core market for the financial services industry and UK demographics predict that their importance will grow. Analysis of the Financial Services Authority's Baseline Survey of Financial Capability[i] showed that those aged 50+:

- make up a clear majority of the holders of many savings and investment products and are over-represented in terms of ownership of household insurance

- are representative of the general population in terms of their holdings of life assurance and several banking products, but are under-represented among holders of many credit products

- continue to hold a significant number of financial products well into retirement

- continue to be active purchasers of investment products

At the same time we see older people being poorly served, and at times excluded, from the financial services market for a range of reasons including:

- direct age discrimination caused by blanket age limits e.g. in insurance, mortgage lending

- direct or indirect indiscrimination where a group of customers is able to purchase a product but are unable to actually *access* the service e.g. move to online and other automated services which it harder for older people who are not online to access and standards services that are not designed to meet the needs of consumers with limited mobility or other disabilities

Not all firms want all kinds of customers – this may be entirely reasonable and work in the interests of both firms and consumers. Sometimes, however, this kind of selective competition can leave parts of the market under-served. For example the travel and motor insurance markets may be very competitive for consumers of a certain age group and profile, but we continue to hear from older people who find it difficult to access any insurance and for whom shopping around is much more difficult than for younger people. Analysis from Defaqto found that in 2012 someone aged 86 can choose from just 25% of car insurance policies available on the market. We have also seen examples of this in the mortgage market, where some mortgages marketed at the older consumer offer significantly less favourable terms than mainstream mortgages - which is only made possible because so many mainstream mortgages contain blanket age limits so reducing choice available to consumers after a certain age.

All these forms of exclusion are not only detrimental in themselves (because the consumer cannot use a service they need) but also significantly weaken competition

because they also reduce the consumer's ability to shop around and use demand to drive improvement.

We have made specific comments about the important role that disclosure about availability, and accessibility, of products to older consumers could play in improving competition for those in later life. We think it is helpful to distinguish between transparency that may be of particular value to individual consumers (e.g. charges relating to their plan) and public transparency that improves competition overall. Both are important. For example, publication of non-OMO annuity rates may not appear of value to individuals who are not customers of the annuity provider, as they cannot buy the products on the open-market, but could very valuable in driving competition or enabling regulators to judge the level of competition in the marketplace.

We have also provided more detailed comments on how we believe the FCA can become a more transparent body, particularly with respect to achieving a step-change in its culture of engagement with consumers and the organisations that represent them.

Questions

Chapter 3 – How the FCA could be more transparent

We are considering saying more about what we've been told and any action we may have taken as a result of whistleblowing. What information do you think would be helpful? What do you think would be the potential benefits? What do you think are the potential drawbacks?

Providing feedback to all your stakeholders is vital - when whistleblowers make the effort to report a matter of concern, it is important you tell them whether you are acting on the information they supplied and wherever possible what next steps you intend to take.

Where you will not, or cannot, act on the information provided, explaining why will help to mitigate the risk that potential future whistleblowers will be deterred from coming forward. It will also help whistleblowers identify what they may be able to do differently next time. Presenting this information on an aggregate basis will help inform other potential whistleblowers – including consumer organisations - what information you are able to use and should encourage people to provide you with the most appropriate intelligence.

If, for reasons of economy and efficiency, the FCA reaches the view that responding to whistleblowers on an individual basis is not viable because of the volume of whistleblowers, we would be strongly supportive of a shift to transparency of the same *kind* of information on an aggregate basis.

Previously, consumer groups could and did submit concerns to the FSA and received no response which undermined trust in the process and discouraged consumer engagement. We would welcome the extension of the transparency that you envisage adopting with whistleblowers to organisations like Age UK that submit concerns.

We could publish more about our enforcement activities in our annual performance account. To what extent do you think this would be helpful? What additional information

about enforcement activities should be published? What do you think are the potential benefits? What do you think are the potential drawbacks?

The ways in which you propose expanding your annual performance account of enforcement activities will be of significant value - in terms of informing stakeholders about what you do, how you do it and why. An explanation of the *kind* of evidence required to achieve early intervention is likely to be of particular help to enable consumer organisations and other stakeholders to provide the most relevant data.

We would also support the publication of information that sheds light on the strategic objectives you seek to achieve through your enforcement activities, explaining why you have focused on specific activities, particularly where these may differ from priority areas identified by consumer organisations – and, equally importantly, why you have decided not to take forward others.

It might be argued that a potential drawback is that firms could seek to navigate their way round the rules using the information. We believe that this should not be a reason for not publishing the data. Although some might firms attempt to use the information to breach the spirit of regulation, others will, we hope, use it to improve their practice.

We could publish more about our supervisory activities and outcomes. To what extent do you think this would be helpful? What additional information about supervisory activities should be published? What do you think are the potential benefits? What do you think are the potential drawbacks?

Publication of more information on supervisory activities and outcomes would be of tremendous use, particularly in terms of educating stakeholders on the new supervisory model that the FCA will be operating.

An indication of those issues or sectors where you believe there are risks, and how you are mitigating them could both focus the behaviour of firms, and serve as an important warning signal to consumers and consumer organisations.

As well as publishing anonymous, aggregated information on those areas that you highlight, an explanation of how the FCA will undertake horizon scanning and your areas of focus would help consumers and consumer organisations understand what intelligence they can most usefully give you.

While we accept that publication of some information could have the unintended consequence of alerting firms to areas you are not focusing on, where they may consequently lower their standards, we believe the benefits of publication far outweigh the risks.

Chapter 4 – Information the FCA could release about firms, individuals and markets

We are proposing to develop a consistent approach for publishing the results of thematic work on an anonymised/aggregated basis. Do you think this would be helpful? What sort of information would you expect to see? How would you like this information to be made available? What are the potential benefits? What are the potential drawbacks?

Publishing the results of thematic work is an important tool to stimulate competition – it highlights the relative performance of different firms and products and so enables consumers to make more informed choices. If the FCA is constrained by law from disclosing firm-specific results of thematic work, we would support instead the publication of thematic work on an anonymised and aggregated basis, though the anonymisation must be such as to not render the disclosure meaningless to the consumer.

The results of a thematic review would serve as an important warning signal to other firms to examine the need for them to make similar changes - and to consumers or consumer organisations to be alerted to potential concerns.

Information that could usefully be published includes:

- the nature of the review i.e. the issue being investigated
- the sample of firms targeted (not by name but by firm classification – to indicate whether this is an issue amongst larger firms or is contained to smaller ones)
- results by issue (e.g. suitability of advice) and firm classification
- action the FCA has required firms to take and the time-frame for them doing so

As well as appearing on the FCA website, we would strongly support the results being included in a Dear CEO letter to consumer organisations, perhaps highlighting steps consumers can take to be vigilant, where relevant. This would need to be done early enough to allow consumers to avoid potential pitfalls, rather than simply dealing with problems after the event.

We are proposing to publish, with the firm's consent, how much it has paid out in redress and disclose more details about the redress scheme in the public notice. Do you think this would be helpful?

Yes, as it would be a very useful means of informing consumers about the scale of the issue (for example, the amount of redress paid out on PPI is a powerful indicator to consumers of the extent to which mis-selling of the product was rife and publishing this on a firm-by-firm basis would help alert consumers to whether they may be personally affected). Clearly publication may also incentivise other firms to change their behaviour.

Disclosing additional details about the redress scheme in the public notice, including how to access it, would also be helpful.

Chapter 5 – Information that the FCA could require firms to release

We believe the FCA has a critical role to play in increasing transparency in financial services markets. We support your intention to achieve greater firm disclosure of product performance in the annuity and insurance markets but would like to see this disclosure being eventually rolled to other financial products.

We think the annuity market could be more transparent and easier to understand. Do you believe the FCA has a role to play in increasing transparency in the annuity market? What is the best way the FCA can improve transparency in the annuity market? Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

One downside is that firms will seek to make a product so complex that they cannot/do not have to disclose! E,g, move to individual underwriting of impaired life annuities and enhanced annuities, and increasingly individually rated credit products. In these cases, FCA should conduct thematic reviews and publish benchmark rates.

Purchasing an annuity is a once in a life time decision so getting the best rates and the right type of product is crucial but Age UK research conducted in 2012 shows that consumers are still struggling to understand annuity products and aren't offered enough information. 31% of respondents said that they were not made aware by their pension providers that they have the right to shop around for an annuity that best suits their needs. 32% of respondents didn't know about the Open Market Option or what it meant when they bought their annuity. And 38% were not aware that certain medical conditions or lifestyle factors could considerably improve their annuity rate. We are conscious that the House of Commons Work and Pensions Select Committee has recently concluded that the industry is failing pension scheme members when people come to convert their pensions into annuities and has recommended the provision of more information on a mandatory basis.

Transparency in the annuity market is therefore a critical tool to stimulate competition amongst firms which should ultimately result in improved information and therefore choice for the consumer.

We welcome the work that the ABI have done through their new Code of Conduct to encourage consumers to maximise their retirement income and it is important that the impact of this is evaluated. We also welcome the ABI's current work on improving annuity rate transparency which we see primarily as providing general information about the market. In our response to the ABI consultation we noted that, for individuals, information sent by their provider and services such as Money Advice Service and the Pensions Advisory Service should be seen as the primary source of help to shop around. However, there may be some consumers who will additionally be interested in transparency tables and seeing the comparisons between providers. Below are some of the points we made our response to the ABI's consultation on annuity rate transparency:

- While the most important consideration for individual consumers is the Open Market Option, we see real value in annuity rates being published by all annuity providers, including those not competing in the open market – the information the ABI proposes to collect seems broadly right but, as ABI themselves recognised in their consultation, it must be provided in a way that avoids 'gaming'.

- Individual consumers must have sufficient information to make good decisions about their retirement income and the pre-retirement wake-up packs already sent out should be the main source for this – ideally this would include information about the range of rates on offer so an individual can see how their provider compares. It should also be possible to use the information on rates to provide an indication of the potential gains from shopping around, for example packs sent out could include a sentence such as "typically the best rate is around x% higher than the lowest rate available".

- Information should be presented in a way that makes it clear how consumers may use it, and should also state what it does <u>not</u> do. For example, publication of non-

OMO rates is intended to be a driver of competition rather than a tool that enables individuals to shop around for the best deal for them. Individuals seeking ipersonalised rates should be directed to services such as the Pensions Advisory Service and the Money Advice Service.

- The most useful information for individual consumers includes:
    - Basic summary data, such as the range of rates available, for any particular scenario
    - An ability to search the data in different ways including by company
    - An explanation of the different types of annuity – such as joint life and enhanced annuities – presented in a way that avoids jargon

The results of the FCA's ongoing thematic work - on the financial losses that arise from consumers not shopping around, and other barriers to shopping around that exist on the supply side – should be published and, as quickly as possible, (in a suitably anonymised format) as they will clearly also form an important input to understanding how transparency needs to be improved.

We believe it will also be important for the FCA to assess whether the ABI's Code of Conduct and transparency tables have an impact on the market in general and on whether individuals get a good deal from their pension savings, and to determine if further measures are needed.

Publication of claims data for insurance products is one idea that we think could help improve the outcome for consumers and change firm behaviour. To what extent do you think this would be helpful? What information about claims data would be useful to publish? What do you consider are the benefits of this idea? What do you consider are the drawbacks?

We share concerns that some insurance products do not pay out as consumers may expect and we agree that publishing information about which firms pay out on different insurance products could greatly inform consumer choice of insurance providers and give them the information they need to get the most appropriate cover at a fair price. It also has beneficial effects for the market as a whole – for example, publication of critical illness claims payout rates has been instrumental in making the market more competitive.

We agree that the two principles you have in mind for product disclosure will help improve the transparency of firms' activity and their performance, and welcome your intention to improve consumers' understanding, not just of the price, but of the quality of products and/or the value they provide.

In light of the FCA's new competition objective, it is short-sighted to limit consideration of disclosures to only the two principles around disclosure rules and the mandation of firm data. . We believe the principle of *access* to – and availability of - financial products and services is of critical importance that indeed often precedes price and value. This is particularly relevant given that we know competition sometimes doesn't work in the interests of older consumers, who although a significant consumer group for the industry have been poorly served in some respects. Indeed, the existence of age discrimination in

some markets, including the insurance market, results in their failure to provide competitive insurance cover to those in later life (travel, motor, contents being only a few examples). This is one of the reasons that charities such as Age UK have partnered with specialist providers to develop affordable products that do not have an upper age limit. Disclosure of information about the availability of a firm's products to older consumers may serve to eventually compel some to provide greater access to those in later life.

We would therefore be strongly supportive of the publication of data that influences firms to design their services and products to cater to the needs of *all* consumers, including those in later life ("inclusive design"), not just the mainstream - and delivers changes in firm behaviour that bring about real competition in the insurance market.

Because of the concerns we have raised about the lack of mainstream cover in key markets to those in later life, we would strongly support the initiative to publish data on insurance products being extended to all insurance products, rather than just the ones you mention most of which we would argue remain relatively niche (warranty, home emergency, identity theft) and for which therefore the imperative for transparency is arguably less urgent.

We agree with the idea that data about outlier products and firms compared to the market norm, and the assessment of trends over time, would be particularly useful.

We think that mandating contextualisation of complaints data would improve understanding of the key messages. To what extent do you think this would be helpful? Do you have any suggestions about what matrix we should mandate? Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

While we believe that mandating contextualisation of complaints data could help improve understanding, we share your view about the risk of diminishing returns and feel that any incremental benefit may be marginal.

We do, however, have very strong views about areas in which firms releasing information about their own behaviour would lead to markedly beneficial outcomes, particularly for consumers in later life. These areas include but are not limited to the following, which we would welcome the opportunity to discuss further with FCA:

- The firm's policy of making financial products available to those in later life, categorised according to individual products (banking, insurance, investments etc.) and rationale for the policy; and
- Measures the firm takes to make financial services and products accessible to those with limited mobility, sight or other means.

[i] Financial Services Authority *"Levels of Financial Capability in the UK: Results of a baseline survey"* 2006

Association of Mortgage Intermediaries' Response to FCA's Discussion paper – Transparency DP13/1

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products.

Our members are authorised by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

AMI welcomes the opportunity to respond FCA's discussion paper on transparency. However, in doing so we must raise our concern at the two month consultation period provide in this paper. This has presented us with a limited period to consider the impacts and consequences of FCA's wider transparency proposals on member firms, the regulator and consumers. There seems little rationale for this short timeframe.

As such, in light of the restricted timeframe given our response is only based on a limited consideration of these factors.

Introduction

Transparency is clearly an important tool and can provide tangible outcomes for the regulator, industry and consumers. However, greater transparency comes at a greater cost for the regulator and industry due to the increased requirements for information and the added burden on systems to process, contextualise and present this information. There is likely to be significant additional marginal cost to firms in keeping abreast of issues emanating from a more transparent regulator.

We believe that any increased requirement to provide greater transparency must be justified by it also producing a significant improvement in consumer and industry outcomes.

Publishing more about whistleblowing

We would believe that the FCA will benefit significantly from greater use of the information than can be obtained from whistleblowers. However, any move to provide greater transparency must be countered by adequate policies and procedures to ensure that potential whistleblowers are not put off coming forward and that that those that do are adequately protected from being identified. In addition, there are important legal considerations outside of FCA's own policies with regards to protecting whistleblowers.

Further clarity on how FCA intends to balance these requirements is needed.

Publishing more about our enforcement activities

Enforcement activities can be wide ranging and may not easily be comparable with other entities when considered either discretely or as a whole. Providing basic information about the average length and cost of investigations, the allocation of resource by sector, and some of the challenges faced would be helpful.

The information that could be most useful to industry may be in relation to what FCA learnt from the action. Some form of summarised sectorial report could help firms to understand issues and risks that are relevant to them.

Publishing more supervisory activities and outcomes

Most financial services regulatory policy is now set at a European level. The FCA's role (and the FSA's before it) has increasingly focused on the UK interpretation of policy and acting as the supervisor of it. As such, it is essential that a greater focus is placed on the work and cost of FCA's supervisions activities.

FCA is very good at explaining the processes behind its supervision policy but more statistical data should be provided on how FCA undertakes the core activity of supervision in practice.

There should be greater transparency regarding the number of FCA staff hours spent on a face-to-face basis with firms, not including the time that firms are at the FCA. This information should also be given by sector. Such information will be essential in helping firms to understand how their substantial fees for regulation are being spent.

FCA's increased use of Section 166s will also lead to significant addition regulatory costs. As the cost of sections 166s are borne by firms, these are not present in FCA's business plan therefore it is essential that these additional cost are collated by the FCA for firms and published in a clear and transparent manner elsewhere. Details of the number of 166s being used should be published alongside information relating to costs to firms. This information should also be published by sector.

Publishing more about our authorisations work

There has for a long time been much discussion and debate about the timeframes for new firms obtaining authorisation.

Details should be published on the average length of time it takes to authorise firms. However it is also essential that other details are provided to contextualise this, such as the longest and shortest time it has taken for the two outlying firms to obtain authorisation. We believe that this numerical data should also be provided for individuals seeking FCA approval. We agree that a broad summary/reason of why firms withdraw from an authorisations process and why applications are refused would also be helpful.

In addition, all information relating to authorisation and approvals should be provided by sector to provide meaningful data.

Publishing more about thematic work

FSA previously published some information about its thematic reviews. We support FCA's intention to improve the content, clarity and accessibility of this information.

There are important legal protections in place that stop the regulator from publishing information directly attributed to the firms that have been part of the thematic review. However, we would support the greater use of anonymous information or examples to provide greater material to firms about issues impacting (or potentially impacting) on their sector.

Publishing more about redress

FSA did not generally publish details of the amount of redress firms pay. If FCA did request that firms provided details of the total redress paid it would need to clearly define what 'redress' is being counted.

Firms will address consumers' 'expressions of dissatisfaction' in a number of ways. In some instances there will be sums paid as cash payments to consumers for loss. Other payments may be made as goodwill gestures where there is no financial loss or no significant fault may have been found. In addition actions may be taken to correct issues that, whilst they attribute significant cost to the firm, they are not paid as redress (such as fund switches). FCA will need to provide greater clarity as to what it means by redress for such data to be meaningful. It must also consider if this will drive firms to make settlements that do not show up on this data.

It is also important to consider what perceptions may be drawn from one firm paying a higher level of redress than another. Is the redress level higher because more has gone wrong or is the redress level higher due to the firm wishing to retain their clients/customers. Alternatively one firm may look to settle issues early through a negotiated settlement whereas another firm may proceed through a very lengthy complaints process before settling at a slightly higher amount. It is not always easy to say which method is more beneficial to the consumer without considering the individual circumstances of each case.

The details of redress schemes resulting from enforcement actions are usually kept confidential and not set out in the public notice. FCA should consider whether there are significant benefits to consumers and industry in publishing this information. Depending on the circumstances of the case it may help other firms to have a better understanding of what form of redress may be paid. However, the danger is that the redress becomes the focus rather than the findings from the enforcement action.

Transparency and the annuity market.

Our members are not involved in this market so we have not commented on this issue specifically. However, as a matter of principle we do not believe that transparency, in itself, should be used as a tool which is focused on a particular issue. Other FCA supervisory activities, such as thematic reviews should be the tools used if there are concerns.

Publication of claims data for insurance products

Our members are not directly involved in insurance products claims. However, as key distributors of protection products we have some concerns about ensuring that any date publication provides meaningful information.

As such we are broadly in agreement with position outlined by ABI. We would add that the provision of context is critical but has so far eluded both industry and the regulator.

Mandating contextualisation of complaints data

FCA has said that it wants to build on the success of publishing complaints data and that this could be done by mandated contextualisation to ensure the media and consumers have a better understanding of the data.

As the FSA the regulator was well aware that the contextualisation of complaints data is not a simple matter. The Financial Ombudsman Service has also struggled with this issue and was unable to reach an agreed position with industry as to how such information could be appropriately contextualised in relation to its own complaints figures.

However, FCA could give consideration to how the new C1,C2,C3 and C4 categories could be used to improve the current publication regime.

To go any further than this it is important to consider what outcomes are achieved from the current complaints publication regime. FCA is of the view that the outcomes of the current publication process are positive. However, how far do these go towards meeting the overall objectives of the FCA? We agree that firms have become more focused on the complaint numbers but do not consider that this has this lead to a real reduction in the overall volumes or causes of these complaints.

The construction of a clearly defined matrix is complex. The outcomes from such a matrix will only produce information framed around this.

How the FCA could be more transparent

The FCA should publish the main Board and key committees' minutes, with the exclusion of references to specific firms. This would help the industry have a better understanding of FCA decision making processes and policy positions.

Information the FCA could release about individuals, firms and markets

Being transparent is not just about making firms provide more information for FCA to publish. It is essential that, as a regulator of substantial resource, FCA must be accountable and therefore be transparent about its successes and failures.

AMI
24.04.13

APCIMS
WORKING FOR THE INVESTMENT COMMUNITY

22 City Road
Finsbury Square
London EC1Y 2AJ
Tel: +44 (0) 20 7448 7100
Fax: +44 (0) 20 7638 4636
Email: info@apcims co uk

19th April 2013

FAO Ms CarolAnne Macdonald
Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Dear Sirs

APCIMS[1] Response to DP13/1 Transparency

We welcome the opportunity to respond to the above document.

Europe

We are concerned that another paper issued in preparation for the establishment of the FCA has not substantially addressed the fact that many firms, including APCIMS member firms, are subject to European directives and regulations for their conduct of business activities. There is no indication in the DP as to how the FCA will marry the issues they raise in the DP with the obligations of firms and national competent authorities to adhere to European directives and regulations together with guidelines and other edicts issued by the European Supervisory Authorities. The legal framework at Appendix 1 does not consider this issue.

Sectors

Various sections of the DP refer to 'sectors'. We would reiterate the need for the FCA to clarify, as soon as possible, their view of the composition of the sectors and sub sectors within the financial services industry. Broad sectors such as 'Investment Intermediation' or 'Asset Managers' will not enable the FCA's staff to develop the deep understanding to support their supervisory approach or enable it to engage and communicate effectively with firms.

[1] The Association of Private Client Investment Managers and Stockbrokers (APCIMS) is a trade association representing 175 member firms. Of this number 112 members are private client investment managers and stockbrokers and 63 are associate members who provide related services to our firms. Member firms deal primarily in stocks and shares. They also deal in other financial instruments for individuals, trusts and charities and offer a range of services from execution only trading (no advice) through to full portfolio management.

Our member firms manage over £500 billion of wealth in the UK, Ireland, Channel Islands and Isle of Man on behalf of 4 million clients and operate across more than 580 sites, employing c.31 000 staff. Our aim is to ensure that regulatory, tax and other changes across Europe are appropriate and proportionate for the investment community

Other matters

We would like to see further consideration of the dangers of creating too much "soft policy", that is material which is outside the Handbook and provides a supposedly non-binding gloss on actual rule requirements and the risk that this deflects firms' attention and resources from what should actually take priority namely the Handbook rules and guidance.

Our detailed comments on the DP are set out on the accompanying appendix to this letter; for ease of reference we have adopted the same headings and sub-headings used in the DP.

Please do not hesitate to contact us if you wish to clarify further any issue arising from this letter and the accompanying appendix. We are happy for our response to be published on your website.

Yours faithfully

[redacted]
Director of Regulation

Chapter 2: Background

Lessons from the FSA approach to transparency and recent initiatives by other regulators and Government

We are disappointed that there is no recognition of the view of many stakeholders that the FSA, from its inception, did not take their obligations to produce a cost benefit analysis ('CBA') in support of its policy proposals seriously or follow its own published material as to how a CBA should be produced. We, and other trade bodies, continuously found failings in the CBA produced in support of policy proposals. For example, the CBA supporting the RDR, a major policy development, was flawed, as we set out in our submission to CP09/18 and in a separate letter to the FSA. The CBA supporting the proposals in CP09/18 were, to a large part, based on a survey of compliance costs and changes to business models by Deloitte which were based on early policy assumptions of the RDR proposals as published in Feedback Statement 08/06. FSMA s.155 (10) defines a CBA as "an estimate of the costs together with an analysis of the benefits that will arise **if the proposed rules are made**" – however, because the CP09/18 CBA was based on research undertaken in pursuit of earlier policy assumptions, it cannot be truly said to address the rules proposed in CP09/18. Given the impact of this initiative on the entire financial services industry, we do not think it was acceptable for the FSA to publish a CBA which did not actually address the proposals subject to consultation.

Given the industry's experience of the FSA's ability and/or willingness to meet their obligations, there is considerable scepticism, compounded by the lack of recognition of this issue in the DP, that the FCA will ensure that the CBA in support of policy proposals are properly prepared.

There are also concerns as to whether the FCA appreciates the concerns expressed about the FSA overriding the findings of their CBA. The Practitioners Panel Annual Report for 2008-2009 stated that *"In cases where the CBA case is weak or non-existent for an initiative, the decision should be taken not to proceed or any decision to proceed in the face of the CBA should require more extensive justification."* There are also references to the CBA work undertaken by the FSA in other Practitioner Panel reports.

Better firm disclosure

We are unclear how the comments referring to product disclosure are compatible with the fact that product disclosure requirements are largely driven by the European rules, for example the disclosure requirements in respect of Packaged Retail Investment Products - "PRIPS". The FCA will be aware that there are currently extensive discussions taking place regarding the scope and content of the PRIP requirements but as far as we are aware there are no provisions which will allow the FCA to 'gold plate' the requirements. You will be aware that when MIFID was implemented in 2007 the FSA was unable to continue to require firms to use its extremely prescriptive IDD/Menu documents for product disclosure.

Paragraph 2.8 states "*The midata project has also considered whether aggregator sites can play an even greater role in helping consumers if firms' disclosure was to take into account an individual's circumstances."* We are surprised that this statement has been made with no reference to the fact that the provision of information that takes account of an individual's circumstances could give rise to firms making personal recommendations. Following the implementation of the RDR, there have been helpful discussions between the FSA and APCIMS member firms that are execution-only brokers, exploring the boundary between providing information and inadvertently making personal recommendations. It appears to us that disclosing information that takes account of an individual's circumstances could easily give rise to firms providing a personal recommendation. There is no recognition of this issue in the DP. It is also unclear why the direction provided to a consumer by an aggregator site is preferable to that provided by a regulated firm. Aggregators are

not subject to any requirements as regards independence and fairness of presentation and may simply direct consumers towards whichever products/providers result on the basis of payments from the product providers. This is an issue the FSA sought to address in respect of platform providers through the COBS 6.1E requirements to disclose payments received from product providers and to present products "without bias".

Disclosure as a regulatory tool

The FSA did **NOT** effectively communicate appropriate messages to the industry and other stakeholders. The FSA failed to target its messages to particular sectors and sub-sectors and adopted a one size fits all approach to many of its communications. The volume of material hitting firms is such that they simply do not have the resources to digest all the material they are expected to read and action. The FSA's website was not fit for purpose for many years, a fact privately acknowledged by many members of the FSA staff. In addition, the FSA failed to establish and maintain key regulatory data in a manner that firms need in order to meet their regulatory obligations. We repeatedly pointed out the fact that data held in respect of funds did not enable firms to readily identify unregulated collective investment schemes ('UCIS') and/or incorporate the data into their own systems to enable them to establish systems and controls in respect of UCIS funds.

We experienced difficulties with the use of the enforcement process as a mechanism for identifying unacceptable behaviour by firms and individuals, caused primarily because there was a lack of input from the FSA's policy team to ensure the content is technically correct. We encountered difficulties from time to time when reviewing Final Notices because the content differed from the information provided by policy staff. The most recent example was in respect of Savoy Investment Management Limited ("Savoy") where the content of the Final Notice appeared to contradict some of the key points we had agreed with the FSA policy staff in respect of the FSA's approach to suitability. In the past, the explanation was that the policy position is unchanged and that the content of the Final Notice was written in the context of the individual firm which was the case in respect of Savoy's Final Notice. Nonetheless, at the time of publication, the content caused firms to question whether or not the FSA had instituted a major policy change in respect of their approach to suitability which necessitated urgent queries to the policy team responsible for suitability who, as far as we are aware, had not seen the Final Notice until we drew it to their attention. We believe that, going forward, consideration should be given to allow for a formal review by policy staff. Such action would ensure that any commentary on the rules within a Final Notice does not inadvertently contradict the FCA's policy position.

Lessons learnt from the DP

Paragraph 2.18 states that "*while DP08/3 largely succeeded in providing a framework for transparency, the FSA was not able to provide the impetus required to drive systematic reform. The DP suggested a number of reforms but the Code was not prioritised or translated into a change programme, which meant that most of these reforms were not taken forward*". Given the very considerable resources available to it, why was the FSA "not able" to put the results of DP08/3 into effect? Why did it not prioritise the Code? Has any work been undertaken to establish why the FSA failed to action the DP08/3 outcomes with a view to ensuring that the FCA doesn't follow the same path when addressing the issues arising from this DP?

Lessons from wider research on transparency

We agree that information needs to be able to be processed by consumers. It is unfortunate that the FSA did not recognise this point when arbitrarily adopting the word 'independent' as a label for advice in a manner that does not reflect general English usage of the word which has created significant confusion amongst all stakeholders and consumers.

The FCA itself should be mindful of the key messages it has identified in respect of its own activities.

We would also emphasise the need for information to be presented in an appropriate context. If all the regulatory data published about firms is negative in tone it tends to support/entrench a general distrust amongst consumers of the financial services industry as a whole. We are not suggesting data indicating regulatory shortcomings should not be published but such data must be set in context.

Chapter 3: How the FCA could be more transparent

Changing our approach as a regulator

It is pleasing to note that the DP recognises that "*The FSA published information but feedback from consumer groups and industry tells us that it was often too difficult to find the information and to understand it.*" Our conservative estimate is that firms have to read approximately 5000 pages of regulatory material every year. Whilst we recognise that external factors, such as European and UK legislation, necessitate certain publications being made within a prescribed timetable a considerable amount of regulatory material will remain under the control of the FCA. We believe there are a number of actions the FCA could take to reduce the regulatory burden on firms and improve the effectiveness of its communications. The relevant actions are set out below:-

- A member of the FCA's senior management team must be tasked with having an overview of the demands being made on firms, in each sector and sub sector, originating from published material, in terms of having time to review the material and take appropriate action following its publication. At the FSA, departments, and teams within departments, worked in silos and there was no overview of the volume of regulatory material that firms were required to read and action. For example, during November and December 2012, when firms' resources were fully engaged in ensuring they met the RDR deadline of 31st December 2012. The FSA issued:-

    - 23 November 2012 Dear CEO Letter Conflicts of interest between asset managers and their customers - what you need to do
    - 30 November 2012 Dear CF10a letter Unbreakable Client Money Term Deposits
    - 11 December 2012 To the CEOs of Asset Managers Review of Outsourcing Arrangements in the Asset Management Sector

    The above three letters were not necessitated by external factors and therefore the timing of these communications were entirely under the control of the FSA. To what extent, if any, were senior management involved in the issuance of these letters and was there any recognition of the fact that firms have finite resources and the current regulatory demands firms were facing? In terms of transparency, the FCA should develop suitable metrics to formally record on a monthly basis, and cumulative for the calendar year, the volume of regulatory material that each firm within a sector is expected to review and the associated actions firms are expected to take. A simple page count would be a good start to establishing relevant metrics.

- The content of communications must be targeted at individual sectors. Firms wish to clearly understand what the FCA's concerns are in respect of the business models operating within their sector. They do not wish to have generic examples or case studies relating to other sectors from which they are meant to guess the regulator's concerns in respect of their sector. For example, the FSA's FG13/01: Risks to customers from financial incentives appears to be substantially based on the retail banking model. In our

response to the consultation guidance we suggested that the finalised guidance have additional appendices where the key messages for each sector could be highlighted; our suggestion was not reflected in the finalised guidance. The one size fits all approach, where an analysis in one sector is automatically read across to another sector, was one of the major failings of the FSA's approach to supervision and the communication of issues to each sector.

We welcome the FCA's proposals to produce a new website that will be easier to navigate to find information and key documents. Unfortunately, unsolicited feedback we have received from our member firms in respect of the form and content of the FCA's website has been scathing. The FCA's website appears to be even worse than the FSA's website. Our own initial review of the FCA's website to date has revealed a significant number of shortcomings. We would reiterate the point that we have made in previous submissions that the development of the website should include feedback from trade bodies, firms, consumer groups and other stakeholders that regularly use the current website to access information. We are disappointed that there has been no engagement with relevant stakeholders regarding the development of the website. In addition to developing the website, the FCA also needs to consider the administrative processes required to ensure that the content of the website remains relevant and valid for each sector. The FSA's small firms' website for Investment Managers and Stockbrokers was very poor for many years. The person responsible for the content constantly changed and it was seen as a communications function. Consequently, the individuals responsible for the content had very limited knowledge of our sector and were unable to judge what material was relevant. As such, it was not seen as a helpful resource by our sector. For example, the FSA's website (and now the FCA's website) for Investment Managers and Stockbrokers website had no reference to the RDR, whereas there are extensive links in the Financial Advisers section. It is our view that senior management did not sufficiently recognise how valuable a good website would be in enabling firms to meet their regulatory responsibilities. We would, however, acknowledge that the FSA and FCA Handbook and the associated functionality, held on the website were very good.

Making more of what we already publish

We believe the FCA should carefully review the documentation set out in Table 1 in paragraph 3.11 to clearly identify what the documentation is intended to achieve and whether the existing FSA format of the documentation is fit for purpose. Simply following the FSA's approach will not enable the FCA to make the step change that is necessary if it is to convince the industry and other stakeholders that it will be an efficient and effective regulator. For example, the FCA needs to establish a set of service standards which meet the needs of firms and other stakeholders, not just the FCA. The current service standards were established in 2002 and did not provide stakeholders with any significant assurance that the service being delivered by the FSA was acceptable. The service standards did not satisfactorily measure firms' experience in engaging with the regulator. The FSA was not regarded as a particularly efficient organisation and, in many cases, emails and other communications from firms were not responded to in a timely manner. For example, we believe the FSA's time limit of 12 working days for a response from the contact centre was far too long. On what basis did the FSA determine this time period was acceptable in terms of meeting the needs of firms? We are also aware that the contact centre did not meet this existing service standard, particularly for 'non-routine' queries. As we have previously mentioned, data held by the FSA was often not fit for purpose; for example, the register of funds did not contain where applicable, the funds ISIN number (How can firms and the FCA monitor UCIS funds when no data is readily available in a suitable format to identify each UCIS?). We would recommend that the FCA engages now with firms to gain an understanding of the day to day issues that firms experience in their routine engagement with the FSA, and now the FCA, to establish, in consultation with the industry and other stakeholders, appropriate service standards across all areas where firms will interact with the FCA and then develop appropriate metrics to be published on a regular basis to enable stakeholders to monitor the FCA's performance.

We support the publication of consultation responses. Many other bodies, such as Select Parliamentary Committees and ESMA, publish the responses they receive, which allow an assessment of the nature of the responses received and the extent to which common themes emerge. This will assist firms when reviewing the FCA's responses to consultations. Specifically, consultation responses should:

- be published in full, without the FCA effectively redacting critical comments or other material that it believes might cast it in a bad light;
- be made available in a readily accessible area of the website;
- be made available within a reasonable time (one week)of the relevant consultation period closing - there is no point in finding out that most respondents disagreed with a proposal if that proposal has already been made.

In addition, there have been occasions in the past when the FSA claimed "majority support" for its proposals by effectively counting each response as one voice – e.g. a handful of responses from individual organisations in support of proposals might "outrank" a small number of trade associations (each representing large numbers of regulated firms) who were against them. If the FCA wants trade bodies to co-operate with it in getting information/messages out to their members, it in turn needs to recognise the full force of their representative role when reviewing consultation responses.

We would reiterate that the FCA should carefully consider what information will be provided when consulting on its funding. It should provide more information than the FSA, allowing the funding requirements to be subject to an effective consultation process. Action needs to be taken now to ensure that, as the FCA develops, it is in a position to provide historic data, cost trends and cost activity analysis; together with details of capital project spends and resultant outcome compared to budget and service delivery, including whether or not anticipated cost savings as a result of the implementation of the capital projects have been achieved. Simply following the current FSA approach is not an acceptable consultation process; it does not provide sufficient accountability to firms and other stakeholders.

Whistleblowing: saying more about what we've been told and the action we may have taken

The level of engagement between the FCA and an individual whistleblower should be driven by the wishes of the whistleblower. Our view is that where whistleblower is seeking ongoing engagement then, subject to legal constraints, an FCA member of staff should manage the relationship and keep them informed. Generally whistleblowing was not a topic where the FSA provided feedback and, consequently, it was not a topic that firms were conversant with in terms of understanding the FSA's approach.

The FCA also needs to consider how it establishes an effective mechanism for getting feedback from the industry and other stakeholders that do not neatly fit within the definition of whistleblowing. It is the case that stakeholders identify activities or behaviour which causes them concern, even if there is no direct evidence of wrongdoing. Experienced market practitioners identifying issues which do not pass 'the smell test' is a source of intelligence for a regulator. It is the case that the self-regulatory organisations that were responsible for our sector prior to the FSA, namely the SFA and IMRO, did receive much greater practitioner input in terms of identifying issues of concern. In order to receive feedback the FCA needs to establish mutual trust and credibility. The FCA needs to ensure that their staff seeking feedback have excellent industry knowledge, actively develop and maintain relationships with firms, and provide feedback, subject to the constraints identified in the DP, on the actions being taken.

Publishing more about our supervisory activity

We recognise that the FCA will have finite supervisory resources and will adopt a risk-based approach when allocating its supervisory resources across a range of sectors. Whilst we do not advocate a no fault regime, it is the case that the level of compensation costs has been unacceptable for many years in certain classes and a number of the defaults are seen by the industry as being directly attributable to the FSA failing to properly supervise firms. At present it is impossible to understand the judgements that have been made in respect of the supervisory approach adopted by the FCA.

By way of illustration Pacific Continental Securities was placed in administration in 2007 and declared to be in default which resulted in compensation payments of around £80m. Our review of the audited accounts up until the years ended December 2001/2004 revealed that between 80 to 90% of the turnover was in respect of related parties based in Belize and during this period the company was unprofitable and had to be recapitalised three times. Our understanding is that the FSA did not routinely review the audited accounts of regulated firms. However, it is impossible for us to verify whether our understanding is correct. A further example is the recently published findings of the Complaints Commissioner[2] where it is unclear whether or not there is an obligation for supervisory staff to maintain notes of meetings. The Commissioner states *"It is indeed a matter of regret that there was no full or complete recording of the meeting nor a sufficiently detailed contemporaneous note on both sides on what took place by all the parties present"*.

The lack of transparency regarding the FSA's supervisory processes did not enable stakeholders to challenge whether or not they are adequate or to hold the FSA to account if they were not being followed. The FCA needs to ensure it addresses this issue. We would like to see detailed information published regarding the supervisory approach adopted by the FCA, not just details of the supervisory activities.

We have no specific comments in respect of the proposed aggregated data to be published in respect of supervisory visits and variations of permissions. We do not believe the data will provide intelligence to firms on the areas you are not focusing on. In our sector the demand from firms is to know areas of concern on an ongoing basis which was reflected in our continuous dialogue with the FSA at all levels. We would emphasise the need to ensure that information is properly contextualised to enable a comparison to be made between those firms where action has had to be taken and those firms where no action has been required. We have previously mentioned the need for the FSA to clearly communicate in a manner which is specific to the sector and sub sector.

Other matters

Our understanding is the FCA will have an enhanced research capability and will itself be analysing data. We would urge the FCA, wherever possible, to publish such data to allow a degree of external challenge regarding the validity of the data and the findings and also to assist firms in their understanding of the risks associated with their activities.

Chapter 4: Information we could release about firms, individuals and markets

At present transaction reporting data appears to be primarily used by the market abuse team. As far as we are aware, the data is not used to any great extent in terms of developing the FCA's supervisory approach nor is the data reviewed and analysed for any other purpose other than market abuse. We question whether the FCA recognises the value of the transaction data it holds and believe it could assist the FCA in developing their supervisory approach for certain issues.

[2] See - http://www.fscc.gov.uk/documents/final/GE-L01481.pdf

Transparency of our authorisations process

Our understanding is that authorisations received by the FSA were often initially rejected because the relevant document submitted by the applicant was not properly completed or was incomplete. Data in respect of this issue should be published to assist applicants in ensuring authorisation forms and supporting data are properly completed at the time of submission. The paper infers that the statutory limit to process authorisation submissions represents an acceptable service standard; is this correct? The publication of average times may not be particularly helpful. More detailed information by types of authorisation being sought and stratification of the different authorisation periods may be more helpful to provide a better assessment of the performance.

Transparency of our thematic reviews and early intervention

Prior to the commencement of thematic work, we would like to see full details of the scope and the nature of the work to be undertaken published. The publication may result in firms undertaking their own themed review adopting the FCA's approach but we do not believe this would undermine the FCA's own work. The reality is that whenever the FSA conducted themed visits firms quickly learned of the approach through their peers, trade bodies or through various consultants claiming to have the inside track on the issue, normally based on the fact they have made a recent hiring from the regulator! Firms often conduct their own themed review based on imperfect information. For most thematic work it will not be possible for firms to retrospectively 'hide' what they were doing prior to the publication of the thematic work to be undertaken.

There are a number of issues which we believe should be considered in determining when and what information should be published in respect of themed visits:

- The length of time needed to complete fieldwork and the subsequent publication of findings needs to be as short as possible, and in certain circumstances consideration should be given to publishing interim findings. The recent Consultation Guidance on Financial Incentives was published almost 2 years after the fieldwork commenced which is far too long.
- We want the details of the findings to be published as soon as possible. If guidance consultation is being considered this can be published at a later date. The Central Bank of Ireland published its findings on a thematic review of best execution in July 2012[3] which gives an indication of the level of detail we would like to see in respect of the findings arising from the FCA's themed work.
- The thematic work and the communication of the findings must be sector specific and the key messages for each sector must be clear and based on sufficient work within each sector to substantiate the findings. You will be aware that the work on financial incentives was based on a very limited sample of 22 firms across a range of sectors. The content seemed to be primarily based on a retail banking model and there was no analysis outlining the key issues for the different sectors supposedly covered by the guidance.

[3] http://www.centralbank.ie/press-area/press-releases/documents/120710%20best%20execution%20industry%20letter.pdf

Transparency of the redress process

Whilst publication of the redress process may be of assistance to firms considerable care would need to be taken to ensure there is appropriate contextualisation. There needs to be absolute clarity as to what products and/or activities are within the scope of any communication issued in respect of redress.

Chapter 5: Information that we could require firms to release

Product disclosure

As we have already mentioned, we are surprised that, in discussing product disclosure, there is no reference to the fact that many of the rules governing product disclosure, such as PRIPs, originate from European directives and regulations and that the FCA will not be able in many cases to 'goldplate' such legislation. Similarly, the manner in which investment services are provided to customers are for many firms driven by the provisions in MIFID. The FCA will '*consider whether there are markets where firms could be more transparent about the underlying value or performance of their products'* but the DP does not make it clear what issues the FCA believes it is able to consider having regard to the relevant European directives and regulation.

Contextualisation of complaints data

The comments in this section illustrate the concerns of our sector regarding a 'one size fits all' approach to issues of concern. We are supportive of the FCA's desire that firms properly address client complaints. The analysis and comments made in respect of the contextualisation of complaints data appear to have been driven by the failure of major banks to adequately address client complaints many of whom, until very recently, would appear to have been 'sub-contracting' their complaints process to the Financial Ombudsman Service. Our understanding of the data, in respect of our sector, is that the number of complaints is low both by reference to the absolute numbers and also where compared to data, such as the number of clients or number of transactions. Our understanding is that there are other sectors with a low level of complaints. Consequently, we believe a differential approach should be adopted targeting those sectors where there are concerns about complaint handling and every effort should be made to avoid a 'one size fits all' approach.

Association for Financial Markets in Europe

Consultation response

FSA DP 13/1 Transparency

26 April 2013

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the Financial Services Authority (FSA) consultation document DP 13/1: Transparency.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Executive Summary

AFME members support the regulatory intention to carry out work "in a way that is as open and accountable as possible" and welcome the general approach to increased transparency in areas such as product information, the manner in which the regulator carries out its functions and the effectiveness of that regulatory activity.

Inevitably there are costs, direct and indirect, associated with transparency and it is essential that an appropriate balance be maintained between those costs and the benefits achieved as a result of that transparency.

Other key areas that are essential to consider are the manner in which information is made transparent, the context in which the information is presented and the need to balance the desire for transparency against legitimate concerns regarding commercial sensitivities and the need for certain types of data to remain confidential.

AFME members believe that in general, individual regulated firms should not be identified by the FCA when disclosing information derived from thematic reviews or other supervisory activities. An exception to this would be where publication of the firm's identity is a part of a disciplinary/enforcement process. Furthermore the information should not allow the identity of firms to be deduced even if the name is not formally disclosed.

Given that regulators focus, or should focus, the majority of their activities in areas where there are regulatory issues, there is a significant danger that increased transparency of such activities may have the unintended consequence of distorting the view of consumers of the respective

market/product area. Care should be taken to ensure that an appropriate balance is maintained so that transparency is applied to both "good" and "bad" aspects identified as relevant to consumers and therefore worthy of publication.

Please do not hesitate to contact me, if you should have any further questions or would like to discuss any points raised in this response.

Yours faithfully

[redacted]
Managing Director, Compliance
[redacted]

1. Setting the scene

1.4 - AFME Members are broadly supportive of the definition of transparency as set out in paragraph 1.4 of the discussion document. However, Members believe that it would be beneficial if the definition was expanded to include reference to the limitations on transparency as a consequence of the need to maintain confidentiality for commercial and other sensitive data.

Members believe that consideration needs to be given to both the quantity and quality of matters subject to transparency. There is a need to avoid too much regulatory "noise" where important messages are lost in more general "clutter" of routine matters. One way in which Members believe it would be possible to focus consumers (and others) on more important matters is to draw a distinction between:

a) Matters that warrant attracting general attention and that are subject to specific publicity arrangements (press releases etc); and
b) Matters that are more routine and where data is simply made available (e.g. placed on the web-site and available for download) without additional publicity.

However, where material is made available, members believe that it is essential that adequate definitions and other contextual information are also made available so that interested parties are able to interpret the material accurately. For example the size of the firm and the number of its customers can be significant in putting complaints data into context.

1.5 – AFME Members encourage the FCA to undertake a formal cost benefit analysis of any proposals to increase transparency. Ongoing, transparency initiatives should be subject to review to ensure that they continue to meet the original objectives in the most cost-efficient manner. The FCA should ensure that there is no unnecessary duplication where the same data elements are required to be disclosed in different formats in support of different transparency or regulatory initiatives. Wherever possible, the FCA should make use of data that it already has available rather than requiring firms to make additional submissions.

1.6 - We welcome the recognition that information should not be disclosed where it "would be unfair to a particular firm or individual". Unless there is a specific reason to the contrary (e.g. in notices regarding enforcement action), AFME Members believe that publications should not include the identity of the firm or firms from which the underlying data have been sourced.

1.15 - Members are encouraged to see that the FCA plans to keep transparency arrangements under review to assess their efficiency and effectiveness. However, it is important to avoid over-engineering the transparency and review processes. Care should be taken to keep the implementation costs associated with transparency initiatives for both the FCA and regulated firms as low as is reasonable in the circumstances. The FCA should avoid overly complex review/analysis of those transparency initiatives, except where fully justified.

1.16 – The cost, both to the FCA and regulated firms, associated with disclosure changes in terms of the initial consultation, analysis and subsequent changes to systems and working practices is significant. Consequently, the FCA should seek to limit the number of changes to disclosure requirements and ensure that a clear and significant benefit to consumer outcomes exists before embarking upon making changes to disclosure rules. If any changes are envisaged there should be sufficient time for transitional arrangements.

There is a specific additional element of transparency, which Members would like the FCA to consider. The FCA is encouraged to provide details of the costs of undertaking a typical consultation exercise and these details should be based on historic data available from FSA records.

The costs should include estimates of costs arising to the FCA (cost of preparation, distribution, analysis of responses and publication of the results) along with estimates of the cost to firms (to cover initial analysis of CP, briefing management and staff and any formal response both of the consultation exercise and final policy).

2. Background

2.4/2.5 - Whilst it is important that consumers "understand and engage with the market", it is also important to remember that the term consumer encompasses a very wide range of individuals and organisations. Disclosures should be pitched at the correct level for the relevant consumer. It is not necessarily appropriate for disclosures associated with a product intended for sophisticated/experienced investors to be pitched at the same level as those intended for a consumer with little or no experience of investments. It is also important to set out criteria/parameters for firms' disclosure of product features so that customers are able to compare different products by reference to the same or similar features. It is also important to remember that "the best deal" for a consumer may not be necessarily the best product for another. Firms should be required to be transparent and offer adequate information to their customers but customers should also be required to take responsibility for selecting the best available option for their own needs.

2.6 - Price comparison websites should be required to disclose a set of features for each product. It should be the customer's responsibility, based on the clear, transparent set of information provided, to take a decision on what is best for his/her needs. It is also important to consider that firms may not have a relationship with these websites and therefore will not be in control of what information is published (see below).

2.10 – It is not clear from this paragraph whether:

- The FCA is envisaging that disclosures made to the FCA will be passed on to third parties;
- The FCA will regulate to require firms to supply data directly to such third parties; or
- The FCA will regulate to require firms to publish data that can subsequently used by be any third party.

Regardless of which of the above applies, we would like to seek clarity on the controls envisaged to ensure that any such consumer website or aggregator site uses the information in an appropriate way. For example, how will the FCA ensure that aggregator sites do not provide a distorted view of the market that is incomplete or biased against any single firm or group of firms? As the DP acknowledges, concerns have been expressed "about the independency or quality of intermediaries" but the paper does not outline in any detail how this concern should be addressed by the regulator.

2.11 - Members agree that disclosure can be a very powerful regulatory tool which can be used to the benefit of both consumers and regulated firms. However, given the potential for adverse/unintended consequences, it is vital that appropriate checks and balances are put in place to ensure that disclosure of regulatory data is only used in appropriate circumstances.

Where the FCA proposes an increase in transparency, Members believe that the proposal should include full details of the purpose of the initiative and the expected results in terms of e.g.

consumer education, consumer protection, anticipated changes in behaviour (both for consumers and firms) etc.

In all cases Members believe that it is essential that the FCA ensures that publication of regulatory data is kept within the correct context/perspective.

Care must be taken to ensure that publication does not lead to a false impression of overall market quality and that a small number of incidents/offenders does not tarnish the wider market inappropriately as this would not be in the public interest.

With regard to the list of examples, Members would like all formal speeches/presentations made at conferences and other public events by FCA staff to be made available (including the associated presentation slides/graphics). Whilst the FSA has been publishing a number of key speeches on its website, the list of speeches has been often incomplete. For example, on a number of occasions, speeches or formal comments by senior FSA staff at conferences or other public events have been referred to in the media without firms being able to verify completeness/ and or accuracy of these reports.

Although we are not aware of a formal announcement having been made at the time of drafting this response, we understand that the FCA has considered reducing the frequency and limiting the content of the Market Watch Newsletters. We are aware of the revised Guidance consultation process, but nonetheless Members would urge that the FCA reviews that decision, as Market Watch has proved to be one of the most useful publications made by the FSA and Members would like to see its continued publication combined with other forms of industry engagements such as bi-lateral meetings and workshops.

2.12 - Members are very supportive of the publication of final notices and decision notices in full as these give valuable insight to the FSA/FCA's supervisory approach.

2.13 – The publication of anonymous aggregated data may be helpful e.g. where a number of firms have been asked to change/improve their approach in a particular area (i.e. supervisory intervention rather than enforcement action). Such publication would help communicate regulatory expectations and allow firms the opportunity of modifying their behaviour, if necessary, to avoid potential supervisory/enforcement action. (However, there will be cases, where contextual information will be needed, as FSA recognised in the case of the reports on market cleanliness).

The FCA should ensure that when publishing firms' specific data, whether individually or alongside other firms, care is taken to ensure that firms are not unfairly disadvantaged in any way as a consequence of that publication. Wherever possible, firms should be advised in advance of publication if their identity is to be disclosed.

Given that FCA supervisory staff will have most day to day contact with C1 and C2 category firms, there is a danger that publication of regulatory data will be skewed inadvertently to the disadvantage of larger firms. Members are concerned that the FCA maintains an appropriate balance to ensure publication does not distort the view consumers have of the larger firms.

2.19 – Notwithstanding the information contained in the complaints data and mindful about the limitations of disclosure, Members would be interested to see an up-to-date detailed analysis of the impact on consumer behaviour resulting from the increased transparency around complaints data.

3. How the FCA could be more transparent

3.3 - Members would ask the FCA to consider what other internal material could be published in addition to the minutes of board meetings. In particular members feel that greater transparency around policy development would be beneficial. This would allow stakeholders to review the types of issues being considered by the FCA and, if appropriate, provide input at an early stage which will have the potential to improve the overall efficiency of the regulatory process.

Members feel that the FCA should consider adopting the same approach as used by some of the European bodies, such as ESMA, where there is frequently a call for evidence from interested parties before a formal proposal is put out for wider consultation. This approach would allow trade associations and consumer groups an opportunity to provide information that could assist in the FCA's development of policy at an earlier stage of the thought process.

3.7 - We welcome the publication of formal investigations into regulatory failure as well as transparency regarding relevant FSA/FCA internal audit reports such the "Review of the extent of awareness within the FSA of inappropriate LIBOR submissions".

3.10 - Our members support FCA initiatives in developing a website that is easier to navigate and strongly encourage the promotion of best practice and equal accessibility across various departments of the FCA as for example historically, important policy documents such as CEO letters were only published on the FSA "Small Firms" section of the website although they would have been equally relevant to larger firms.

3.12 - Members believe that the FCA should publish details of all FOI requests it receives and the subsequent FCA responses unless there are very good and disclosed reasons to the contrary.

Members believe that the FCA should publish/make available (after the event) details of all research it has commissioned especially that from external suppliers. Information should be provided on the objectives/rationale for the research, the process used to select the party commissioned to undertake the research and copies of the final result/reports as well as any follow-up actions intended as a result of the research.

Members would like to see the FCA publish a balanced view of the results of its research activities with publication of results both where there is perceived to be an issue warranting regulatory intervention as well as where the results indicate that no significant regulatory action would appear to be required/appropriate.

3.13/3.14 – Members would like to see the FCA publish more information regarding supervisory activity and supervisory outcomes particularly in those areas where FCA believe there is a significant risk to the FCA's consumer protection and integrity objectives.

3.16 – Members would support an FCA initiative to increase the transparency around whistle-blowing subject to maintaining an appropriate degree of confidentiality being maintained to protect both the whistleblower and the firm concerned. Members feel that Section 348 4 b of the Act provides an adequate gateway for publication (in anonymised/sanitised form) to allow, in most instances, sufficient details relating to whistle-blowing for the disclosure to be meaningful.

Members believe that feedback to whistleblowers is very important to maintain confidence in the system and to encourage appropriate use in the future. Obviously an individual whistleblower may not wish to be contacted and receive feedback but where feedback is requested it should be possible for the FCA to provide confirmation that the matter has been investigated, the overall result of that investigation and confirmation as to whether any further regulatory action is likely to be taken regarding the matter. It would not be necessary or appropriate for the FCA to provide specific details such as the names of individuals within the firm contacted or precise information regarding regulatory action taken/proposed.

If no action is to be taken by the FCA in response to the report from the whistleblower then the whistleblower should be offered an adequate explanation as to why the FCA have decided not to act.

3.20 - What information would be helpful?

The FCA should provide feedback to all stakeholders providing aggregate details on:

- The number of whistleblowing events;
- The types of issues raised by whistleblowers;
- Whether the whistleblower had used the relevant firm's internal whistleblowing arrangements before approaching the FCA;
- Whether the FCA investigated the matter and the results of that investigation;
- Details of what action was taken/is proposed to be taken by FCA along with a justification for that action.

3.20 - What are the potential benefits?

Potential benefits include encouragement for others to use the whistleblowing process if it is seen to be taken seriously by the regulator. Equally firms may well update/amend their own procedures based upon the data made available (e.g. improve their own internal whistleblowing procedures or change working practices within the firm to take account of lessons learnt).

3.20 - What are the potential drawbacks?

A significant number of "false alarms" where, upon investigation by the FCA, no action was required, could lead to a drop in the number of reports (with potential whistleblowers losing faith in the system believing that it was a waste of time or that they would not be not taken seriously given, malicious reports aside, the whistleblower presumably always thinks there was a concern even if subsequent investigation suggested there were no issues).

3.21 – Members believe that in the majority of cases it is fairly obvious why enforcement action has been taken by the regulator. However, there may be instances where it would be helpful for the FCA to comment on the reasons why they have taken action in a particular case e.g. where action was taken to set an example and to specifically warn the wider population on a point.

An explanation as to why the FCA has focussed on one particular area rather than another may assist stakeholders in understanding where the FCA perceives there to be greater risk to its objectives and consequently greater risk/impact on consumers.

Publication of more information regarding the scope and costs associated with investigations would be helpful although average costs are of very limited value. It would be much more helpful were the FCA to include an estimate of the costs associated with each enforcement action it undertakes. Such information should be readily available from FCA's internal records and could be included at minimal additional cost. This information would assist stakeholders assess efficiency and the cost vs. benefit of regulation and regulatory action.

3.22 - Extent to which this would be helpful?

Greater detail regarding the activities undertaken within the enforcement division may assist stakeholders in assessing the overall efficiency of the regulator and the cost vs. benefit of regulation in particular areas.

The information could be a potential source of data for education programs providing better information as to regulatory expectations/standards and processes.

3.22 - What additional information should be published?

In addition to the existing data published on enforcement cases, Members would like to see information regarding cases investigated by the FCA where, upon investigation, no action was taken. Information in this area should include details of the number and type of cases investigated, the time/resources allocated to the investigations and details as to why no action was taken e.g. no case to answer, insufficient evidence to prosecute, not in the public interest or matter referred back to Supervision for action by supervisors and the firm concerned.

Members would also like to see greater transparency around the use of Section 166 powers by the FCA to include:

- Who is on the list of organisations approved to undertake Section 166 reviews?;
- What criteria are used to assess such firms and the processes around being included on that list?;
- What arrangements does FCA have in place to assess the performance/quality of reports obtained using Section 166?;
- How frequently are Section 166 reviews being required by FCA?; and
- What are the estimated costs/benefits associated with the use of Section 166 powers by the FCA?

Members believe that the FCA should publish more detail on its market monitoring activities, particularly those arising out of the monitoring of transaction data supplied by firms. Consideration should be given to providing information on alerts generated, investigations undertaken and results obtained from monitoring price and transaction data across the various markets.

3.22 - What are the potential benefits?

Stakeholders will gain a better understanding of the regulator's activities and the rationale as to why action has been taken or not taken in by the enforcement division.

Greater understanding of the regulator's priorities will assist regulated firms in focussing their own resources on the areas where the regulator believes there is the greatest risk to consumers.

3.22 - What are the potential drawbacks?

There is a danger that too much regulatory resource will be devoted to producing information and subsequent analysis of that information in an appropriate format for publication.

3.25 - Members do not believe that publication of the type of information outlined in paragraphs 3.23 and 3.24 would lead to any significant fall in standards in other areas.

Members would like to see the FCA provide a more forward-looking view of supervisory activities indicating where, over the next 12 months the FCA anticipate the most significant activity will take place e.g. the number of visits planned and the areas under consideration for thematic review.

3.25 - To what extent do you think this would be helpful?

Members believe that greater transparency in this area would assist them in understanding areas of regulatory concern and provide useful information that would help them assess their own position relative to their peer group.

3.25 - What additional information about supervisory activities should be published?

Refer to comments on paragraphs 3.13 and 3.14 above regarding publication of the FCA's view of the "state of the market".

Members believe that when publishing information about authorisations, variations of permissions or other similar data sets, the FCA should include details on time to process, reasons for delays, reasons for withdrawal of applications etc. to facilitate a better understanding of the overall application/approval process.

Information regarding the application for and granting of waivers, anonymised details of waiver requests and the resultant action taken by FCA would also be helpful and would help maintain a level playing field for participants. For example, with regard to recently introduced mobile phone recording requirements, some firms felt at a disadvantage believing that others had been granted waivers when in fact FSA confirmed that no waivers had been given and consequently their concerns were unfounded.

Members would like to see information on a regular basis (e.g. annually) on the qualifications, training and experience of the staff within both the supervisory and policy areas of the FCA along with details as to how the FCA monitors and assess the quality of the work undertaken by those teams.

3.25 - What are the potential benefits?

The benefits would be improved consumer confidence that the supervisor is aware of issues/concerns in the market and taking appropriate action to address those issue/concerns in a timely manner.

Consumers may become aware of regulatory concerns in particular areas which may lead them having a better understanding of the particular product and the risk associated with that area. Consumers may take more care when purchasing/investing in a product where they have a greater understanding of the risks involved.

Regulated firms may be able to use data as an early warning of potential issues that may arise which could lead to improved compliance monitoring within firms.

3.25 - What do you think are the potential drawbacks?

There is the potential for misunderstandings to arise unless appropriate disclosure of contextual information is also provided to stakeholders alongside the details of supervisory activity.

Increased transparency may lead to supervisory staff seeking to justify their existence by undertaking unnecessary visits/data requests which would have an adverse effect on the overall costs of regulation.

4. Information we could release about firms, individuals and markets

4.12 - To what extent do you think this would be helpful?

The publication of averages is of very limited value as the results are subject to distortion/bias as a consequence of unrepresentative samples in the underlying data. It would be much more beneficial for the FCA to publish the range/distribution of the time taken to process applications for authorisation with associated commentary as to the nature of the applications in the sample.

4.12 - Other information in relation to the authorisation process

Where the application has taken more than the target time to process some explanation should be provided so that stakeholders can interpret the data correctly e.g. if the firm submitted an incomplete application or the FCA took longer than normal to process the application for some other reason.

Information should also be provided so that the statistics can be viewed in context such as whether the application related to a complex business involving a wide range of regulated activities or whether it was an application for a very small business focused on a specific business area.

4.18 - Do you think this would be helpful?

Members believe that the FCA should always publish the results of its thematic reviews, provided the sample size is large enough for aggregation to work effectively and therefore avoid the identification of the individual firms included in the review.

4.18 - What sort of information would you expect to see?

Members believe that publication should include as a minimum:

- The objective behind undertaking the review;
- Details of the methodology adopted when undertaking the review including the rationale for the sample size and individual firms selected for participation in the review;
- A view of the results/raw data arising from the review;
- Details of the analysis undertaken of that raw data;
- The conclusions drawn from the review; and
- Any further action planned as a consequence of the review.

4.18 - How would you like this information to be made available?

In general, Members support publication of material on the website with a facility to down load any underlying data so that firms can carry out their own analysis where required.

4.18 - What are the potential benefits?

Members believe that there are a wide range of potential benefits including:

- Better understanding of regulatory action/inaction;
- Better understanding of the state of the market;
- Opportunities for enhanced consumer education/understanding; and
- The potential that the underlying data may be useful for other purposes leading to cost savings or other efficiencies.

4.18 - What are the potential drawbacks?

As with all publications there is the potential for the information to be used out of context or otherwise misunderstood. There is also the risk that firms subject to the review may be identified and subjected to unfair criticism.

Transparency of the redress process

4.19 - In general Members would support a proposal to increase transparency around the redress process although care is required to ensure that consumers are not misled and that individual firms are not disadvantaged as a consequence of that increased transparency.

In particular Members feel that greater clarity/definition would be required regarding the definition of redress to differentiate matters such as:

- Payments made to cover costs;
- Compensation in respect of specific losses;
- Compensation for lost opportunities;
- Compensation/damages for inconvenience etc;

- Goodwill payments; and
- Fines or other financial penalties paid by the firm.

4.21 - Do you think this would be helpful?

Generally, we support transparency but have no specific points to raise this topic.

4.21 - What sort of information would you expect to see?

See comments against 4.19 above. In addition, it would be helpful to see data on the number of redress cases per year per each firm, turnaround times for dealing with complaints and more detailed data to understand if redress is paid at the end of an investigation or at the outset as a gesture of goodwill. In order to put the information in context, reference should also be made to the percentage of complaints by reference to the overall customer base of the firm.

4.21- How would you like this information to be made available?

It will be important that the information is available free of charge and online.

4.21 - What do you think are the benefits?

This would provide evidence to support the scheme and demonstrate that valid complaints are appropriately dealt with.

4.21- What do you think are the drawbacks?

There is a need to avoid a "compensation culture" where people are encouraged to seek redress on an invalid basis e.g. significant number of false PPI claims.

5. Information that we could require firms to release

5.3 - Whilst it is relatively easy for aggregator sites to rank products by price, it is much more difficult to rank those same products by quality given the subjective nature of an individual's perception of quality. Care should be taken to ensure that the "quality" of a product in terms of its suitability to meet a particular need is not assessed by simply counting/assessing the number of add-ons that come with that product.

5.4 - Members would encourage the FCA to seek specific input from Consumer and Practitioner Panels on the matters felt most relevant to consumers when selecting a particular product/product supplier.

Members also feel that it is important to keep in mind the very wide definition of consumers and recognise that a "one size fits all" approach is unlikely to be appropriate or acceptable to stakeholders.

5.10 - We think the annuity market could be more transparent and easier to understand.

We have no specific comments to make on this section as insurance activities fall outside the scope of AFME activities.

5.17 - Publication of claims data for insurance products is one idea that we think could help improve the outcome for consumers and change firm behaviour.

Insurance activities fall outside the scope of activities primarily covered by AFME, however AFME members have suggested that such data should not be made available in respect of insurance products sold as part of a packaged account, as information on how easy is to claim against that insurance company may have an anti-competitive effect on the market.

5.19 - Contextualisation of complaints data

5.19 - To what extent do you think this would be helpful?

It would be useful if data are provided with a detailed context and background. For instance, this could include reference to the overall percentage of accounts. It would also be important to provide details of the reasons for the complaint to differentiate between a customer's general dissatisfaction with a service provider from dissatisfaction with a feature of the product or the sale process of the firm.

5.19 - Do you have any suggestions about what matrix we should mandate?

Information could include:

- Overall number of complaints;
- Overall number of successful outcomes versus complaints upheld in favour of the firm;
- Percentage of complaints versus overall number of customers (e.g. 5% of the total population);
- Details of complaint; and
- Details of how complaints are logged.

5.19 - Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

We have no specific comments to make on this section.

5.20 – Members believe that the FCA should undertake a review of the criteria in association with relevant trade associations/consumer groups and then issue a formal consultation document to ensure that all stakeholders have an opportunity to review and input on the proposed arrangements. Consultation with trade bodies and consumer groups in advance of the formal publication of the consultation document should help ensure that the overall policy proposal has been subject to review by appropriate experts before being published to consumers and other stakeholders. Members believe that the overall quality of the consultation exercise will be improved as a consequence of adopting this approach.

6. Conclusions

We have no comments on this section - please refer to our detailed comments on the specific sections.

7. Appendix 1 – The Legal Framework

The regulator should carefully balance the legal requirement to make information available with the legal obligations for firms to keep customers' information confidential. Firms should not be required to disclose customer data unless this information is anonymised.

Association of British Insurers

Transparency

The ABI's response to DP 13/1

The UK Insurance Industry

The UK insurance industry is the third largest in the world and the largest in Europe. It is a vital part of the UK economy, managing investments amounting to 26% of the UK's total net worth and contributing £10.4 billion in taxes to the Government. Employing over 290,000 people in the UK alone, the insurance industry is also one of this country's major exporters, with 30% of its net premium income coming from overseas business.

Insurance helps individuals and businesses protect themselves against the everyday risks they face, enabling people to own homes, travel overseas, provide for a financially secure future and run businesses. Insurance underpins a healthy and prosperous society, enabling businesses and individuals to thrive, safe in the knowledge that problems can be handled and risks carefully managed. Every day, our members pay out £200 million to customers, including motorists, pension annuity payments and businesses.

The ABI

The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has almost 350 members, accounting for some 90% of premiums in the UK.

The ABI's role is to:

- Be the voice of the UK insurance industry, leading debate and speaking up for insurers.
- Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.
- Advocate high standards of customer service within the industry and provide useful information to the public about insurance.
- Promote the benefits of insurance to the government, regulators, policy makers and the public.

Executive summary

We are pleased that the FCA has opened a debate around transparency in the financial services sector. There are some interesting ideas set out in the paper and we look forward to working with the regulator and the industry to explore the scope for transparency of the regulator, firms and markets.

The ABI is keen to have more understanding regarding the detail of how the FCA plans to be more transparent. The ideas outlined in the paper are relatively high level, making it difficult to respond in depth. However, we have set out some of our initial ideas in the section below.

It is vital that FCA is clear about what it means by transparency. There is a difference between publishing information that is clear and useful, and simply publishing information. Too much information can sometimes be just as bad, or worse, than no information at all in terms of impact on the consumer.

The ABI questions the value of 'transparency for the sake of transparency' and we are pleased to see this concern acknowledged in the paper. Instead, information from firms should be useful to consumers and to the industry. The ABI agrees good information about products – both prices and product/service features – is a critical component of a well-functioning competitive market, as it facilitates informed decision-making by consumers.

Some of the proposals in the paper have a strong link to thematic reviews that are being carried out by the FCA at the moment, in particular on claims handling, add-ons and annuities. It is important that the policy and supervision teams at the FCA work closely together to both avoid duplication of effort and also to ensure consistency. The recent communication and engagement on the mitigation review into financial incentives is a positive example of the benefits of transparency between the regulator and the industry.

We welcome the proposal that the regulator should be more transparent about the supervision strategy, particularly surrounding the assessment of the appropriateness of s.166 report for a particular interaction with a firm. The FCA should also be transparent about how tools like s.166 fit with overall supervision strategy.

We also welcome the stated intention to clearly show a link between the regulatory fees charged and the output of the regulator, by publishing FCA Value for Money strategy, and the commitment to demonstrate cost control and value for money to firms. There needs to be a stronger commitment by regulatory authorities to efficiency as there has been a marked increase in regulatory fees in recent years. The development and publication of a Value for Money strategy will also help to demonstrate the accountability of the regulator.

The FCA needs to be more transparent regarding its relationships with other bodies/regulators, especially with Financial Ombudsman Service (FOS) and at the European level.

How the FCA could be more transparent

We would expect proposals on the transparency of the regulator to include more details on the governance structure than the paper shows. We suggest there is scope to discuss the provision of information on governance such as the internal committee structure and how these work. This will help the industry have confidence that the internal checks and balances of the regulator are in place and work well. Publishing terms of references for these committees would also aid transparency.

There is an opportunity to show that a new approach to conduct regulation extends to the governance of the organisation itself. The Board should look for ways to increase the visibility of its work and enhance its engagement with key stakeholders. For example, the FCA should look for ways to make Board meetings more accessible to the public, perhaps learning from the Food Standards Agency which podcasts its Board meetings. Whilst we understand that some aspects of these meetings require some confidentiality, other aspects of policy and decision making could be made more visible than was the case with the FSA.

The FCA could also be more transparent regarding responses it has made to questions submitted by individual firms. On an anonymous basis and where there are no commercial sensitivities, the FCA could publish via their website a summary of Q&As they have responded to. At present, one firm may receive a response confirming an interpretation of a particular rule, but this information is not shared with others. This can result in an uneven playing field for the compliant firm to operate in. Publishing Q&As would help spread good practice and consistency outside of supervision activities and formal guidance papers. It could also save the regulator being asked the same questions time after time.

Under RDR, Q&As from adviser firms were published and were considered to be useful in guiding firms on their compliance requirements. We would propose that this practice continues on an on-going basis and is extended to Q&As from other firms including product providers and platforms firms.

We believe the FCA needs to demonstrate a stronger commitment over future cost control than the FSA did. FSA fees for insurers have risen from £59.9m in 2007/08 to £127.1m for 2012/13. More transparency concerning FCA funding requirements will help to support this and ensure regulatory accountability. Under the current arrangements there is, despite consultations, no significant check on whether proposals are reasonable or represent value for money. The amount of information provided is not sufficient to enable external observers to judge whether the level of fees and resources that the FCA is devoting to particular sectors are justified. Greater transparency and more meaningful engagement with stakeholders will aid the FCA in achieving its objectives for delivering value for money. The creation of a Value for Money strategy is a good start to the process but more is needed.

The regulators should be more transparent about the supervision process, particularly surrounding the assessment of the appropriateness of a s.166 report for a particular interaction with a firm. The scope, cost and number of these reviews has increased considerably, and the FSA's 'Journey to the FCA' document signalled the importance of s.166 as a tool for the FCA. The effect of its increased use is to shift significant regulatory costs from the FCA to the firm. This is in the context of a marked increase in regulatory fees for insurance firms over recent years as set out earlier. We believe the use of this power should be the exception rather than the rule but transparency regarding the use of this power is vital. We support the intention to publish more information about areas of expenditure including S166 as part of the Value for Money strategy. However, alongside any cost information it is vital that there is transparency about the decision making for using these powers. As such the FCA should report on;

- the number of occasions they directly appointed a skilled person
- the number of occasions s.166 is used to collect information from a firm
- what circumstances the s.166 was used in (enforcement/diagnostic/monitoring etc)
- objectives of review and whether achieved
- breakdown of costs

We also believe it would be appropriate to have greater transparency in how the regulator selects suppliers for its panel of approved Section 166 "skilled persons", and particularly how it is controlling costs for firms in this process.

The FCA will also need to be in touch with developments around transparency in other areas which may affect regulated firms. For example, the Department of Business, Innovation and Skills (BIS) proposals on 'Midata' could give consumers access to data about their previous consumption/transactions, and thus an insight into their behaviour. The ABI believes that if these proposals are extended to the financial services sector the FCA should take the lead in developing any framework.

The FCA needs to be more transparent regarding its relationships with other regulators, especially at the European level. The FCA will often be the implementer and supervisor of rules that have been made at EU level. But it is important for the FCA to proactively influence the EU regulatory framework to the benefit of UK consumers and firms and it should be open about its objectives and activities.

The FCA 2013/14 Business Plan made a good start in this area, sharing details of on-going FCA activity in principal European legislation. However, greater transparency would encourage greater engagement from the industry and the ABI is keen to work in partnership with FCA on EU regulatory initiatives wherever possible.

Another area worth considering is how to more effectively share the outputs, thinking and discussions of the FCA/FOS/OFT Co-ordination Committee.

Information the FCA could release about firms, individuals and markets

It is in the interests of the FCA and the industry to work together to jointly enhance their reputations. Increased public trust and greater customer confidence will be beneficial for both the industry and the regulator and we support moves from the regulator to be more transparent in dealing with the industry and consumers. The industry should be willing to share knowledge about the market and emerging conduct risks, and act swiftly to address them. In so doing, firms need to have confidence that the FCA will respond proportionately and work constructively with firms where they are willing to find solutions. It will be important to clearly identify and focus on the high-level strategic issues, as there is a danger that individual supervisors and industry compliance staff become distracted by relatively minor aspects of regulation. This will require leadership from, and good communication between, the senior management of firms, trade associations and the FCA.

The paper sets out some areas in which the regulator could release information about firms and markets. We agree that publishing more information regarding the authorisations process will help firms to understand why authorisations are refused and make firms aware of FCA expectations when applying. We also agree that detail of the findings of thematic reviews should be published and shared with the industry, perhaps in the form of industry guidance like the recent guidance on financial incentives. The recent early engagement with the industry on this topic is a positive sign that the regulator intends to work with the industry to identify issues and work together to find a resolution. However we would expect that guidance papers would be used where needed to clarify existing practice, with any material change in regulatory approach still being subject to full consultation. Good regulation should be built around the right kind of relationship between the financial services industry and the regulator.

It is difficult to understand how publishing information regarding the amount that a firm has paid in redress would influence other firms' behaviour. Given that there are a number of other mechanisms in place to ensure that the industry understands and addresses common trends (such as publication of complaints data and FOS decisions), this proposal appears to be a case of 'transparency for the sake of transparency'.

Information the FCA could require firms to release

The ABI is in broad agreement with the FCA's aims to increase transparency. We believe that it could provide value for consumers and allow them to make more informed choices when purchasing financial services products. However, it is essential that information is delivered to consumers in a consistent and contextualised manner across the industry.

We therefore believe it is vital that the regulator should take the lead in developing a framework for this, in consultation with the industry. The information will be useless unless it is published on the same comparable basis and this will require guidance from the regulator.

There are two specific proposals in the paper regarding how the regulator could change what firms disclose:

- Improved transparency in the annuity market
- Publication of claims data for insurance products

While the intention behind these proposals is laudable, the specifics of delivering this will be highly complex – especially those on publishing claims data.

We recognise the regulator's intention to address an apparent lack of transparency in the annuities market. There are already a number of investigations by a variety of regulators taking place, including an FCA thematic review. However, it is unclear what the FCA is proposing to make the market more transparent, and whether this will solve the issues raised in these reviews.

We believe that appropriate firm disclosure, access to streamlined and cheaper advice services and allowing the market for distribution to continue to develop is more likely to assist consumers in understanding and choosing annuities.

We also welcome any activity that results in improved customer outcome and satisfaction. This goal can certainly be achieved through enhanced transparency, focused on customer need. The ABI Code of Conduct requires all ABI members, as a condition of membership, to help the customer understand the decisions they need to make. This is achieved by clear and consistent written communications and certain standards for the sales process. All customers will have all the information they need to shop around, and will be clearly signposted to sources of advice and support.

The role of the FCA should be on ensuring (in conjunction with the ABI and the wider industry) that any distortions that arise due to information asymmetries are removed and that the annuity market is free to operate competitively for the benefit of customers and also providers. The appropriate means to achieve this is through high quality disclosure and encouragement of meaningful engagement with the customer.

The DP specifically asks about unintended consequences. Customer detriment can be caused through an inappropriate focus on one aspect of the perceived issue which either results in the customer making sub optimal decisions, or in the undermining of beneficial competitive pressures in the marketplace. In our Code of Conduct and our proposal to publish annuity rates we have been keen to avoid too much focus on maximising short-term income, and emphasise that there are several decisions to make at retirement. Customers are likely to need help in understanding all of their options and the decisions required – when to retire, whether to take tax-free cash and how much, providing for dependants, considering health, inflation and investment risks.

Lack of transparency is not the primary reason for low levels of shopping around. Research has shown that consumer inertia limits shopping around in the annuities market. ABI research to measure effectiveness of the Code of Conduct found that respondents with the smallest funds and those who did not shop around for products generally (with home insurance used as a specific example) were the least likely to shop around for an annuity.

As the FCA notes, the ABI is currently working on publishing annuity rates. Concerns about the potential impact of publishing rates on competition in this market have been raised; but the data that we will publish will be limited, which will ensure that anti-competitive behaviour is avoided. More broadly, this demonstrates that regulators face a trade-off between increasing transparency for customers and limiting transparency among competitors.

The ABI agrees that consumers may have limited information on which to differentiate insurance products apart from the headline price and brand. Transparency of claims statistics may provide a helpful alternative way to do so, and could allow competition over more than solely on price. It may also present an opportunity to educate consumers on the value of insurance. The importance of consumer expectation must also be borne in mind.

There are two potential consumer uses for claims data:

1. To help them decide whether or not they need a particular product (i.e. a product with a low number of paid claims *might* not be a good value product for that consumer)
2. To help them choose between providers and policies.

There are a number of important points to bear in mind when considering how to take forward such a piece of work as this.

Firstly, in order to achieve the best outcome from this exercise, it will be extremely important, to contextualise the statistics and to carefully define terms such as “claim”. The disparities in the structures of different insurance products need to be acknowledged and therefore the claims process and definitions will be different and not easily comparable. For example, depending on the type of insurance product and the type of claim, how it is settled can differ considerably. Not all claims are paid out on a straightforward monetary basis – for example some claims can be paid on a regular basis over a long period of time, some may involve partial payments, others can involve replacement or repair of goods rather than a monetary amount, and some can involve the provision of a service rather than an amount. There are also different understandings of when/if a claim is declined. We are pleased to see that the regulator acknowledges this in the paper. There are also important variations between group products and individual products. This means that the context and standardised terms used in the area are likely to be different for different types of product.

We recommend rigorous consumer testing before pressing ahead with this proposal to ascertain the most understandable definitions for the most number of consumers. In addition, insurance products are structured differently for a defined target market. The FCA needs to have a clear understanding on how each insurance product works and the target market for each product as this will lead to different claims experiences, before embarking on further work.

Similarly, moves to mandate contextualisation of complaints data would require industry consultation. We note that the FCA recognises that previous attempts to do this did not result in agreement due to the complexity of the issue.

Another important point to bear in mind is the overlap between this work and that of other FCA teams. For example, thematic reviews on claims handling, packaged bank accounts, work conducted by the Unfair Contract Terms team, and regulatory developments such as the Consumer Insurance Act will all have a bearing on proposals included in this paper. The complexity involved in this proposal simply should not be ignored. The regulator and the industry need to share information as a result of the related thematic reviews that are currently on-going. It is also unclear at this stage how fraudulent claims would be recorded within the data.

Finally, we cannot emphasise enough the importance of recognising consumer understanding and expectations about insurance. A high level of claims declinature may not necessarily indicate an unwillingness to pay claims.

There is the additional danger with a project like this, that it may lead consumers to believe that insurance products need to be claimed from in order to be any use, when in fact insurance is a product designed to provide protection should the 'worst' happen.

We suggest that, if the FCA believes that the benefits outweighs the difficulties and goes ahead with this proposal, the regulator considers running it as a trial/pilot. The regulator could look at one non-core general insurance product line and perhaps one protection product line and run these as a pilot over a 18-24 month period to ascertain if publishing a contextualised set of claims data would indeed assist consumers in making decisions.

Some ABI members currently publish claims statistics for Life, Critical Illness Cover (CIC) and Income Protection. These statistics are published on an individual firm by firm basis. The ABI has agreed to investigate standardising the definitions and basis used for reporting these statistics across the membership. We would be happy to share this work with the FCA as part of the transparency debate.

ABI already publishes aggregate claims information for both protection products and general insurance products and would be willing to work with FCA on this area. We endeavour to add some context for consumers and the media and show the value of the product itself.

ABI
26.04.2013

CarolAnne Macdonald
Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

23 April 2013

Dear CarolAnne,

AFM Response to CP13/1, Transparency

1. I am writing in response to this discussion paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:

   - Signify our support for greater regulatory transparency; and
   - Explore some of the proposals made in the paper.

2. The Association of Financial Mutuals (AFM) represents 53 member companies, most of which are owned by their customers. Between them, AFM members manage the savings, protection and healthcare needs of 20 million people, and have total funds under management of approaching £100 billion. The nature of their ownership and the consequently lower prices, higher returns or better service that typically result, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of additional consideration by the new regulators.

3. We consider that it is vital to the objectives of the FCA that they continue to challenge themselves, and firms, to promote high standards of transparency and accountability. Where consumers maintain a strong mistrust of parts of the financial services industry, there remains a continued need for firms to demonstrate that they act fairly and in the best interests of its customers. For most firms this is a natural part of their ethical approach to business, but there are exceptions.

4. Similarly, for the regulator to be seen to be acting appropriately, it needs to provide clear evidence of the actions it has taken. Most of the concerns

expressed at the effectiveness of the FCA's predecessor were, we believe, overstated, but to correct those perceptions the new regualtor needs to present clear evidence that it is making good decisions based on appropriate regulatory processes.

5. We have addressed the specific points made in the paper, and would be pleased to discuss further any of the issues raised by our response.

Yours sincerely,

Chief Executive
Association of Financial Mutuals

Responses to specific points made in selected chapters

Chapter 3

Much has been made of the presumed failings of the FSA in previous years. Whilst we do not consider much of this to be justified, the regulator intensified some of those concerns by a limited amount of accountability and transparency, and a reluctance to admit errors.

We are encouraged by the fresh approach exhibited by the FCA, and believe that this is more appropriate and compatible with its wider set of objectives. We consider it is important that FCA leads by example rather more than did its predecessor, by adopting wherever practical, the same levels of transparency itself as it expects from regulated firms, and by committing itself to similar standards (of governance, disclosure, fairness etc).

For example, the regulator establishes funding requirements each year, based quite loosely on its business plan and the conduct risk outlook. We consider that these should be much more closely aligned, so that firms can see more accurately where their fees go, and can more readily recognise that an increase in fees is consistent with a higher cost of supervision for that category of firm.

With regard to *whistleblowing*, data supplied by FSA via Freedom of Information requests as well as to a member of AFM indicates that there is a significant opportunity to improve the logging of whistleblower referrals, and what happens to them. Notwithstanding legal constraints on what the regulator can say to the whistleblower, we consider a prerequisite to a more effective whistleblowing regime is to have a proper recording system in place.

On *enforcement activity*, FCA should continue to publish information that serves to act as helpful deterrence to other organisations. Where politicians have queried the lack of bankers brought to account during the financial crisis, it would be helpful to understand what action was considered against individuals and why it was or wasn't pursued.

Chapter 4

We agree with the proposals to make the *authorisation process* more transparent, by the use of anonymised aggregate data. FCA should consider carefully how to ensure data is anonymised, as volumes of request will be low in some sectors.

We consider there are risks in publishing the results of *thematic work*. Most thematic reviews take a relatively small, representative sample of firms, and publication of data might imply that there were more widespread problems than there really are. This may in turn undermine consumer confidence disproportionately. The solution may be in the first instance to issue findings to a sector and to invite evidence to the contrary, rather than to publish incomplete findings.

We think it would be helpful to publish more information about the scale and nature of *redress payments*.

Chapter 5

As the paper concedes, there has been a significant change in the type of information customers receive in the *annuity market*, and in the processes adopted by firms to help ensure customers get a good deal. The ABI Code of Conduct on retirement choices came into force on 1 March 2013- we would expect the benefits of the new Code to crystallise in the coming months, and would urge the FCA to assess the effectiveness of the Code after at least six months operation, before determining what new requirements, if any, are required. In the meantime, further analysis of the behavioural reasons on why consumers do not act, or act rationally, would be a valid contribution from FCA.

Regarding the publication of *claims statistics* on some insurance products, members of AFM have been particularly pioneering. By the same token, some AFM members are reluctant to appear on price comparison sites, because they tend to encourage product selection on too narrow a set of criteria.

We recognise that for many consumers the earliest moment of truth (or conversely the point at which they discover they have mispurchased an insurance policy) is when they make a claim. Understanding how likely your insurer is to pay a claim therefore should be a key part of the buying decision. Hence most AFM members have published claims data on income protection products for many years, and consumers and IFAs have confirmed this has been valuable information.

At different times we have also published sector statistics on Holloway income protection claims data. Whilst we found it difficult to identify an appropriate set of data that could be published in an unambiguous way, we were disappointed that not all insurers were willing to explore how to publish claims data. We therefore see a legitimate role for FCA in identifying good practice and a common basis for publishing data. We have explored a range of options for collecting claims data and would be happy to share our experiences with FCA.

On contextualising *complaints data*, we consider this to be important to giving consumers appropriate incentive to act on the data presented. We would encourage FCA to resurrect the earlier proposals, and if necessary mandate their use.

APFA RESPONSE TO DP13/1: TRANSPARENCY

ABOUT APFA

The Association of Professional Financial Advisers (APFA) is the representative body for the financial adviser profession. There are approximately 14,000 adviser firms employing 81,000 people. 40% of investment and protection products are sold through financial advisers, with annual revenue estimated at £3.8 billion (£2.2 billion from investment business, £1.2 billion from general insurance and £400 million from mortgages). Over 50% of the population rank financial advisers as one of their top three most trusted sources of advice about money matters. As such, financial advisers represent a leading force in the maintenance of a competitive and dynamic retail financial services market.

APFA welcomes this opportunity to respond to the discussion paper on transparency.

SUMMARY

The government is committed to being more open and accountable and, through its transparency agenda, is making more data available to enable public bodies to be held to account. We support this drive for greater transparency and welcome the FCA's desire to become more transparent. We believe clear leadership from the FCA will be essential if it is to be successful in promoting transparency throughout the other regulatory bodies (FOS, FSCS and MAS) and financial services in general.

However, transparency is not an end in itself; it is a means to an end. It should not be about the collection or publication of more and more data from or by firms, for no clear purpose. APFA believes that FCA's priorities should include providing (i) the information stakeholders need to assess whether FCA is meeting its statutory objectives and (ii) the information firms need to conduct their business with a clear understanding of the regulator's expectations.

Accountability

Whilst the recently published Business Plan contains some detail about how the FCA intends to demonstrate that it is achieving its regulatory objectives, we believe it does not yet go far enough. The FCA needs to clearly articulate as soon as possible its objectives, targets and key performance indicators, including a set of measures that demonstrate the longer term impact of regulation on consumer and firm behaviour. They need to include hard measures that focus on outcomes rather than outputs and which enable government and stakeholders to evaluate the performance of the FCA. One obvious measure is a reduction in the number and/or frequency of events that meet the "regulatory failure" test (as outlined in the recently published FCA paper "How the Financial Conduct Authority will investigate and report on regulatory failure").

The FCA should also establish a system of independent oversight of its objectives and targets and its performance against them. This oversight needs to be conducted by a body

that has no vested interest in the success, or otherwise, of the FCA – for example the FCA's objectives and targets could be agreed with the Practitioner, Smaller Businesses and Consumer Panels. The FCA should regularly publish a report setting out its performance against its targets, which should be audited independently.

The FCA's expectations

The FCA needs to set out clearly its expectations of the way firms should conduct their business and then be consistent in its regulation, so that firms know what to expect and are not subsequently judged with the benefit of hindsight. There needs to be clarity around the extent to which customers are responsible for their own choices and decisions, when the regulator expects firms to take action and how far the regulator intends to intervene. For example, the recently published Occasional Paper "Applying behavioural economics at the Financial Conduct Authority" makes several references to cross-subsidies between consumer groups or products. Examples include "teaser rates" on credit cards and savings accounts. It could therefore be inferred from that paper that the regulator believes such cross-subsidies cause consumer detriment and should be banned, but no clear statement has been made to that effect. It therefore has the potential to create uncertainty for firms. Whilst we recognise that considered judgments take time, all efforts should be made to clarify matters as soon as possible or clearer indications of likely conclusions should be given at the earliest point. The regulator needs to be upfront with firms, clear about its expectations and deal with firms in the way it expects them to deal with their customers. We do not want to see firms having to second-guess what the regulator is thinking by trying to interpret cryptic hints dropped in papers and speeches. We need the regulator to be transparent about its expectations and consistent in its behaviour.

Other issues

Some other areas where we feel more transparency would be beneficial are as follows:

1. The FCA needs to demonstrate that it is applying the regulatory principles set out in FSMA. Whilst the Business Plan makes reference to some of the principles, there is, for example, no reference to how the FCA will demonstrate that it is complying with the requirement to consider the desirability of sustainable growth in the UK economy.

2. As required by the Regulators' Compliance Code (currently being consulted on by the Department for Business, Innovation & Skills) we expect the FCA to publish a set of clear standards explaining how it will apply the requirements of the Code. The FCA should also regularly (i.e. at least annually) publish details of its performance against these service standards, including reasons why any standards have not been met.

3. We would like to see greater transparency of decision making at the FCA. Whilst we accept there can be a need for confidentiality, we believe that the FSA did not get the balance between confidentiality and transparency right. The FSA's settlement with Capita (and others) in respect of Arch Cru was a prime example of the regulator making decisions that had a significant impact on other firms, but with little transparency. We recognise the situation is not identical, but it is worth noting the conclusions of US judges in respect of similar settlements from the SEC. There have been a number of Court cases in the USA where judges have questioned the SEC's approach to agreeing settlements with defendants subject to litigation. As Judge Rakoff said in a settlement case between the SEC and Citicorp: "There is something counterintuitive and incongruous about settling….if it [the defendant] truly did nothing wrong". The judge also pointed out other flaws – a lack of clear evidence or reasoning behind settlement amounts, inadequate penalties and harm to the public interest. Other judges have made similar comments in other cases. In order to maintain

confidence in any legal or quasi legal system, there must be no bias, actual or apparent, in the process - "Not only must Justice be done; it must also be seen to be done." We would therefore expect to see the FCA disclosing more details of decisions, such as settlements with a firm, particularly those that could have a significant impact on other firms, whether it be directly or indirectly. We also need the FCA to be more transparent about its decision making so that firms are clear about what is expected of them and have confidence that the FCA's decisions are based on rational principles, sound evidence and are free from bias.

4. We would like to see greater transparency around the way the FCA's costs are allocated to firms. Whilst we understand the methodology used, it seems to us that there is a disconnect between the statement of principle and the outcome. In the FSA's fees policy statement, it states that supervisory costs are allocated taking into account the risk profile of the firms or bodies supervised and thus the more higher-risk firms (in terms of impact and probability of failure) carrying out permitted business covered by a specific fee-block, the more costs are allocated to that fee-block. When looking at the cost allocation for 2013/14, A13 is allocated 9.1% of the budget, the fourth highest allocation to a fee block - more than insurers (life and general) and general insurance intermediaries. Yet when you look at complaints data (as a measure of consumer detriment) personal investment firms account for 1% of complaints, significantly lower than product providers and insurance intermediaries. Furthermore, with the introduction of RDR, the risk of consumer detriment from investment intermediaries is significantly reduced. It is also fair to say that the monetary value of the retail business done by investment intermediaries is significantly lower than that of product providers and banks. It therefore appears that given the risk profile of adviser firms, their share of the regulatory bill should be significantly lower than 9%. We therefore believe there needs to be greater transparency around how the FCA allocates its costs so that the link between the principles and the outcome is clearer.

5. A lot of data was submitted by firms to the FSA, and it was not always clear what use was made of this information. Firstly we would want the FCA to review whether all the information it collects is really necessary – it should only be collected if it is needed and the cost of collection (for both firms and the FCA) can be justified. Secondly, we would expect to see all data collected by the FCA being published, albeit on an aggregated basis where appropriate. This will help external parties monitor trends within the different sectors of the industry, and firms benchmark themselves against an industry average. An example is the data that is collected from firms via the Retail Mediation Activities Return (RMAR), little of which is currently published and the purpose of which is not always clear.

6. We are concerned that there has been a lack of transparency around the costs incurred in respect of s.166 investigations and that there is a danger that the total cost of regulation is being disguised through the use of outsourcing. We therefore support the FCA's proposals to develop a value for money strategy and to publish more information about particular areas of expenditure, including the cost of s.166 reports.

RESPONSES TO INDIVIDUAL QUESTIONS

CHAPTER 3: HOW THE FCA COULD BE MORE TRANSPARENT

General comments

See our comments in the summary above in respect of the FCA's own transparency. In addition we would make the following comments:

- We welcome the development of a new website by the FCA, as we found the FSA one difficult to navigate. There should be one area where all publications can be found, and it should be easier to sign up to email alerts when new material is published e.g. consultation papers. Having had the opportunity to look at the new FCA website, we are not yet convinced that it is any easier to find information on it than it was on the FSA website. For example, we have yet to find a way of signing up for email alerts.
- We would support the publication of all FOIA requests and responses, as suggested in the paper. We also believe that the routine publication of non-confidential responses to consultations would be useful.
- As indicated in our summary, we believe more information should be published regarding the FCA's performance indicators and outcomes.

Our comments on the specific questions asked are below.

We are considering saying more about what we've been told and any action we may have taken as a result of whistleblowing.

We believe that in order to give whistle-blowers confidence that the concerns they report are being taken seriously, the FCA should report back to them, in as much detail as it can, provided the whistle-blower is happy to be contacted.

We also believe that the FCA should publish aggregated and anonymised information about the reports it has received and the actions it has taken in response to those reports. If no action is taken, an explanation of the rationale behind that decision would also be helpful (including for example where a whistle-blower has made a report for frivolous or vexatious reasons). The publication of such information would give individuals and firms confidence that the system is working and that the FCA is taking appropriate and proportionate action in response to concerns raised with it.

We could publish more about our enforcement activities in our annual performance account.

Generally we agree that publishing more information that explains the rationale behind enforcement activity would be helpful. It would be particularly useful to see the allocation of resource by sector and the average length and cost of investigations.

However, we would ask the FCA to consider how best to present this information. The FSA's Enforcement Performance Account contained some useful information, but we would be concerned if any changes were only to add to what is already quite a long document. We would suggest that the FCA considers how best to summarise the information of most interest to firms, reflecting the different sectors within the industry, and present it in a format that is easily accessible. It may be the case that the information that is of most interest to firms will differ to that which is of interest to consumers, and therefore consideration should be given to using different approaches for different audiences, rather than an overly long and detailed "one size fits all" approach. There is a danger otherwise that it will become lost in the mass of other information published by the FCA without achieving the aim of bringing greater clarity to the regulator's approach to enforcement matters.

We could publish more supervisory activities and outcomes.

We support the suggestion that anonymous aggregated information on the FCA's supervisory activity would be helpful. We would add to the proposal outlined in the paper

that, in the same way as has been suggested for enforcement activity, an allocation of the resource by sector and where possible/appropriate, the average length and cost of, for example, thematic reviews, would also be helpful.

However, as with the enforcement performance account, we would ask that consideration be given as to how best present the information so as to ensure it is easily accessible.

CHAPTER 4: INFORMATION WE COULD RELEASE ABOUT FIRMS, INDIVIDUALS AND MARKETS

General comments

As is recognised in the paper, the FSA collected data through returns from firms, some of which was published. Firstly, the FCA needs to conduct a "root and branch" review of all the data it collects, the reason it is needed and the costs (to firms as well as the FCA) of collecting the data. There needs to be a clear justification for collecting all data, and the benefits need to outweigh the costs. Secondly, we would suggest that more of this data could be published - for example, data collected through the RMAR.

Some data that was published by the FSA was incomplete and therefore does not reflect a true picture of the market – in particular the Product Sales Data, which did not include products sold via platforms. In an era where the volume of business transacted via platforms is increasingly significantly, we would suggest that this omission needs to be rectified. It would also be useful to have information on the value of product sales, not just the volume. This would enable stakeholders to get a sense of both the size and value of the market for different products and distribution channels, as well as the trends over time.

Our comments on the specific questions asked are below.

We are proposing to publish the average length of time it takes to authorise firms and the reasons why applications are refused.

Generally we are supportive of the publication of information that helps shed light on the FCA's performance and also helps firms understand the timescales and rationale of the FCA's decision making processes.

We are proposing to develop a consistent approach for publishing the results of thematic work on an anonymised/aggregated basis.

We agree that the publication of anonymised/aggregated information about thematic work would be helpful, particularly where it includes details of what is considered to be both poor and good practice. This will help firms understand better the thinking behind the FCA's approach, as well as highlighting areas where firms may need to focus attention. However consideration may need to be given as to how best to communicate these messages, for example using a Q&A approach or holding road shows on particular themes may assist smaller firms in particular. The messages may also need to be tailored to make them relevant to the different sectors the FCA regulates. An example is the FSA paper "Risks to customers from financial incentives" which appeared to focus on the retail banking sector, and therefore firms in other sectors may not have found it as helpful in understanding its application to their business models as it could have been.

We are proposing to publish, with the firm's consent, how much it has paid out in redress and disclose more details about the redress scheme in the public notice. Do you think this would be helpful?

Where the amount of redress is significant and/or a large number of consumers are affected, we believe it would be appropriate to publish more details of the amount of redress required to be paid as a result of enforcement action. It would be useful to see the methodology and assumptions used to calculate the amount due, the number of consumers due compensation, any "discounts" factored in and the reasons for such discounts being applied, plus a high level calculation showing how the total amount payable has been arrived at.

The £54m payment scheme agreed with Capita, BNY Mellon Trust and HSBC in respect of Arch Cru is a case in point. It has never been made clear how the figure of £54m was arrived at, nor the factors that were taken into account when this settlement was agreed. There is concern that the FSA found an easier target in advisers. For example, the FSA appeared to find it acceptable that 30% of financial advisers who advised on Arch cru might fail as a result of the redress scheme, yet let Capita off the payment of a fine due to its inability to fund it – despite it being part of one of the largest groups of companies in the UK. We believe that, as a result, confidence in the FSA's decision making processes was undermined. Greater transparency is needed to give firms more confidence in the FCA, particularly when its decisions can have significant implications for other parts of the market. As stated in our summary above – not only must justice be done, it must also be seen to be done.

CHAPTER 5: INFORMATION THAT WE COULD REQUIRE FIRMS TO RELEASE

General comments

We would urge caution before any decisions are made which require firms to disclose more information. Firstly there has to be evidence that such information is found to be helpful by consumers and that they do not instead find it adds to their confusion or disinclination to engage with the subject. Secondly there has to be a robust case made that any benefits can be justified given the extra costs that will inevitably be incurred by firms.

Our comments on the specific questions asked are below.

We think the annuity market could be more transparent and easier to understand.

Whilst recognising that transparency around products is generally beneficial for consumers, there is a danger that providing a lot of detailed information can have the opposite effect to that intended, and ends up confusing consumers rather than helping them. We would therefore suggest that it is better to give consumers the salient points in a short document, with sign posts to where they can find further information if they want more detail (for example on the provider's website). This will increase the likelihood of consumers reading what is presented to them whilst still allowing those who want more detail to obtain it if they so wish.

The recently published ABI Code of Conduct on Retirement Choices encourages the customer to seek further advice and/or information about the different ways in which they might be able to take their retirement income and we believe the message around seeking advice should be reinforced, rather than publishing more information on the assumption that this will help consumers shop around themselves.

Publication of claims data for insurance products is one idea that we think could help improve the outcome for consumers and change firm behaviour.

As stated previously, whilst product disclosure can be beneficial, care needs to be taken that it is presented in such a way as to make it helpful, rather than simply adding to an already burdensome amount of information and data. However, if it is done in such a way that it provides a level playing field so that all companies are disclosing information in a standard way, it could be helpful for consumers and/or their advisers when making decisions about particular companies or products. Whether individual companies publish their data in a standard format (e.g. on their websites) or consolidated data is held in a central place (e.g. on the Money Advice Service website) it is important that there are appropriate explanations. There is a danger that consumers may misinterpret the information and assume that because a particular type of policy does not pay out very often, it is not worth having – whereas the opposite may be the case if the risk profile is one of infrequent events but high value losses (i.e. low probability but high impact).

We think that mandating contextualisation of complaints data would improve understanding of the key messages.

We would tend to question whether the cost involved in further disclosure is justified, and given that the FSA failed to agree an approach, we do not see this as a priority for the FCA.

APFA
April 2013

Carol Anne Macdonald
Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Reply sent by e mail to; www.FCA.gov.uk/Pages/Library/Policy/DP/2013/dp13-01-response.shtml

26 April 2013

Dear Ms McDonald

Financial Services Authority (FCA)[1] DP 13/1; Transparency

The British Bankers' Association ("BBA") is the leading association for UK banking and financial services representing members on the full range of UK and international banking issues. It has more than 200 banking members that are active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. All the major banking groups in the UK are members of our association as are large international EU banks, US and Canadian banks operating in the UK and a range of other banks from the Middle East, Africa, South America and Asia, including China.

The integrated nature of banking means that our members are engaged in activities ranging widely across the financial spectrum from deposit taking and other more conventional forms of retail and commercial banking to products and services as diverse as trade and project finance, primary and secondary securities trading, insurance, investment banking and wealth management.

Members include banks headquartered in the UK, as well as UK subsidiaries and branches of foreign banks, on behalf of whom the BBA is pleased to respond.

The paper was published by the Financial Services Authority; to be clear, we have responded from a conduct perspective and this response should be seen primarily as directed towards the activities of the Financial Conduct Authority (FCA), although some observations and comments may be equally valid for the Prudential Regulatory Authority.

We welcome the opportunity to add our thoughts to this general debate on regulatory transparency and are keen to see it progressed under the FCA's strategic objectives of – broadly – consumer protection, market integrity and competition, within the overarching context of *making markets work well.*

To achieve this, we would welcome further consideration of a wider range of information that would demonstrate the value and benefits of financial services generally to consumers

[1] Sic

and this is reflected in our comments below. We support transparency measures that are balanced and sensible and do not distract from the underlying issues themselves.

We would be happy to discuss the content of this paper with you, as you refine your thinking and consider the content of any further discussion or consultation papers.

Yours sincerely

[redacted]
Executive Director, Retail Banking

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

[redacted]

CarolAnne Macdonald
Policy, Risk & Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

[redacted]

24th April 2013

Dear Ms Macdonald,

DP13/01 – Transparency

We welcome the publication of this document which sets out the latest thinking about the use of transparency within financial services. Our views and responses to the questions posed throughout the discussion document are attached as an Annex to this letter.

We are supportive of transparency and believe that when it is used well it can lead to greater consumer engagement and improved outcomes. Financial services play a very important social role, from current accounts and direct debits which secure the smooth running of households and businesses, to insurance which provides affordable risk transfer. However, consumers have low levels of trust in financial services firms due to a variety of reasons ranging from product mis-selling, perceptions that charges are too high or opaque, or that firms are reluctant to pay claims etc.

Transparency can help us to overturn these perceptions, either by allowing firms to demonstrate that they perform better than reputations suggest, or to drive behavioural change in those firms which do not perform at an acceptable level.

That said, the release of information needs to be appropriate, contextualised and of use to consumers, firms, regulators and other bodies. If it does not meet these criteria there is a risk of ever greater information overload for consumers, offering no value. Too much and/or the wrong type of information will have the opposite effect to that intended and will further alienate consumers, or potentially create an unintended behavioural change. This point has already been made in the recent FCA paper on behavioural economics.

We note the links between transparency and behavioural economics and consider both of these to be tools that firms and the regulator can use to drive better outcomes. However, it is not clear what specific outcomes the FCA are seeking to achieve with transparency. We suggest that work in these areas is structured to make it clearer what outcomes are sought.

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

It is also important to consider that the data released is historic and will not necessarily be representative of future performance or behaviour or may simply reflect a one-off issue that has been resolved.

Running through our response are 3 themes which are important when considering transparency.

1. Contextualisation and comparability – It is vital that information is framed appropriately to ensure understanding, relevance and usefulness to users.

2. Balance – Information disclosed needs to be balanced, weighing both developmental areas for industry but positive aspects too. We believe that there is scope to harness this concept for consumers, helping them to make decisions to save or protect themselves or their property.

3. Consistency of supervision – The regulator must adopt consistent positions on all policy and operational matters. Scenarios where one part of the regulator permits a firm to take a particular course of action, but a different area later rules out that same course of action for a different firm are unhelpful. Transparency for transparency's sake and information overload must be avoided.

Our thinking is framed by the need to balance consumer access, responsibility and protection. We believe that if approached in the right way transparency could build consumer interest and awareness in financial services thereby assisting in access and responsibility.

At the same time as attempting to use transparency as a means to help consumers make purchasing decisions we would like to see the regulator, perhaps in line with government, the Money Advice Service and industry, lead some work to improve customer awareness and understanding of how to use the information published to improve consumer outcomes.

In our response we address the points raised by the FCA in the discussion paper, we also introduce some additional points of our own. We would welcome the opportunity to meet with you to discuss our thoughts in this area.

Yours sincerely,

[redacted]

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

ANNEX 1: Response to DP13/01

1. Helping Customers Decide

Consumer access is an increasingly important consideration for consumers themselves, as well as industry and regulator. Post the Retail Distribution Review (RDR), debates continue about how to encourage saving and simplify products. We would welcome the FCA playing an active and constructive role in these discussions, working with the industry to develop solutions and reflecting them in its regulation. As part of this, we would like to see the regulator adopt a more pragmatic approach to suitability for the mass market on the lines of 'a good outcome for many is preferable to a near perfect outcome for a few'.

Over time as the mass market matures and access to non-advised distribution grows, we believe that publication of information, if done in the right way, could play a pivotal role in supporting our implementation of demand side strategies or helping customers take greater responsibility and developing their own financial capability. Transparency like this could boost demand by helping build trust and confidence; and tackle the emerging advice gap by supporting non-advised distribution models.

Transparency offers scope to help consumers, but recent research we have conducted shows that the majority of customers are unaware of concepts such as advice and risk appetite. We believe that work needs to be carried out to help customers to understand the difference between 'advice' provided by a qualified adviser and 'information' provided to help them make a decision.

2. Information that firms could be required to release

2.1 Improved transparency in the annuity market

We are fully supportive of the idea of transparent annuity rates and have been advocating this for some time. Customers and commentators should be able to research rates and make comparisons. We first called for this in our Rethinking Retirement campaign in 2011.

The ABI Code of Conduct on Retirement Choices, which took effect on 1st March this year, introduces a first step in this direction with same basic requirements designed to boost transparency. The ABI Code is a minimum standard and more could, and should, be done in this area. However, the focus should not be solely on rates as choosing the most appropriate type of annuity is just as important.

The information published must allow comparisons to be made. We believe that the regulator should now take the lead in developing a framework for the next stage in the journey towards greater transparency in the annuity market.

In our latest Rethinking Retirement Report (2013) we call for greater transparency of the costs of annuity transactions across non-advised services. The industry needs to ensure non-advised annuity sales meet the same cost transparency standards as advised sales. All providers and

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

advisers should clearly explain the levels of service and costs to customers to allow them to make comparisons. Customers can then understand if they are paying competitive costs for the appropriate level of advice for their needs. The natural assumption is that lower levels of advice, such as non-advised services, will always be cheaper. This is not the case as non-advised annuity sales may still incur commission as opposed to a fee – and for some higher value pensions this commission could be more than an advice fee.

2.2 Publication of claims data for insurance products

The transparency of claims statistics could allow competition over more than simply price. This also represents an opportunity to educate consumers on the value of insurance. We need to help customers to understand that insurance products offer protection in the event of a need to claim; and do not need to be claimed from in order to be of value to them. The importance of peace of mind cannot be over-emphasised.

Reinforcing our previous comments about the importance of comparability and context, customers need to have confidence that the information they are reviewing is disclosed on a standard basis and that they are comparing like with like.

Protection products offer different features and benefits and this makes comparison difficult. There are numerous different ways that claims data can be reported, with different emphases put on timing of receipt, settlement or declining of claims. The definitions will need to be consistently applied across the industry. For example even the term ‘claim’ can be applied to differently depending on the firm.

As the ABI have observed, not all claims are paid out on a straightforward monetary basis. Some claims can be paid on a regular basis over a long period of time, some may involve partial payments, others can involve replacement or repair of goods rather than a monetary amount, and some can involve the provision of a service rather than an amount. There are also different understandings of when/if a claim is declined.

Whilst the value of claims paid out could be a useful indicator to customers we are concerned that metrics such as the number of claims paid out, or the number declined may drive the wrong behaviours in customers. If an individual sees that a particular product has a high percentage of claims paid they may take this as an indication that the policy is a good product for them irrespective of their individual circumstances. Conversely a product with a low percentage of claims paid may be taken to mean that it is a poor product offering little value when this is not necessarily the case. We consider it much more important that customers are provided with clear information on products, and, where appropriate, good advice. Allowing customers to draw conclusions from claims frequency data may have the unintended consequence of them choosing not to purchase cover that they need, or buying from a provider whose product is less suitable.

The FSA has previously highlighted customer focus on initial premium as an emerging risk (FSA Retail Conduct Risk Outlook 2012/13); stating that there was an increasing trend for customers to select general insurance based on price only without consideration for other ‘qualitative’ factors and on-going charges. Replacing the focus on price with a focus on different numbers

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

does not address the “qualitative” factors referred to (although they may form part of the solution). There needs to be a focus on presenting the overall value of the product more clearly to the consumer. It may therefore be more beneficial for customers to understand the reasons why claims are sometimes not paid so that there can be a better understanding of why a product may or may not be suitable for them.

The information published must allow comparisons to be made. Work is underway in an ABI working group to ensure consistency of reporting of metrics and definitions. This working group should be given the opportunity to conclude its work and propose a solution to be shared with the regulator.

We would also suggest that the FCA contacts the Office of Fair Trading to understand its approach in relation to publication of claims data. As PPI providers are now obliged to make claims ratio data available, the OFT may be able to provide insight into the extent to which the data is being used, by whom, for what purposes, and the value that the data provides to customers. This is potentially a good benchmark against which to test the usefulness – to customers – of claims data on other products.

Overall we feel that further evaluation is required to assess what disclosure would be beneficial and whether consumers would actually benefit in the way that the FCA expects (how will it change behaviour if at all?). We would also suggest that should the FCA conclude that publication should continue that a ‘test and learn’ exercise with a small sector of the market is carried out to prior to any wider roll out,

2.3 Complaints data

For a customer to know that a big company gets more complaints than a small one does little to help the customer. It is possible to contextualise complaints data in several ways and firms are likely to choose the metrics that best represents their performance. However, we believe that a standard metric, for example the number of complaints per 1,000 policies, is the fairest way to contextualise the data. This provides a single metric that can enable comparison across each broad category. Even with this added context the complaints data remains a blunt tool. Consideration is still needed to understand how meaningful and useful this will be for consumers particularly given the historic nature of the data.

The publication of business specific complaint data by the Financial Ombudsman Service, together with the publication of Ombudsman decisions to commence later this year, means there is already a strong focus on complaints and it is difficult to determine what additional benefits further disclosure could provide.

3. Information that could be released about firms, individuals and markets

When it comes to transparency of regulatory processes, such as authorisations, we can see the benefits to new entrants to the market, including niche providers, in terms of understanding timescales for variations of permissions or outcomes of the senior management approval process.

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

3.1 Thematic Reviews

Publication of additional details about thematic reviews is positive, if clearly articulated. This would help achieve a delivery of consistent messages to firms. An outline of the issue, what the FCA looked at, a general outline of findings and specific requirements imposed by the FCA would be useful to help firms understand the FCA's concerns. The FSA had previously undertaken a similar activity in relation to unfair contract terms in the publication of its undertakings (albeit that the undertakings were not anonymous).

Giving firms early indication of the FCA's concerns would be a positive move. We made a similar point in our response to the paper on product intervention powers (CP12-35). Feedback following thematic reviews would form part of this engagement with the industry, particularly where some firms within a sector had not been engaged directly in the thematic review or where firms would be indirectly affected by thematic reviews e.g. where the thematic review had been undertaken with distributor firms but the FCA was making recommendations of change which could impact on provider firms.

Also, it will help to create a 'level playing field' among firms within the same sector. Consistency of messaging is very important. It is possible that where some, but not all firms, in a particular sector have been given specific feedback following a thematic review they may undertake changes to product/terms which mean they become 'outliers' in terms of those in the sector which have not received the same messages. This could have an adverse effect on individual firms and potentially the customer's of those firms. We believe that if something is of concern for the FCA this needs to be communicated generally to the sector so that all participants are required to act in the same way.

However, disclosure will need to be helpful for consumers and industry. There is a risk that as the regulator issues more information and opinion via communication methods less formal than rules, that a 'second rule book' develops (e.g. from speeches, outputs of thematic reviews etc).

3.2 Redress

When considering redress, overall figures from a firm can give little information or value since numerous factors influence redress. For example, if a firm makes a pricing error and later identifies and rectifies the error; the size of any redress will depend on whether the market has gone up or down.

Under the FSA's consultation on publication of warning notices (CP13-08) the FCA may already publish early warning of potential enforcement activity against a firm or individual which contains limited information for customers and firms about the FCA's concerns. The final notice then publishes the full details of the enforcement action (including findings and the action taken by the FCA).

Where firms have already been required to undertake redress activity and individual customers concerned are paid redress it is not clear what additional benefit there is in requiring firms to

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

publish greater information about levels of redress and what this is intended to achieve. The FCA needs to be mindful of potential activity that could be taken by claims management companies in response to publication of levels of redress paid or expected to be paid.

We would also ask the FCA to clarify what is intended to be covered by the term redress i.e. does this cover refund of premiums, claims payments or interest.

4. How could the FCA be more transparent?

To balance some of the more negative messages about industry and firms (vis a vis enforcement etc), we believe that there is a place for the regulator to 'name and praise' firms. We note the positive statement made recently by Martin Wheatley in connection with Aviva and behavioural economics.

We also acknowledge that there is more that the industry itself could do in this area and we will be discussing this issue with the Association of British Insurers.

As we have already made clear, we support greater transparency, though our support is qualified in that it needs to be for the right reasons. It would be useful to understand the driving forces behind the suggestion to improve transparency on whistleblowing. The issue is the behaviour of firms and not disclosure itself. A high level of whistleblowing is not necessarily in-itself good, instead a low level of reporting alongside a well controlled industry is positive. We would be interested in understanding what the FCA intend to publish and how they will present it. As outlined in our introductory section, the information presented must be both needed by firms/consumers and useful to them. We are concerned about the practical implications of transparency in this area and whether information will be of too high a level to be meaningful.

Transparency about whistleblowing needs to be managed carefully so as not to threaten the over-riding concept of public interest disclosure.

If FCA intend to pursue this avenue, metrics similar to those set out below could be considered:

- How many disclosures made straight to the FCA.
- How many are made after the issue has been flagged internally to the firm first.
- How many were spurious or vexatious.
- % £££'s saved by whistleblowers.
- Trends/themes identified.
- How has customer confidence increased?

We would also suggest that the FCA gives the whistle-blower the option at the outset as to whether they wish to receive any further communication

Turning to enforcement, Final Notices are already published and we question what else of use could be published. We echo our previous messages around this issue concerning the need for fairness and due process. We remain unconvinced about the benefit to name individuals involved in enforcement cases, before the investigation process has been completed.

Aviva UK Life
Wellington Row
4th Floor
York YO90 1WR
Tel +44 (0) 1904 452990

We would welcome more visibility of the FCA's work on emerging risk analysis to inform our thinking.

We would like to understand what FCA is doing in terms of stakeholder engagement, for example with:

- Consumer groups and other interest groups.
- European Commission and European Regulators – we anticipate a greater level of policy setting emanating from Europe and consequently we need the FCA to be actively engaging, listening, sharing ideas and representing the UK industry. By understanding overseas models and thought leadership, could we learn from what is happening internationally to understand if it could it be used domestically.
- Other regulators –it would be beneficial for the FCA to engage with, and where appropriate learn from, regulators in other industries (e.g. OFGEM).

5. General comments

All of the proposals outlined above will require changes to firms IT systems in order to capture data in the right format and to be published. It may also require additional staff training costs which will add a cost to the business. It is therefore important that the benefits of transparency for consumers will outweigh the added cost and complexity for firms. We cannot see clear evidence of this at present and would recommend that further research is undertaken specifically into the role in influencing cultural behaviour, before formalising any transparency requirements with a full cost benefit analysis.

The FCA also need to consider how the information published could be used by other bodies such as claims management companies and whether there is a possibility of unintended consequences as a result.

BBA response to FCA DP 13/1 Transparency

Summary

DP13/1 includes much to welcome – especially the strong statements on the limits of transparency and the explicit acknowledgement that the former FCA's regulatory conduct strategy centred around the provision of documented information and how – with hindsight, this has now evolved (through *inter alia* the application of behavioural economics).

Our response draws on our previous responses to DP 08/3 and CP 9/21, where relevant, and covers a number of thoughts and responses including;

1. The FCA should take account of other material transparency initiatives, coordinating as appropriate, including;
    a. Publication of Final Ombudsman Service decisions on its website in a searchable database.
    b. Disclosures regarding mis-leading financial promotions
    c. Publications of Warning Notices (in certain circumstances)
    d. Disclosure of Super Complaints – formally or informally by the complainant
    e. The merits of front-running any European initiatives in this area

    A practical test might be for the FCA to make a considered analysis of what added value any new transparency measures might bring, beyond the benefits attributed to the examples above.

2. We agree with your summary analysis of the potential legal constraints, in so far as it goes, and we have annexed a summary of other relevant European legislation that we would ask you to consider.

3. We think it is important that the contagion effects of reputational risk are further considered.

4. We are keen to see a full cost benefit analysis to support any transparency initiative, to protect consumers from unnecessary or superfluous costs.

5. Overall transparency around whistle-blowing should perhaps be limited to some basic statistics and information about what the FCA may have learned and action it has taken

6. There is always the danger, if the transparency measure is put into effect incorrectly, to influence consumers into making incorrect decisions and may also attract undesirable behaviours from some CMCs.

7. Any disclosures of named individuals, whether approved persons or otherwise, raises data privacy, compliance and employment law concerns.

8. Generally, any data that is disclosed will need to be contextualised in order for the public / interest parties to be able to properly assess it and take a view.

9. Could be more information that is forward looking, about the FCA's early thinking, be disclosed?

10. Would some information be better disclosed via the Money Advice Service (MAS), to ensure that it reached its intended audience in the manner originally envisaged? We would be interested in a critical analysis of how the FCA's transparency proposals align with the MAS agenda and an evaluation of MAS' role in FCA disclosure processes going forward.

11. Naturally we are also concerned about the timing of information provision, to ensure that thought is given to the extent that it might blight markets prematurely.

12. We are also keen to see examples of good practice brought to the industry's attention, which can be at least as helpful as poor practice.

General points

We are generally supportive on improved transparency measures that are balanced and sensible and do not distract from the underlying issues themselves. DP13/1 includes much to welcome – especially the strong statements on the limits of transparency and the acknowledgement of the law of diminishing returns. We also welcome moves to increase the FCA's own transparency.

We support the FCA's objective of stimulating competition in financial services by increasing consumers' financial awareness, capability and confidence levels and understand why greater transparency is seen at face value to be an attractive tool to help achieve this. We welcome the opportunity to add our thoughts to this general debate on regulatory transparency and are keen to see it progressed under the FCA's strategic objectives of – broadly – consumer protection, market integrity and competition, within the overarching context of *making markets work well.*

Competition

Arguably, consideration of transparency in the context of promoting competition has been understated in the paper. We would have expected some exploration of the behaviours driven by, for example, comparison sites, where there are obvious parallels, to ensure that there are no negative or unintended consequences in tabulated performance (or price) data. This might lead to greater consideration of the behavioural economic effects of a largely classic economic theory (with which we do not disagree); that improving information assymetries will encourage rational consumers to make better decisions.

By extension, it would be interesting to see, for example, an analysis of the publication of FCA/FCA complaints data to understand how it has driven improved firm behaviours, customer behaviour or consumer outcomes.

A bold analysis of transparency proposals through market testing, focus groups or similar might provide a rich seam of consumer insights. We understand that MAS has developed some subject matter expertise in this type of work.

Market Integrity

We acknowledge and welcome the FCA's decision to step back from a change of policy in some areas considered in the DP. For example we agree that the current transparency measures relating to enforcement are sufficient.

Notwithstanding the above, we stand by our previous comments regarding the use of transparency as a regulatory tool. In determining how and when to deploy regulatory transparency, including what emphasis to give to it against other tools such as enforcement, it is necessary to consider the regulatory toolkit as a whole. Indeed, the FCA should consider the entire panoply of its regulatory options when deciding upon the most appropriate response to a given set of circumstances.

If the FCA decides disclosure is the more effective tool, it is essential to document a robust rationale that underpins the decision, linked to its core objectives. Arguably, the strongest and most unambiguous regulatory tools available to FCA are supervision, enforcement and policy making. The BBA therefore considers that the FCA needs to explain carefully and clearly how transparency fits with the fulfilment of its statutory objectives, by expanding on paragraph 1.5 in any future consultation, as it is not immediately apparent in the paper where the learnings from FSA DP 08/3 have been applied. Paragraph 1.14 is pivotal in this context.

We note that transparency will be an evolution rather than a more finite process. The FCA may want to await the impact of even more important transparency measures that have or are just about to come into force to see if this general approach is driving any improvements across the industry, notably;

From autumn this year the FOS will start publishing individual final ombudsman decisions on its website in a searchable database.

- The Financial Services Act (2000, as amended) provides the FCA with powers to disclose publically when it requires firms to remove mis-leading financial promotions and they can also publish Warning Notices (in certain circumstances) confirming that enforcement proceedings have been initiated (rather than Final Notices at the end of the process).
- Certain 'designated bodies' can send super-complaints to the FCA for review and these can be made public by the designated body (e.g. a consumer group) even if the FCA remains silent whilst investigating the complaint.

Customer Protection

We have previously challenged the FSA's assumption that "...*allowing intermediaries the maximum leeway [with which] to present data in a way that most effectively meets the needs of the target audience...*" If FCA does not develop a robust delivery strategy for its disclosures, many disclosures that are targeted directly at consumers will rely on intermediation to achieve any effect on consumers' decision making behaviour and in today's media environment, we are keen to see this aspect of transparency is treated sensitively to ensure that the FCA's intended message lands. Our concern is that the FCA will not be able to ensure that the messages actually conveyed will influence consumers as it intends.

The needs of the consumer are not always aligned with the motives of the various intermediaries. Whilst this may be the case on occasion, the FCA should be aware that the needs of the consumer are not always foremost in the mind of the media, especially those sections of the media with a more sensationalist agenda. It is essential the FCA is mindful that the aforementioned intermediaries are not necessarily a reliable means of transmitting a message to consumers nor an appropriate medium in which to leverage risks to industry's and individual firms' reputation. It is ultimately the media which would retain control over how disclosed data is presented if there is no viable, widely used and accessible alternative. This is particularly pertinent when complex, multi-faceted issues are intermediated, and the FCA should consider carefully the risks and effectiveness of relying on the media to deliver

desired regulatory outcomes. There is a real risk that consumer confusion arising from distorted media messages could undermine consumer confidence both in the financial services industry, and indeed in the industry's regulators, contrary to FCA's objectives.

The FCA should take account of other material transparency initiatives, coordinating as appropriate, including;

a. Publication of Final Ombudsman Service decisions on its website in a searchable database.
b. Disclosures regarding mis-leading financial promotions
c. Publications of Warning Notices (in certain circumstances)
d. Disclosure of Super Complaints either formally or informally by the complainant

More generally, we would encourage the FCA to coordinate its approach to disclosure with all other relevant stakeholders, e.g., the Lending Code Standards Board, Office of Fair Trading (OFT) (for a short period), its EU peers (particularly those jurisdictions where UK banks have systemic importance), and the EU institutions.

It remains idiosyncratic that while FOS has previously stated its support of FCA publishing complaints data, it continues to work independently of the regulator on its own initiative, publishing data to a different timeline. We have argued previously that "...It is clear that any FSA and FOS initiatives to publish firm-specific complaints handing data will need to be closely aligned given each organisation's different remit and objectives, so as not to undermine consumer understanding and confidence...." however we note that this point still remains unresolved.

In our previous response to DP 08/3 – Transparency as Regulatory Tool, we commented that;

> "If the FSA decides disclosure is the more effective tool, it is essential to document a robust rationale that underpins the decision. **We highlight to FSA, the report of the Royal Statistical Society (RSS)[2]** on the publication of performance indicators, which concludes that "there must be a strong focus on the real objectives" when presenting data ... The report of the RSS highlights significant issues with the publication of school league tables, not least that these cannot be relied on to indicate future performance and can, in the worst cases, promote dysfunctional behaviour on the part of schools and/or local authorities. We would also direct FSA to the work which has been carried out by Harvey Goldstein and George Leckie (University of Bristol). In their June 2008 article, "School league tables: what can they really tell us?", Goldstein and Leckie set out persuasive arguments for why school league tables are not fit for purpose. In particular, they point out that parents are interested in "future predicted values" and that the historical information presented in league tables cannot fulfil this expectation; past performance is no guarantee of future performance...
>
> "We have also noted that FSA has recently published Consumer Research 69. The paper comments that "the indirect evidence from behavioural economics is that low financial capability is more to do with psychology than with knowledge." The findings of this research are certainly thought-provoking. They include an examination of the psychological traits at work when consumers are making financial decisions, and understanding how these could shape approaches to financial education and

2 http://www.rss.org.uk/main.asp?page=1711

> regulation to give more chance of success in making a real, quantifiable difference in consumer behaviour. If, as the paper supports, disclosing information to consumers is unlikely to have a positive impact on behaviour and decision-making, then FSA and the industry risk costs and reputational damage for little or no benefit to consumers. Indeed, disclosures which have the potential to convey the banking industry in a negative light, e.g., OIVoPS and complaints data, may further entrench the cognitive biases which Consumer Research 69 identifies as relevant to FSA's agenda."

We appreciate that the effects are potentially only going to be measurable definitively over the longer term and could be very difficult to assess. Doubtless they have already had some positive effects, such as the publication of complaints data – along with other factors such as assigning an APER responsible for complaints handling – which has helped to concentrate management attention on this issue, although we are not sure how much the public engages, differentiates and uses the data as a buying tool.

Whilst we accept that a crude test of say, whether a customer may or may not be willing to pay for the information that the FCA intends to publish is inappropriate, it serves to underline that ultimately, as in any business, customers cover direct and indirect costs in the price that they pay. Additional costs will be generated from increased reporting requirements on firms where the information is not covered by BAU reporting and the opportunity cost where resources are diverted from investment in activities that might be considered more directly beneficial to consumers should also be considered. A practical example is the spike in spurious/ speculative complaints by claims management companies as a reaction to data publication, which diverts complaints handling resource from more legitimate complaints. If the FCA looks to minimise the costs burden by deselecting smaller and/ or medium sized firms, the data published will obviously lose some of its validity. We are therefore keen to see a full cost benefit analysis to support any transparency initiative, to protect consumers from unnecessary or superfluous costs in any later consultation paper.

How the FCA Could Be More Transparent

Paragraph 3.11 summarises the areas where the FCA is obliged to disclose under the Financial Services and Markets Act (2000, as amended) (FSMA), including; publication of Board Minutes, auditing by the National Audit Office and investigations into Regulatory Failures.

There will be other ad-hoc reports such as Super Complaint responses and Skilled Persons reports (under S166 FSMA), however the basis of these publications remains undisclosed. Both of these types of reports could provide information of interest to firms outwith the immediate focus of regulatory activity and could be included in the FCA's considerations of its own transparency. Equally, it is unclear whether the FCA will collate consumer credit related data along the same lines as mortgages data – we would be keen to engage in thse considerations to ensure that duplications with existing industry data sets is not duplicated.

For instance, could be more information that is forward looking, about the FCA's early thinking, more information about plans for and results of thematics, lessons learned, and discussion of things that the regulator thinks might be a problem be disclosed? Is there a reason why more regular (smaller) updates should not be made where appropriate? Whilst we don't want to create an industry around one aspect of what the FCA does, if they have the data and it's valuable to share it outside of the thematic review of Risk Outlook process then the FCA should be encouraged to do so.

Where further information about firms is made public, the use of 'league tables' is not always the correct option and an additional dimension when considering additional information might also be the format in which it is published.

Whistle-blowing

Whistle-blowing is a particularly sensitive area and we would encourage the FCA to consider the unintended consequences of further disclosures in this are. Further, it is not clear in what form the information might be published; is it reassuring/ does it act as a catalyst for a member of staff in Firm A to be aware that there have been whistle-blowing incidents in Firm B?

We agree that careful consideration around communication is also key. We remain to be convinced that, for example, league tables would be effective in this scenario too blunt a tool if a firm actively encourages whistle-blowing (as we do in the retail and business bank) as a form of internal monitoring. Contextualising by Full Time Equivalent might render the number of incidents irrelevant in larger firms. If internal or external whistle-blowing statistics were made public in a non-anonymised form, this could negatively impact firms and discourage their employees from identifying wrong doing.

Also, in respect of whistle-blowing there needs to be a definition and possibly a level of materiality around what amounts to whistle-blowing, as some calls are mis-directed to the whistle-blowing disclosure line or are internal HR issues. We would welcome some form of independent filter of the data that ensured that only actionable and anonymised whistle-blowing information was disclosed. Obviously there is a need to protect the identity of the (genuine) whistle-blower otherwise that may discourage similar disclosures in the future (and has potential legal consequences).

We have received some useful member-feedback, which is repeated below, for your reference, reflecting both the consequences of championing whistle-blowing, the need to interrogate and filter raw data for validity and international considerations that were not discussed in your paper, but are of concern for a cohort of our membership

> "From our experience, we often find that a big internal publicity drive around the whistle-blowing service would lead to a spike in calls. So, perversely, if the whistle-blowing data were to be used as a benchmark, it would mean that the firms which are arguably better in this space "look bad" simply because they have higher whistle-blowing numbers. In other words, the less publicity a firm gives to its whistle-blowing processes, the less colleagues would have recourse to it.
>
> "Many jurisdictions treat whistle-blowing cases differently as compared to the UK model, so the question arises as to whether firms with non-UK activities/branches could be mis-represented in whistle-blowing data returns.
>
> "Our experience also shows that a disproportionate number of calls to the whistle-blowing line are 'false calls' ... colleagues simply did not know where to take e.g. a personal grievance."

Given that this is an area where the Parliamentary Commission on Banking Standards has also been giving thought, we would also encourage you to review their recommendations as part of your work.

Overall transparency around whistle-blowing – as a sensitive issue – should perhaps be limited to some basic statistics and information about what the FCA may have learned and action it has taken might be helpful. Given the above, It might be more appropriate for the consequences of any whistle-blowing to be made public, rather than the act itself. If reference was made to the catalyst for the action, then the aspirations of paragraph 3.18/ 3.19 might be equally well served.

Enforcement Activities

There are clear requirements to be taken into account before Warning Notices can be published – and we note that the FCA is currently consulting under CP 13/8 Publishing Information about Enforcement Warning Notices. We will be responding fully to this consultation in due course, but for ease, we have restated our main observation, made during the passage of the (then) Financial Services Bill, relative to the transparency debate succinctly below.

We have argued previously that reducing the 28 day period to make representations to 14 days in all cases, risks denying the subjects of the enforcement proceedings the opportunity properly to make written submissions to the Regulatory Decisions Committee (RDC). This gives rise to a risk of prejudicing the subjects' ability properly to advance their cases, creating a risk of unfairness or a perception of unfairness; premature publication of enforcement or warning activity would exacerbate this view. Media interest is typically in highlighting the miscreant, not their absolution, should this be the case.

Any disclosures of named individuals, whether approved persons or otherwise, raises data privacy compliance and employment law concerns. These concerns were raised during the consultation leading to the FOS[3] publication of ombudsman decisions. The BBA lobbied for the names of individual complaints handlers/ bank staff to be redacted, along with commercially sensitive information that could provide competitors with an unfair advantage about a given business and also Claims Management Companies with an insight as to how to 'play' bank systems to 'game' claims without consideration of the actual claim's merits.

Supervisory Activities

We would see this as an area where the FCA could build a proactive agenda to complement the *FCA Risk Outlook 2013.* If one driver is to encourage firms to review and improve practices where necessary, then notice of prioritised supervisory activity (noting this would not be possible in all circumstances) seems rational and pragmatic. We note that over the past couple of months, senior FCA staff have made speeches that both communicate the FCA's *modus operandi* and broad conduct themes that they expect firms to follow. Alongside, specific products and practices have also bee spotlighted and this can be very valuable to service improvement teams (or their equivalents) within firms. This approach is perhaps more forward looking than the approach promulgated under paragraph 3.24. This approach would carry the risk of gaming under paragraph 3.25, but presumably the FCA has adequate controls and remedial tools to tackle this behaviour – if indeed a firm was predisposed to consider that the FCA was only likely to prioritise a small

[3] Financial Ombudsman Service, Transparency and the Financial Ombudsman Service – Publishing Ombudsman Decisions Next Steps (September 2011); Financial Ombudsman Service, Transparency and the Financial Ombudsman Service – Publishing Ombudsman Decisions Summary of Responses (January 2012); Financial Ombudsman Service, Policy Statement publishing ombudsman decisions *our approach for 2013*(2013)

number of supervisory activities at one time; we do not recognise this type of regulatory practice as representatives of primarily C1 businesses.

In our response to FSA DP08/3, we agreed that, in principle, there are arguments for the publication of anonymous, benchmarked results. The caveats raised at the time hold true: If the media interprets the results and communicates a negative message which undermines consumer confidence, FCA will have achieved the opposite of its aim in disclosing the information.

The DP provides insufficient information on how disclosure would work and we would welcome more information on the following:

- Will firms be notified of the impending disclosure and allowed to make representations?
- Will all sectors be disclosed?
- Will FCA identify the firms in the sectors, and, if not, how will it ensure that a firm is not misidentified as belonging to a particular sector (and suffering negative impacts or undue advantage)?

We are also concerned that the message which FCA is seeking to convey is clear, as we have noted that summary findings tend to convey reasonable messages but sometimes seem to diverge from the regulatory requirements.

We have long held concerns that, if the presumption is that an OIVoP will be published, whether fundamental or non-fundamental, that as a safeguard, reference must be made to the RDC. FCA may consider that, as the nature of a non-fundamental OIVoP is "not as serious" as a fundamental OIVoP, the decision-making does not require the same formality of process. However, the ultimate outcome of fundamental and non-fundamental OIVoPs is the same, i.e., publication, and reputational damage to a firm; the level of which will not be decided by the nature of the OIVoP but rather by the reaction of consumers and the media.

There is also a risk that over time, historical OIVoPs may no longer represent FCA's current expectations. While the Handbook has the functionality to indicate when rules and guidance are out of date, how will FCA indicate when OIVoPs are no longer relevant to the prevailing climate?

We are concerned that OIVoPs could be used by FCA to prescribe how firms should act without the benefit of formal consultation and cost benefit analysis, thereby avoiding necessary due process**.** The intention of OIVoPs when FSMA was progressing through Parliament was to enable FCA to take steps in respect of a specific firm, and its customers, not as a tool to prescribe requirements for the wider industry.

The FCA is proposing to impose OIVoPs even when the firm is itself prepared to take action; the plan to publish non-fundamental OIVoPs could have a wide-ranging impact on the industry. This proposal seems at odds with EG 2.4 and EG 2.33 – 34. If the FCA were to publish a non-fundamental OIVoP even if the firm was prepared to take action, the public perception would be that the firm had failed to co-operate.

The proposals seem to be largely motivated by the desire to make industry aware of its concerns, and of the action the FCA is taking, more quickly and effectively than has proved possible through the enforcement process. There is a tension inherent in using such a supervisory tool for purposes (such as effective deterrence) which are more usually associated with those of enforcement. Own initiative variations have generally been seen as part of the FCA's gatekeeper role, rather than as part of its enforcement role.

It is clear that in the context of the current proposals, the FCA has in contemplation a much wider class of consumers than the actual or potential customers of the firm in respect of whom the OIVoP is sought. It appears to include not only customers and potential customers of the firm, but also all potential consumers at large, and indeed the whole market. It is arguable that the proposals, as presently framed, fall outside the class of consumers contemplated in FSMA.

To date, little attention has been paid by the press, to the publication of supervisory notices, since the notices published relate to what were considered to be essentially breaches of Threshold Conditions by non-mainstream firms. The proposed extension of the use of OIVoPs, coupled with increased publication, is likely to bring to the fore the tensions involved in using a supervisory tool for what are essentially enforcement purposes. The supervisory notice regarding the OIVoP will inevitably be critical of the firm's conduct, and its publication is likely to result in damage to the reputation and commercial standing of the firm. Arguably, the firms in question could have challenged the publication on the basis that they had not been afforded the due process which FSMA confers in respect of public censure. The fact that no such challenge has been made to date is largely a reflection of the fact that the statements had little reputational impact, in part because the firms concerned were ceasing to conduct regulated business, and also because the statements received little or no publicity beyond their appearance on the FCA's website and amendments to the register.

However, if and when the FCA begins to publish details of non-fundamental OIVoPs in respect of household names, these statements will begin to attract press attention, and reputational damage for the firms concerned, which will be aiming to continue to conduct regulated business. It is likely that at that point, the FCA may find its processes subject to serious challenge.

An issue arises in connection with the timing of the publication. Whereas FSMA allows the FCA to impose a variation which takes effect before completion of the review process (provided that the FCA reasonably considers that this is necessary) and requires the FCA to publish (as appropriate) information about the matter when the notice takes effect, publication of the content of warning and decision notices is prohibited by the FSMA, which only permits publication of the final notice at the end of the enforcement process. In our view, it would be improper to use an OIVoP in order to make other firms aware more quickly of the FCA's concerns if that resulted in the circumvention of the due process that the FSMA requires in relation to public censures.

Releasing Information about Firms, Individuals and Markets

There is always the danger, if the transparency measure is put into effect incorrectly (e.g. in that it doesn't provide enough context and sends the wrong message) then there is potential to influence consumers into making incorrect decisions and may also attract undesirable behaviours from some CMCs. In turn it may be preferable for some data to be presented on a sector basis. If the FCA is unwilling to take this approach, then the data could be disclosed in this format initially followed by further assessment on the CBA and potential risks for more detailed (e.g. firms specific) disclosures.

As a general principle, we consider that any data that is disclosed will need to be contextualised (e.g. shown as a % of overall equivalent business volumes with trend indicators to show if improving/worsening) in order for the public / interest parties to be able to properly assess it and take a view. Otherwise the exercise is just one of placing data in the public domain with much less chance of useful interpretation which might result in a measurable improvement (e.g. improved consumer outcomes). In terms of operationalizing any future proposals, there may be a role for aggregators and other third

parties (e.g. MAS) but the full benefit will only be reaped if these aggregators are independent. Also any operator will need to be able to factor in indices on qualitative as well as quantitative factors.

We think it is important that the contagion effects of reputational risk are further considered. Publishing information on a given brand in the sector might develop behavioural biases against the sector itself, not just the brand leading to negative consumer outcomes: accessing financial services is an important aspect of competition as acknowledged in the Financial Services and Markets Act (2000; as amended)

Authorisation timelines

We support greater transparency of the FCA authorisation process which will enable potential applicants to have a better understanding of its requirements increasing the likelihood of a cost effective and successful approval. We also welcome the FCA proposal in relation to the granularity of the information, splitting it by sector and regulatory activity. I might also be helpful to have separate information on de novo applications and application for permission to add further regulatory activities.

Similarly it would be instructive to compare authorisation information by size of firm, which may enable observers to understand the extent to which the FCA is adopting a proportionate approach.

A number of 'challenger' banks have expressed frustration with the formal authorisation process generally, so insights in this area would be helpful. Given the smaller universe, care would need to be taken not to call-out particular firms' identification processes by default. We understand that the issues facing challenger banks have been more fundamental, however; for example access to senior FCA staff, broader capital and liquidity requirements and we will be considering this point further in the context of the Prudential Regulatory Authority's paper Approach to Supervision (April 2013). We will be happy to return to you in due course on this point

Publishing the Results of Thematic Work

It would be helpful for the FCA to state clearly what it considers to be the primary objective of publication of thematic work, beyond disclosures seen to date. Paragraph 4.17 reflects the need for firms to be able to make their case, however paragraph 4.18 seems to be arguing that anonymised data that might otherwise be retained as confidential would be published in some way to incentivise firms to change their policies, foregoing their right to representation as a result of external pressure. We are not sure that the FCA intended to imply that it would look to pressure firms in this way, given the raft of new and existing powers that it can use more legitimately to achieve the same ends, when "nipping mis-selling problems in the bud".

Instead, we can only assume that the FCA intended to communicate the outcomes of thematic reviews to make consumers aware of possible risks from a given sales process or product design (or combination of the two). It is important to understand the rationale behind the FCA's desire to publish the results of thematic work on an anonymised/ aggregated basis before we can answer the questions set.

Further it appears that the FCA is looking to be dissuaded from publication rather than to open a debate on the merits of publication (with the caveats above), given the wording in paragraph 4.18 (box) and it would be equally helpful to understand the decision process that has led to this statement.

Transparency of the Redress Process

Whereas the industry has accepted the publication of complaints data, and support the concept of contextualisation to ensure that data are compared on a more even-handed basis, it is not clear how this might operate relative to redress.

Any published figure would either be a total – always skewed by exceptional events unless adjusted, thus diluting the purity of the concept, or presumably an averaged amount, which would not be representative of what a consumer might be expected to receive if they had grounds to raise a complaint, given the range of issues that might give cause to complain.

Naturally, where redress is due, it should always be paid, but a quality measure based on aggregate redress amounts might reduce goodwill payments that are used for a range of reasons (from acknowledging inconvenience to a commercial decision, used to close an otherwise 'deadlocked' complaint).

Further it appears that the FCA is looking to be dissuaded from publication rather than to open a debate on the merits of publication (with the caveats above), given the wording in paragraph 4.21 (box) and it would be equally helpful to understand the decision process that has led to this statement. The Box appears to conflate two concepts; publication of redress and publication of scheme redress. Given the statement in paragraph 4.21 regarding full openness on redress, it would appear that this matter has been agreed with firms already. The issue is the extent to which this type of disclosure highlights any economic incentive for claims management companies to extract rent from consumers and whether it is therefore in the ultimate interests of consumers for whom redress is payable to be susceptible to targeting as a result.

Product Disclosure.

We leave it for others to make comments regarding disclosures in the annuities market and insurance claims data.

We are very supportive of contextualisation; in fact, at one stage the BBA developed its own contextualisation model when firms published their complaints data/ FOS published complaints data; we would be happy to share our insights with you. Given the work that the FCA has undertaken previously with larger firms, we leave them to comment specifically on the expected level of returns from any further substantive work in this area, which would presumably feed through to a formal cost-benefit analysis.

ENDS

APPENDIX

COMPARATIVE ANALYSIS: Professional Secrecy in European Directives

Source: [redacted]

Directive	Date	Content
UCITS Directive (85/611/EEC)	20 December 1985	Under article 50(1), the designated authorities of the Member States must collaborate closely in order to carry out their task and must for that purpose alone communicate to each other all information required. Article 50(2) requires Member States to provide that all persons employed or formerly employed by the designated authorities shall be bound by professional secrecy. Any confidential information received in the course of their duties may not be divulged to any person or authority except by virtue of provisions laid down by law. This does not preclude communications between the designated authorities of the Member States, as provided for in the Directive. Information thus exchanged will be covered by the obligation of professional secrecy on persons employed or formerly employed by the authorities receiving the information (article 50(3)). Under article 50(4), a designated authority of a Member State may use any such information received only for the performance of its duties.
Third Non-Life Directive (92/49/EEC)	18 June 1992	Under article 16(1) Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors and experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. Any confidential information which they may receive in the course of their duties may not be divulged to any person or authority, except in summary or aggregate form, such that insurance undertakings cannot be identified (without prejudice to criminal cases or bankruptcy). Article 16(2) provides that Member States may exchange information in accordance with the directives applicable to insurance undertakings. Such information shall be subject to the conditions of professional secrecy laid down in article 16(1). Member States are permitted under article 16(3) to conclude co-operation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to professional secrecy requirements at least equivalent to article 16.

[redacted]

Life Directive (2002/83/EC)	5 November 2002	Under article 16(1), Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors and experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. Any confidential information which they may receive while performing their duties may not be divulged to any person or authority, except in summary form, such that insurance undertakings cannot be identified (without prejudice to criminal cases or bankruptcy). Article 16(2) provides that the competent authorities of different Member States may exchange information in accordance with the directives applicable to assurance undertakings. Such information shall be subject to the conditions of professional secrecy laid down in article 16(1). Member States are permitted under article 16(3) to conclude co-operation agreements, providing for exchange of information, with the competent authorities of third countries or with certain authorities or bodies of third countries only if the information disclosed is subject to professional secrecy requirements at least equivalent to article 16. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement. Article 16(7) permits Member States, with the aim of strengthening the stability, including integrity, of the financial system, to authorise the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law. Member States must ensure that, amongst others, the information received in this context shall be subject to the conditions of professional secrecy imposed in article 16(1).
Insurance Mediation Directive (2002/92/EC)	9 December 2002	Article 9(1) requires the competent authorities of Member States to cooperate in order to ensure the proper application of the provisions of the Directive. Article 9(2) sets out various circumstances in which competent authorities are to exchange information on insurance and reinsurance undertakings. Competent authorities may also exchange any relevant information at the request of an authority. Under article 9(3), all persons required to receive or divulge information in connection with the Directive are to be bound by professional secrecy in the same manner as is laid down in article 16 of Council Directive 92/49/EEC (the Third Non-Life Directive) and article 15 of Council Directive 92/96/EEC. Article 15 of Council Directive 92/96/EEC was repealed by the current Life Directive and should now be construed as a reference to article 16 of that

		Directive.
Markets in Financial Instruments Directive ("**MiFID**") (2004/39/EC)	21 April 2004	Article 54(1) requires Member States to ensure that competent authorities, all persons who work or have worked for the competent authorities or entities to whom tasks are delegated, as well as auditors and experts instructed by the competent authorities, are bound by the obligation of professional secrecy. Any confidential information received in the course of their duties must not be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms, market operators, regulated markets or any other person cannot be identified. Under article 54(2) where an investment firm, market operator or regulated market has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be divulged in civil or commercial proceedings if necessary for carrying out the proceedings. Article 54(3) provides that a competent authority who receives confidential information pursuant to MiFID may only use it in the performance of their duties and for the exercise of their functions within the scope of MiFID. However, where the competent authority communicating information consents, the authority receiving the information may use it for other purposes. Article 54(4) states that any confidential information received, exchanged or transmitted pursuant to MiFID shall be subject to the conditions of professional secrecy laid down in article 54. However, article 54 does not prevent competent authorities from exchanging or transmitting confidential information in accordance with MiFID and certain other directives with the consent of the competent authority or other authority, body, natural or legal person that communicated the information. Article 54(5) provides that article 54 shall not prevent the competent authorities from exchanging or transmitting, in accordance with national law, confidential information that has not been received from a competent authority of a Member State.
Reinsurance Directive (2005/68/EC)	16 November 2005	Article 24(1) imposes a general obligation of professional secrecy on all persons working for or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities. No confidential information which they receive in the course of their duties can be divulged to any person or authority, except in summary or collective form, such that individual reinsurance undertakings cannot be identified. Under article 25, competent authorities of different Member States may exchange information in accordance with directives applicable to reinsurance insurance undertakings. This is subject to the obligation of professional secrecy imposed under article 24(1). Article 26 allows Member States to conclude cooperation agreements, providing for

		exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equal to those referred to in article 24(1). Any such exchange of information must be for the purpose of performing the supervisory task of the authorities. Article 27 requires competent authorities receiving confidential information under articles 24 and 25 to use it only in the course of their duties and specifies the purposes for which it can be used. Articles 28 to 30 permit the exchange, transmission and disclosure of information between or to a range of authorities and bodies. In general, this is to allow functions to be discharged and is subject to the obligation of professional secrecy specified in article 24(1).
Banking Directive (recast) (2006/48/EC)	14 June 2006	Article 44(1) imposes a general obligation of professional secrecy on all persons working for or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities. No confidential information which they receive in the course of their duties can be divulged to any person or authority, except in summary or collective form, such that individual credit institutions cannot be identified. Under article 44(2), competent authorities may exchange information in accordance with the Directive and other directives applicable to credit institutions. This is subject to the obligation of professional secrecy imposed under article 44(1). Article 45 requires competent authorities receiving confidential information under article 44 to use it only in the course of their duties and specifies the purposes for which it can be used. Article 46 allows Member States to conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equal to those referred to in article 44(1). Any such exchange of information must be for the purpose of performing the supervisory task of the authorities. Articles 47 to 52 permit the exchange, transmission and disclosure of information between or to a range of authorities and bodies. In general, this is to allow functions to be discharged and is subject to the obligation of professional secrecy specified in article 44(1).
Payment Services Directive (2007/64/EC)	13 November 2007	Article 22(2) requires professional secrecy to be strictly applied in any exchange of information under article 24. Member States are free to apply article 22 taking into account, *mutatis mutandis*, articles 44 to 52 of Directive 2006/48/EC. Under article 24(2), Member States must allow the exchange of information between their competent authorities and (a) the competent authorities of other Member States responsible for the authorisation and supervision of payment institutions, (b) the European Central Bank and the national central banks of Member States, in their capacity as monetary and oversight

		authorities (and, where appropriate, other public authorities responsible for overseeing payment and settlement systems) and (c) other relevant authorities designated under the Directive, Directive 95/46/EC, Directive 2005/60/EC and other Community legislation applicable to payment service providers.

Discussion Paper 13/1: Transparency

Response by the Building Societies Association

Introduction

1. The Building Societies Association represents mutual lenders and deposit takers in the UK including all 46 UK building societies. Mutual lenders and deposit takers have total assets of over £375 billion and, together with their subsidiaries, hold residential mortgages of £245 billion, 20% of the total outstanding in the UK. They hold more than £250 billion of retail deposits, accounting for 22% of all such deposits in the UK. Mutual deposit takers account for 31% of cash ISA balances. They employ approximately 50,000 full and part-time staff and operate through approximately 2,000 branches.

Executive Summary

2. Key points made in the BSA's response to DP 13/1 (the DP) are as follows -

- it is very important to recognise the various different types of transparency and the varying factors applicable to each - while, as a matter of general principle, transparency is a good thing, the specific factors applicable to firms and to regulators (and to different categories of transparency) are by no means identical (see paragraph 6)

- we believe that considerable improvements are required in relation to transparency about regulatory operations - especially costs control, the processes concerning section 166 reports, and IT plans and expenditure (paragraphs 13 – 23)

- most of the transparency exercise so far has focused on information about, or provided by, firms - while there are still some further areas where increased transparency might usefully be explored, it is important to guard against information 'overload', which is unhelpful for (and confusing to) consumers.

The paragraphs that follow comment in turn on each of the chapters of the DP.

1 - Setting the scene

3. We note the reference in paragraph 1.1 of the DP to the Government's pledge that public sector bodies, including regulators such as the FCA, should carry out their work in a way that is as open and accountable as possible. The BSA strongly supports the Government's pledge and the FCA's stated commitment to honour it. We recognise that, while both the FCA and the PRA are subject to statutory transparency have-regards, their respective approaches to the matter might differ, reflecting the separate natures and objectives of the two new regulators.

4. We also note the legal underpinning set out in 1.2, 2.25 and in the appendix to the DP, and the sensible principles referred to later (in paragraph 2.17). However,

paragraph 1.2 contains an incomplete statement of the new regulatory transparency principles, now set out in section 3B of the FSMA - while we recognise that it is a summary, the description omits the important statutory words *"in appropriate cases"* from the desirability of each regulator publishing information about regulated firms and individuals. This changes the meaning of the provision, which is not a *general* imperative for transparency. It would be helpful if this point were clarified in the feedback statement.

5. The BSA recognises the point made in 1.4 that there will be a presumption in favour of transparency unless there are compelling reasons to the contrary, but with a crucial qualification set out in paragraph 6 below. We also note the comment in 1.5 that transparency does not take precedence over other relevant considerations. However, we believe that those considerations are, generally speaking, *consistent with* transparency.

6. Nevertheless, it is important, especially at this scene setting stage, not to muddle the different kinds of transparency and, in particular, not to confuse the guiding principles behind a regulator's transparency about *it own operations* and what can reasonably be expected in relation to firms and their businesses. A regulator, as a public body subject to the Freedom of Information Act, may - and probably should - have transparency as a guiding principle, but it should not be forgotten that guiding principles in relation to firms include privacy, commercial sensitivity and protection of property. There are at least five types of transparency, with - in certain respects - different considerations applying to each; namely –

- *FCA/PRA transparency* about their own operations in general, including cost control – there should be very few limitations on transparency in this area

- *FCA/PRA transparency* about their interaction with individual firms - while there will be cases where publication is appropriate (eg in relation to enforcement, redress etc), there are strong confidentiality and commercial sensitivity aspects, the rights in respect of which must be honoured

- *firms' disclosure* about product features, terms and conditions etc where transparency is very important to consumers and to regulators, but where information overload and superfluous or confusing reporting/transparency requirements should be guarded against

- *firms' disclosure*, possibly mandated by a regulator, of otherwise proprietary/confidential information about aspects of the firm's business - while we recognise that there might be occasions where such transparency is desirable, we believe that they will be very limited and of an exceptional nature

- *firms' disclosure* comprising information required to be disclosed to the market under Listing Rules (required of listed firms but not others).

We believe that it is clear from the above list, and the brief descriptions, that - while there may be some overlapping factors - different considerations also apply to each area and it is important not to confuse or conflate any of them.

7. We can understand that, whilst efficiency and economy might in certain circumstances mitigate against excessive overload of information, those factors are usually in line with openness in practice. For example, a point that we return to later

in this response concerns regulatory IT costs. Brief references to IT expenditure, on an occasional basis in the fees CP, the annual report or business plan, are inadequate – yet this is how the FSA published relevant information. This was not only insufficiently transparent but also contrary to the principles of efficiency and economy. The BSA believes that the FCA needs to do much better than its predecessor in this area (see paragraphs 19-20 below).

2 - Background

8. In terms of lessons from the FSA approach to transparency, and in particular the issue of IT costs mentioned elsewhere in this response, the key lesson is that the FSA failed to be sufficiently transparent and the FCA needs to improve on its predecessor's performance considerably. The increases in transparency regarding regulated firms (for example in relation to complaints data) was not matched by openness about the performance of the regulator in certain key areas.

9. In terms of better firm disclosure, there were some successes (eg complaints data) and some deficiencies (eg in relation to MCOB and unfair terms). One of the original objectives of mortgage regulation was that prospective borrowers would be able to compare KFIs but this objective was never really achieved (the problems were elucidated in a letter from the FSA to chief executives on 12 May 2005). A lesson for the future is that regulatorily-prescribed information overload is no way to protect consumer interests.

10. Similarly, where the FSA requested firms to replace contractual terms that the regulator regarded as unfair, there was a tendency for much longer replacement terms to be the result. Again, a 'less is more' approach on information is sometimes in the consumer's best interest, especially if accompanied by a sensible approach to prominence. We welcome the intention, highlighted in the *Risk Outlook 2013*, to examine information asymmetries and the suggestion in the DP that the regulator may revisit firms' disclosures. There are no easy answers, and while firms have a clear duty to provide consumers with information that is true, fair and not misleading, constantly overloading consumers with more and more information is not usually the right answer. The bullet-points set out later in the DP (paragraph 2.22) provide a useful starting point for a proper re-examination of this subject. We welcome the explicit recognition that excessive information provision is counter-productive.

11. While we see no problems, in principle, in the FCA examining, under its competition objective, ways in which firms can provide better information (eg under disclosure documents), we believe it important for the FCA to stay away from financial education *per se* because that subject is no longer within the regulator's statutory remit and the - very well funded - Money Advice Service exists with that specific statutory objective. The FCA will have enough to deal without without moving back into financial education. The DP mentions the *midata* project - the BSA responded to the relevant consultation in 2012 - www.bsa.org.uk/policy/response/midata.htm.

12. Regarding regulatory failure (paragraphs 2.14 and 3.7), we believe that the FSA was as transparent as it was allowed to be; for example, in promptly publishing its internal audit report into Northern Rock. We support the commitment to future transparency.

3 – How the FCA could be more transparent

- **General**

13. The commitment (paragraph 3.2) to transparency about the FCA's work, decisions, actions and management of costs, is very welcome. The summary minutes of Board meetings at www.fsa.gov.uk/library/corporate/board/2013, while interesting, tend to be far too short to provide much helpful guidance to the regulated community, their advisers or their trade bodies. It would be much more in line with the commitment to transparency if the *full* minutes, obviously redacted regarding confidential or commercially sensitive information, were published in future.

14. We welcome the additional powers that the 2012 Act gives to the National Audit Office to examine the FCA's performance and delivery. We also support the plan to develop a value-for-money strategy and, again consistent with the new climate of transparency, we hope that the FCA will consult widely before finalising the strategy.

15. The BSA particularly welcomes the explicit acknowledgement (in paragraph 3.6) that the FCA aims *"to publish more information about particular areas of expenditure such as IT and indirect expenditure such as s166 reports"*. Indeed, these are the two topics about which the BSA has the greatest concerns in the dual contexts of cost control and transparency (see below).

16. We naturally recognise that, following the events of the last five or six years (in relation both to prudential and conduct matters in the financial services industry), regulatory costs are likely to be high. However, high regulatory costs – and, indeed, *increasing regulation* - do not appear to have reduced prudential and conduct problems in the past. Relevant costs should be reasonable and proportionate, especially in view of the fact that the financial services industry has already borne the costs of the FSA's supervisory enhancement programme (2007-2010), it faces certain other high costs (eg regarding the FSCS, MAS etc) and is operating in a market hit by serious recession. The fairness and appropriateness of costs can properly be judged only in a climate of genuine transparency.

17. In earlier consultations (eg *A New Approach to Financial Regulation: building a stronger system)*, the Government stated that the FCA's and PRA's combined ongoing running costs *"should not be materially different (in real terms) in aggregate from the current FSA budget of about £500 million"* (paragraph 33). We are concerned that in fact the costs of the two new regulators will be significantly higher combined than the current FSA's, which itself rose steeply each year since the regulator's inception. Over the past five years, for example, it increased 92.7%. The building society sector, by contrast, has reduced its management expense ratio by more than a third over the past fifteen years. Yet, as was disclosed in the recent regulatory rates proposals, combined regulatory fees are planned to rise by 24% in 2013/14.

18. If these rises go ahead, we believe it very important for the authorities to take responsibility for the earlier statement concerning projected 'twin peaks' costs and explain in detail why this was so wide of the mark, and what practical steps will be taken to ensure more accurate projections in future.

- **IT expenditure**

19. Year-on-year, the FSA's IT spend has increased but, despite this considerable financial input, the Bank of England made it clear that it does not regard the FSA's IT infrastructure as appropriate for use by the PRA. This means that a new IT system has to be developed for the PRA, while continued changes have to be made to the FSA/FCA system – meaning a double spend that will have to be financed by regulated firms during particularly difficult economic times. So far, we have not seen enough financial control, transparency or accountability regarding this situation and we believe that it is crucial that this is rectified going forward. (The appendix to this paper contains some further background on the FSA's IT expenditure and what we believe is needed regarding cost control and transparency in future.)

20. In relation to future accountability and transparency, we believe that the key questions are –

- What measures will be put in place to ensure that the new systems are both fit for purpose and cost effective, and mistakes from the past have been learnt from?

- In view of the fact that the FCA (as well as the PRA) needs considerable further IT investment, what measures will be put in place to ensure that the new systems are both fit for purpose and cost effective?

- What measures (eg contractual 'penalties') are in place to manage delays in delivery/budget over-runs and ensure that the costs of these are borne by the IT development provider(s) rather than becoming an extra cost to PRA/FCA regulated firms?

- What arrangements will there be for consultation with, and input from, the regulated community, who are required to fund the regulatory IT costs in question?

Consistent with the commitment regulatory transparency underpinning the DP, we look forward to feedback on each of these questions. We also believe that the regulators should each have a webpage, setting out IT projections (including planned costs), which would be updated regularly and would provide a full explanation where these projections prove to be inaccurate. The regulators should also be accountable to the practitioner panels in respect of information about IT plans, costs etc.

- **Section 166 reports**

21. The effect of using section 166 FSMA (skilled person reports) is to outsource significant regulatory costs from the regulators themselves and, because the firm has to pay for the report, this potentially make the costs less transparent. In 2006-07 the FSA commissioned 16 such reports but, by 2011-12, the figure had risen to 111. In view of the events since 2007, it is no surprise that regulation should be more interventionist. Nevertheless, the average cost of a section 166 report increased from *£80,000* in 2007-08 to *£280,000* in 2011-12. Such increases, combined with the fact that the total burden of regulatory costs is more difficult to control or scrutinise while this route is used, is a significant concern.

22. Therefore to reiterate - while we understand the need for interventionist regulation and do not object in principle to the use of the section 166 tool, we are

concerned that recent public statements indicate that PRA and the FCA will have a much greater propensity to deploy section 166 reports than has the FSA had. We believe that it is very important that there is not only a commitment to sensible cost control, but also to transparency (subject naturally to proper confidentiality about individual examples of exercise of the power) in the processes relating to its use and the frequency of - and justification of - its use.

23. Specifically, it is crucial that the FCA is open and transparent in respect of process matters such as the selection of skilled persons (including relative costs); consultation with firms in respect of their particular businesses; the suitability of the subject matter for a section 166 report; arrangements for addressing potential conflict of interests; and FCA accountability regarding the number, scale, nature etc of such reports. Rather than dealing with transparency on this matter *ad hoc*, the BSA believes that the FCA should formulate, with full consultation, a policy on these issues. In view of the fact that the DP commits to greater transparency in this area (paragraph 3.6), we look forward to disclosure of what this commitment will mean in practice.

- **Regulatory processes and actions**

24. The BSA broadly supports the proposals set out in paragraph 3.14 concerning whistleblowing, enforcement activities and supervisory work.

25. Regarding enforcement activity, we noted the FSA's comment in a previous Annual Enforcement Performance Account, that - *"We are pleased that publishing enforcement action, along with appropriate supervisory follow up, has often led other uninvolved firms and industry bodies to consider whether the enforcement action has implications for their business, systems and controls."* In the light of this the BSA has, for several years, prepared summaries of the Account highlighting enforcement areas that are potentially relevant to our members. Enforcement activity is one of a number of key sources of information to be taken into account in assessing and mitigating conduct risk, others include the Annual Risk Outlook. We therefore welcome the suggestions in paragraph 3.21 of the DP.

26. Generally speaking, we agree with the suggestions (in paragraphs 3.23 – 3.35) about information concerning supervisory activity. Like the FCA, we recognise the potential for unintended consequences and, in that vein, we caution against publication of information that might lead to a presumption of guilt concerning the industry. The first of the three bullet points in paragraph 3.24 is the one that, in our view, is most likely to be helpful.

4 – Information we could release about firms, individuals and markets

- ***General***

27. We have fewer comments in this area (and on the topics covered in section 5), not because they lack importance, but because they have been heavily explored in the past and considerable information is now in the public domain, for example on complaints and enforcement, and potentially stemming from some of the new regulatory powers etc. There is a risk of information overload and/or diminishing returns, which should at least be factored in to the considerations. In addition, transparency must only ever be supplementary - and, ideally, complementary - to other regulatory tools. Most important, it must never be seen as supplanting effective supervision. Even as a supplement to supervisory tools, disclosure requires careful handling if the balance of the relationship between FSA and the firms it supervises is

not to be undermined. We also refer back to the points we made in paragraph 6 above.

- ***Conduct Risk Outlook***

28. We now have the benefit of having read the FCA's first *Risk Outlook*, which is a helpful and interesting document. It remains to be seen whether or not it is loaded too much towards analyses of behavioural economics and insufficiently targeted at specific conduct risks. The detailed background, examining matters such as the psychology of consumer decision-making, is probably appropriate for the first edition of the document but it might need to be refined, in the light of experience, in later versions. If, in future, perhaps the Outlook could be accompanied by industry-specific roadshows, this could be useful (especially for C3 and C4 firms that will not have a nominated supervisor in future).

- **Authorisation process**

29. The proposals concerning the authorisation process (paragraphs 4.9 – 4.12) are sensible and it would be helpful if they could be extended to encompass generic information about significant influence function/controlled person applications, eg number of applications in the queue, average time for decisions to be communicated etc.

- **Thematic reviews, early intervention, and redress**

30. We acknowledge the legal constraints mentioned in paragraphs 4.15 – 4.17 and recognise that any move towards publication of further information must operate within such restrictions. Again, we must not have what amounts to a presumption of guilt and, while we strongly favour proper consumer redress, the FCA should be sensitive to the practice of some claims management companies to lodge false complaints and to engage in 'fishing expeditions'.

31. What is proposed in paragraph 4.18 is quite similar to what already happens eg the FSA recently made public its concerns about, and activity with regard to, investment advice and sales incentives. We are not convinced that the DP adds very much to the *status quo* in this particular regard.

32. While we favour transparency as a matter of principle, we believe that the FCA would need to be particularly alert to the risks from claims management company misbehaviour regarding the proposals in paragraph 4.19 – 4.21 (see paragraph 28 above) and think through the potential implications carefully.

5 – Information that we could require firms to release

33. The overall principle of greater transparency so that consumers can better judge products, not just on price, but also on other factors is unobjectionable and we recognise that it fits with the FCA's enhanced competition remit. Probably the biggest challenge in practice is being able to place a value on factors other than price. However, the two examples referred to in the DP (the annuity market and claims data on insurance products) are not core to our membership. That said, the proposals look sensible provided they are fully thought through and contextualised – possibly, a working party might be set up to examine the practicalities? Much the same approach might be appropriate regarding complaints data although, as noted, much work has already been carried out (briefly covered at the end of chapter 5).

APPENDIX: The FSA's IT Expenditure

FSA proposed fees and levies consultations in recent years have, among other things, featured the following -

- Increased expenditure was flagged for *"Development of new regulatory reporting forms including development of new, and/or enhanced, IT systems"* (2009-10 – CP 09/7, paragraph 10.10).

- *"Further investment is also needed to address the increase in Information Services (IS) development work and the growing role of IS solutions in facilitating new initiatives. Funding will also be required for the ongoing development of our IS architecture and Knowledge Information programme, and general demand for IS support on existing projects."* (2010-11 - CP 10/5, paragraph 5.24).

- *"In particular, as a result of significant changes to our role and structure - e.g. European-led regulatory change and the UK regulatory change programme - our work has become increasingly data and IT dependent. During 2011/12, we plan to deliver a large number of 'non-negotiable' policies and business initiatives, requiring further investment in the operational platform".* (2011-12 - CP 11/2, paragraph 2.24).

Yet, despite such expenditure by the FSA, *Building a Stronger System* (impact assessment, paragraph 9) stated –

> *"In the short run, however, the transition will involve significant expense to the Bank on premises and IT. . . . The Bank is also clear that in order to contain costs in the long run it would not wish to share in the existing IT systems at the FSA, which have relatively high running costs. So in order to reach a position in which it can both ensure integration and exercise a proper control over future costs, the Bank will need to invest in the transition"*.

The impact assessment went on to state –

- *"The FSA has indicated that much of its regulatory IT estate would be in need of amendment or replacement even in the absence of the changes envisaged by the Government's proposals. New or amended systems for the PRA will therefore be developed as part of 'business as usual', though under the guidance of the PRA Transition Programme Board, a joint Bank/FSA body chaired by Hector Sants"* (paragraph 11).

- *"The FSA legal entity will become the FCA and retain the staff and systems not transferring to the PRA. As with the PRA, there will be significant system development, although this would have been necessary in any event and is not seen as part of the cost of the transition*" (paragraph 13).

In summary, we seem to have the following position –

- the FSA has incurred high, year-on-year, expenditure on its IT systems

- despite this, the Bank of England/PRA decided that it does not want to share the FSA's systems

- therefore, there will be significant new investment in Bank of England/PRA systems in order to meet the new regulatory duties, and

- the FCA also plans significant systems enhancements on its separate system.

Certain questions consequently arise –

1. How have we reached a situation where the FSA's IT infrastructure has "relatively high running costs" and is deemed unsuitable for use by the PRA, and who is accountable for this state of affairs?

2. What measures will be put in place to ensure that their new systems are both fit for purpose and cost effective, and mistakes from the past have been learnt from?

3. In view of the fact that the FSA/FCA (as well as the PRA) needs considerable further IT investment, what measures will be put in place to ensure that the new systems are both fit for purpose and cost effective?

4. What measures are in place to manage delays in delivery/budget over-runs and ensure that the costs of these are borne by the IT development provider(s) rather than becoming an extra cost to PRA/FCA regulated firms?

The Building Societies Association
29 April 2012

Carol Anne Macdonald
Policy, Risk and Research Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

26 April 2013

Dear Ms Macdonald,

The Chartered Financial Analyst Society of the United Kingdom (CFA UK) welcomes the Discussion Paper DP 13/1 'Transparency'. CFA UK is keen to share its views, ideas and observations about the Financial Conduct Authority's desire to be more transparent and what this means in practice. This response has been prepared by CFA UK's Professional Standards and Market Practices Committee (PSMPC). The PSMPC identifies and monitors key regulatory and best practice developments likely to affect CFA UK members.

We hope that in addition to consulting with consumer and trade bodies; the FCA may also be open to consult with professional bodies such as CFA UK in the future. By working with professional bodies, the regulator can benefit in a number of ways, one of which is to potentially address some of the challenges with regard to whistle blowing (please see below for more details below).

Integrity is at the heart of our society[1]. Members of CFA UK abide by the CFA Institute Code of Ethics and Standards of Professional Conduct[2] . The Code and Standards provide members guidance on best practices on issues that include, professionalism, duties to clients and the integrity of capital markets.

[1] INTEGRITY FIRST: Expert – Professional – Ethical – Visit: httRp://www.cfauk.info/integrity/

[2] Summary of CFA Institute Code of Ethics and Standards of Professional Conduct. http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2010.n14.1

Context for CFA UK's response

"We are a new organisation that will learn from its past". (DP13/1 page 30)

CFA UK recognises the importance of an effective regulator for the financial services industry. What we mean by 'effective' is that the regulator[3] –

- Supervises and enforces the regulatory regime
- Strives to improve the quality and integrity of the market
- Able and willing to act decisively to limit consumer detriment
- Willing to hold those that act inappropriately to account
- Self-awareness – recognise its own limitations and be willing to take the necessary actions to address them
- Accountable – the senior leadership of the new regulatory regime is held to account when there is regulatory failure.

Transparency is essential for the regulator to demonstrate the aforementioned attributes. An effective regulator needs to make effective disclosures. Value for money will be determined by how effective the regulator is, rather than the regulator looking for ways to minimise costs and thereby activity.

CFA UK appreciates there may be legal and other constraints which can limit the regulator's desire to as transparent as possible. The regulator should not use these barriers as convenient reasons not to act when required. If for example the legal barriers are unreasonable, it is the regulator's responsibility to speak out; especially if these barriers are undermine market integrity or act against client interests. CFA UK would hope that by being more transparent, the regulator can mitigate many of the types of unacceptable behaviours uncovered since the crisis; and reduce the risk of regulatory failures in the future.

Transparency –quality rather than quantity?

"Fool me once, shame on me. Fool me twice shame on you." (Randall Terry)

CFA UK welcomes the regulator's objective to be more transparent. Just as important will be the quality of these disclosures and their implications for meeting the regulator's objectives. We

[3] Our responses related to effective regulation can be found at https://www.cfauk.org/about/advocacy.html

agree with the FCA that disclosures are not enough and that where appropriate the regulator will need to do more to encourage and bring about the changes it seeks. This also includes when the regulator falls short of its own standards.

In using disclosures, the FCA will need to set out how these statements will bring about the changes in consumer/firm behaviour it expects. Past experience has shown that several large firms did not appear to fear reputational damage when engaging in behavior that undermined market integrity or placed clients' interests second. Consumers often acted in ways that were considered less than beneficial. In fact, despite various warnings about scams and 'too good to be true' products, consumers continue to fall into behavioural traps. Using the insights from behavioural economics is welcome but should not be limited to consumers. As we state in our position papers "Financial Amnesia", and "Effective Regulation", behavioural factors also contributed to firm, market and regulatory failures.

The success of any effective disclosure regime is what the regulator will do if it observes outcomes that are no different to that when the disclosure was made. The FCA will need to set out what it will do to encourage the changes it seeks from firms and consumers. The recent case in the press is a good example[4] of what the FCA is concerned about and the importance of ensuring firms put in practice the policies they have in place. By being more transparent, the regulator is also creating expectations that it will need to fulfill. If the regulator disappoints these expectations, the disclosure becomes ineffective and just noise.

The key test for the FCA's approach to be more transparent will be in the area of regulatory failure. CFA UK has observed that the FCA may not have the quality and quantity of resources to be as effective as it would like. This is likely to increase the risk of failure in the future. Should failures arise that meet the criteria set out in the DP (page 15); we would hope that a more objective process would be in place to investigate them.

We look forward to disclosures of how the regulator will be able to conduct an impartial investigation into itself should significant failure arise in the future. It was noticeable that no regulator from the tripartite system has been held to account. It will be valuable to learn how senior members of the new regulatory framework can be held responsible and what the consequences may be in the event of a material regulatory failure.

[4] "FCA fines private bank £4Mln for money laundering controls," FT Adviser, Michael Trudeau, 24th April 2013. http://www.ftadviser.com/2013/04/24/regulation/regulators/fca-fines-private-bank-m-over-money-laundering-controls-kInmatp0xAUMba4UIJ88aO/article.html

Evidence

"The Commission considers it a matter for profound regret that the regulatory structures at the time of the last crisis and its aftermath have shown themselves incapable of producing fitting sanctions for those most responsible in a manner which might serve as a suitable deterrent for the next crisis."

(Parliamentary Commission on Banking Standards report on the failure of Halifax Bank of Scotland 2013)

CFA UK is keen to see evidence based policymaking. This becomes particularly important when a regulator is seeking to demonstrate the net benefits of its actions. All too often, the amount of evidence is often limited or of a low quality to persuade that the initiative will deliver benefits that have been identified.

While the focus on transparency is welcome, the regulator needs to demonstrate how its proposed approach to transparency will be more meaningful in meeting its objectives than that used by its predecessors. The period leading up to and after the recent financial crisis provides many examples to test the FCA's philosophy to differentiate itself from its predecessor. CFA UK requests the FCA to use one or more of these examples to show how disclosure and its new way of regulating would have brought about a different outcome and perhaps answer some key questions that its predecessor did not consider.

The FCA should provide evidence and metrics as to how effective its efforts in being transparent are and where they need to be improved.

Responses to questions

Q1. We are considering saying more about what we've been told and any action we may have taken as a result of whistleblowing.

The FCA is responsible for the conduct of 26,000 firms and the prudential supervision of 23,000 firms; whistle blowing can be an important source of market intelligence and insight. Whistle blowing can in some cases identify new areas that require attention or support the investigation of issues already identified by the regulator. Any whistle blowing claim has to be addressed with great care, empathy and judgment. History has demonstrated that the previous UK regulator has

not always acknowledged the seriousness of a whistleblower's claims – Libor[5] and HBoS being prime examples. How the FCA deals with, and follows up with whistleblowers will be crucial.

One avenue that the FCA may want to consider is encouraging whistleblowers to approach their professional body first. In this way the professional body, like CFA UK, could relay the claims on behalf of their members. Of course, when receiving such claims the regulator should not identify the source of these claims but could communicate with the actual whistleblower via the professional body. Thereby overcoming some of the challenges identified in the DP of communicating with whistleblowers. Similarly, the FCA could, with the consent of the whistleblower approach the individual's professional body to see if any support could be provided.

This also raises an interesting question - what happens when someone wants to inform on the regulator?

Q1.a

What information do you think would be helpful?

In the first instance the FCA should set out the resources it has devoted to dealing with whistle blowing claims. The turnaround times for responding to and following up these claims and the outcomes. The FCA should provide information about the whistleblowing claims it has received and the rationale for either taking further action or for not taking further action. Of course, we do not expect the regulator to openly identify which firms or the whistleblower is involved in the claim. CFA UK hopes that the FCA would exercise discretion when stating it has been approached by a whistleblower.

When being approached by whistleblowers, if patterns emerge regarding the types of claims being made then this too should be reported. In this and in all cases of whistle blowing, the FCA should use this opportunity to remind all firms and individuals of their regulatory obligations, Furthermore, if the allegations prove to be supported by evidence, then the firms in question will face the consequences and to ensure the appropriate redress is secured.

Included in the whistleblowing category would be communications received from external bodies such as other regulators or policymakers. The rationale for this suggestion is that in cases like

[5]"Bank Of England, Financial Services Authority Missed Warnings On Barclays Libor Scandal", Reuters , Posted: 07/02/2012 1:14 pm Updated: 07/03/2012 12:31 am
http://www.huffingtonpost.com/2012/07/02/bank-of-england-fsa-barclays-libor_n_1643810.html

Libor and Split Capital Trusts[6] concerns were raised by other regulators which were ignored by the Financial Services Authority until it was too late. In such cases it would be prudent to publish the source of the claims being made so that the seriousness of the claim can be assessed more quickly by stakeholders.

Whistleblower updates would also be valuable to communicate the rationale for which allegations are being pursued by the FCA and which ones have been stopped.

Q1.b

What do you think would be the potential benefits?

- Having an adequately resourced whistle blowing capability provides reassurance that any claims will be followed up effectively by the regulator.
- Responding to whistleblowers makes them feel as though they are being taken seriously.
- Reporting whistleblowing data could lead to a rise in whistleblowing as market participants become more aware about what type of behaviour to report.
- Contributes to trust and confidence that the regulator is willing to investigate matters that may potentially undermine market integrity or result in major consumer detriment.
- Where allegations are proven the regulator can demonstrate its desire to '*step in earlier, and act faster, when we identify problems that risk harming consumers or the integrity of the market.'* (Journey to the FCA 2012)
- Publishing data about the types of issues being brought to the attention by whistleblowers enables firms make greater efforts in ensuring their practices are sound. While giving others that are considering whistle blowing some insights as to whether the subject of a potential claim is a material concern or a grievance. Either way there is an opportunity for the regulator to collaborate with professional bodies on this and related issues.
- Creates a public audit trail that can be used to assess the effectiveness of the regulator in relation to whistleblowing.

[6] "FSA admits 'regulatory gap' over trusts," Rupert Jones, The Guardian, Wednesday 23 October 2002 http://www.guardian.co.uk/business/2002/oct/23/1

Q1.c

What do you think are the potential drawbacks?

The key drawback is that the nature of the disclosure tips off the firm or inadvertently reveals the whistleblower's identity. Hence, the communication will need to be carefully drafted to protect identities.

Another drawback is the risk of deliberately false accusations driven by monetary motives (with companies prepared to settle such claims out-of-court and the protection afforded by the system to such false allegations).

One other drawback may be that no one takes any notice of the communication about whistleblowing claims and perhaps the regulator may need to think about how best to get these messages across. Similarly, even where whistle blowing claims are not supported by the evidence this should not prevent the regulator from publishing the nature of the claim.

Q2. We could publish more about our enforcement activities in our annual performance account.

Enforcement is a key part of the regulator's remit in protecting consumers, enhancing market integrity and ensuring the quality of firms and their practices remains high. Enforcement should serve two purposes. Firstly to punish those that breach the regulations; secondly, to act as a credible deterrent to others considering taking regulatory risks. It will also be valuable for the regulator to distinguish between inadvertent breaches and breaches that were deliberate.

It has not escaped our notice that recent enforcement actions against large firms have focussed more on headline grabbing financial penalties. Given the nature of some of these breaches of the regulations; the absence of non-financial penalties is noticeable. We hope that the FCA does not fall into the behavioural trap of its predecessor in relying on the form of the punishment rather than focusing on the substance.

It was the reluctance to take enforcement actions that have done so much to undermine trust and confidence in the regulator. By disclosing enforcement actions, the regulator demonstrates that it is willing to hold firms to account. In addition, consumers can be reassured that the regulator will act where it finds firms place their interests ahead of their customers.

The performance account statement is provided annually so it should contain all the information released at the time when the enforcement action is announced to the public.

Q2.a

To what extent do you think this would be helpful?

Making quality disclosures about the FCA's enforcement activities helps stakeholders understand the activities of the FCA and may provide some reassurance. In addition, it would also provide a transparent rationale for the FCA's enforcement actions especially when it is perceived that the action is not a sufficient punishment or a credible deterrent.

Q2.b

What additional information about enforcement activities should be published?

- The FCA can be more transparent about the rationale for its enforcement actions and also why a potential enforcement action did not take place.
- The FCA could be more transparent about fines it levies and how they are calculated.
- How the penalties compare to the revenues generated by the guilty firms for the inappropriate behaviour. How the firm's customers will benefit from this enforcement action.
- The extent to which the firm/firms facing enforcement action have been the subject of similar actions in the past. Is this a serial offender?
- The FCA should also indicate why further action was not taken and where applicable why further action was necessary. For example, for serial offenders or in significant cases, why further action was not taken against the senior management in terms of reviewing their 'fit and proper' status or reviewing the firm's permissions for that line of regulated activity. By way of example the recent fine[7] related to money laundering controls focuses more on systems and processes was welcome as it emphasised the importance of practices that should align with the letter of the law. However, the FCA could have gone further by stating why no individuals were held to account given that these serious breaches have been taking place for three years. Why are discounts on fines still allowed even in the most serious of cases?

[7] FCA fines private bank £4Mln for money laundering controls," FT Adviser, Michael Trudeau, 24th April 2013.

http://www.ftadviser.com/2013/04/24/regulation/regulators/fca-fines-private-bank-m-over-money-laundering-controls-kInmatp0xAUMba4UIJ88aO/article.html

http://www.fca.org.uk/news/efg-private-bank

- The FCA should also indicate, where relevant how current enforcement decision differs from previous actions relating to the same types of inappropriate behaviour.

- The timeline related to action from when the FCA learned about the unacceptable activity to when it took enforcement action.

- Why the enforcement action will be a credible deterrent to others.

- One secondary consideration to take into account is the extent to which the guilty firm faces higher regulatory fees and levies. We are aware that fines are used to reduce future fees and this implies a minor benefit to the offending firm. We would hope that in addition to any financial and non-financial penalties, the firm in question faces higher regulatory fees and levies in the future.

Q2.c

What do you think are the potential benefits?

- Firms are in no doubt that the (financial and non-financial) costs of inappropriate behaviour and activities will outweigh any potential benefits from them
- Improved transparency and understanding of how the FCA decides on the penalties (non-financial and financial).
- FCA is ready to take stronger action to protect market integrity and provide redress for customers.
- FCA is prepared to improve the quality of competition.

Q2.d

What do you think are the potential drawbacks?

- If firms know what fine they will face they may pursue undesirable behaviour based on their expected payoff and calculate that it is profitable to proceed with certain activities in spite of the potential fines. However, using financial and non-financial penalties should ensure that all firms are under no illusion that FCA will act decisively. The costs of inappropriate behaviour should far outweigh any benefits derived from it.
- Stakeholders feel that the FCA has not gone far enough especially in very serious cases.

Q3. We could publish more supervisory activities and outcomes.

It is essential that the regulator ensures that regulated firms abide by their regulatory responsibilities. The focus should be less on the quantity of supervisory efforts and more on the quality. Through quality supervision, the regulator can determine which firms are behaving in the spirit of the rules and those that only follow the letter of the regulations.

Q3.a

To what extent do you think this would be helpful?

It would be helpful only to the extent that there would be some form of formal disclosure that the regulator is undertaking some form of supervisory activity. However, with 26,000+ firms to supervise there will always be the risks that some firms will escape the attention of the regulator and so the regulator should be prepared to anticipate risks to meeting its objectives.

One area that would be useful is for the regulator to demonstrate that it is undertaking the quality of supervision required. The recent crisis demonstrated that the previous regime may not have undertaken the quality of supervision required. It would also be useful to learn where firms are not entirely complying with the spirit of Principles for Business 11 –
"*A firm must deal with its regulators in an open and co-operative way and must disclose to the FCA anything relating to the firm of which the FCA would reasonably expect notice*."

In the wake of the crisis, the regulator should demonstrate that it is resistant to capture and seen to be acting impartially.

Q3.b

What additional information about supervisory activities should be published?

In addition to our answer in Q3a; information about permissions would also be helpful. It would be useful to know if a firm is running risks of having its permissions changed or withdrawn as a result of a supervisory visit. It would also be helpful to know why permission has not been withdrawn or put at risk when a firm has engaged in activity that breaches the regulations. It would also be helpful to learn which individuals within a firm are responsible for breaching the regulations and what sanctions they may face as a consequence of those actions.

Q3.c

What do you think are the potential benefits?

The chief benefit would be to demonstrate that the regulator is doing what it has been set up to do - regulate the industry through effective supervision and use enforcement when its supervision efforts reveal material areas of concern.

Q3.d

What do you think are the potential drawbacks?

The DP does state that thorough its disclosures, firms could lower their standards in areas the FCA has not cited as of interest in its supervisory visits. However, areas of concern revealed during the supervisory visits may provide sufficient incentive for firms to improve standards in those areas. Here again the judgement based approach of the regulator will determine what its priorities should be. Perhaps the regulator can disclose on a regular basis how effective its supervisory efforts have been and set out both the successes and areas for improvement.

Q4. We are proposing to publish the average length of time it takes to authorise firms and

Q4.a

To what extent do you think this would be helpful?

- Publishing the amount of time taken to gain authorisation is helpful although more information is needed to explain the length of time and whether this has changed compared to a previous period e.g monthly or quarterly.
- By identifying reasons for the length of time being taken, it can be demonstrated if it is due to something new entrants need to address; something the FCA needs to address or a combination of these and other factors.
- The aim should be to encourage quality suppliers into the industry rather than focus on firms that may superficially meet the requirements.
- As we stated in our response to the "Journey to the FCA" consultation it will be important for the FCA to show there is no asymmetry of treatment between incumbent firms and potential new entrants. In that, potential new entrants are refused authorisation because

they do meet the standards required; while the FCA maintains the authorisation of firms that continue to fall short of the standards required of them.

Q4.b

Is there any other information you would like us to publish in relation to the authorisations process? Why?

Please see our response to Q4a

Q5. We are proposing to develop a consistent approach for publishing the results of thematic work on an anonymised/aggregated basis.

Q5.a

Do you think this would be helpful?

- The question the FCA needs to ask itself is - if it was a customer of a firm that is at the receiving end of a thematic visit and it is because the regulator was concerned would the FCA want to know about it? If the answer is yes then the FCA has its answer. If the answer is no then the FCA needs to state why a customer would not want to know if its supplier was under investigation.

- Naming poorly performing firms can help to protect consumers and give them the information necessary to use another institution. Once concerns have come to the notice of the regulator, consumer detriment may already have occurred (PPI being a good example). The onus is on the regulator to ensure firms provide redress for the customer. However, as PPI demonstrated even if consumers move they may move to another firm that may also be miss-selling PPI but not yet discovered.

- Similarly where good practice is found then that should also be mentioned so that the customers of that firm know about it. However, the regulator will need to be careful that it does not provide some form of implicit seal of regulatory approval in doing so.

Q5.b

What sort of information would you expect to see?

"There was insufficient banking expertise among HBOS's top management. In consequence, they were incapable of even understanding the risks that some elements of the business were running, let alone managing them."
(Parliamentary Commission on Banking Standards- 'An accident waiting to happen': The failure of HBOS)

The aim would be to help customers distinguish between high quality firms and lower quality firms. Where the thematic visits are the result of concerns one would expect to see details about the concern, the rationale for the thematic visit and which people within that firm are responsible.

All too often thematic visits that identify the cause of the concerns as "systems and controls" or poor processes. What the regulator needs to recognise is that firms are run by people and that these individuals have responsibilities to run their businesses in the appropriate manner. If these individuals are unaware or unable to meet the standards required than the regulator needs to review their competence to be in the industry.

Issues such as PPI, Libor and other unacceptable developments are the result of people within firms willing to take regulatory risks and place their interests above that of their customers. This was also aided by the fact that they did not fear reprisal from the regulator.

Once thematic visits have been carried out we would expect further communications about the follow up from the regulator. For example if the regulator requests changes to be made, we would hope the regulator would check and see if its instructions had been carried out and to the standards required.

Additional information that would be useful is if the visit was the first; or one of a series because the firm in question is frequently a cause for concern for the regulator. In doing so, this helps the firm's customers realise whether the visit is a one-off or whether the firm is a serial offender. In addition, the regulator should also indicate the seriousness of the concern, so that if customers need to move quickly they have the ability to do so.

Q5.c
How would you like this information to be made available?

- Online of the firm's website.

- Where the regulator has concerns with a firm and these have been substantiated, the firm should notify all of the customers affected by the concerns and what the firm will do with regard to redress if required. These actions should be at the request of the regulator and the regulator should make this request and the reason for it public.

Q5.d

What are the potential drawbacks?

- Naming poorly performing bank may lead to a run on that bank. However, the resolution process may alleviate this somewhat.
- Customers may continue to procrastinate even if the nature of the visit is very serious.
- The regulator fails to follow up appropriately and the firm feels it has "got away with it" and continues to run regulatory risks.
- If the firm feels the regulator has dealt with it lightly it may exhibit loss-aversion so that it continues with regulatory risky behaviour; continue to act against the interests of its clients even though it could well undermine its own future.

Q6. We are proposing to publish, with the firm's consent, how much it has paid out in redress and disclose more details about the redress scheme in the public notice.

Q6.a

Do you think this would be helpful?

As we stated above, it is essential for the regulator's credibility to demonstrate it is effective in regulating the industry, holding firms to account and seeking redress for consumers. CFA UK appreciates the need to gain the firm's consent in some instances to disclose details of redress. Where firm consent is not given, would it be possible for the regulator to approach the customers that have been compensated? In this way the regulator can gain the customer's perspective of the details of the redress and how the firm treated that customer. All too often redress is paid and is qualified as a "goodwill" payment or that the payment is not an admission of liability.

If redress is being provided by firms and this is not known; the regulator should at least provide some information as to why redress is being provided and the circumstances that resulted in redress being made. It becomes more important where the same firm is regularly compensating its customers. This not only sends valuable signals about the firm to its customers and competitors but should also raise red flags with the regulator.

Equally important will be the how the redress is calculated. CFA UK has regularly asked the regulator to set out how redress has been achieved. Otherwise, the redress just becomes a cost of doing business and is factored in as such by firms seeking to exploit consumers and run regulatory risks. The costs of inappropriate behaviour should far outweigh the benefits from such activity.

Q6.b

What sort of information would you expect to see?

Our answer in 6a sets this out.

Q6.c

How would you like this information to be made available?

Please our response to 5c

Q6.d

What do you think are the benefits?

Please our response to 6a

Q6.e

What do you think are the drawbacks?

As we stated above there is the risk that other firms could use the information to undertake a cost of business calculation and if it is acceptable continue behaviour that is against their customers' interests.

Q6.f

Do you think this would be helpful?

Overall any initiatives that can help consumers make better decisions and improve the quality of suppliers and their behaviour has to be welcomed.

Q7. Transparency and the annuity market – no comment

Q8. Publication of claims data for insurance products –no comment

Q9. We think that mandating contextualisation of complaints data would improve understanding of the key messages.

The Handbook defines a complaint as

'*any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of an eligible complainant about the firm's provision of, or failure to provide, a financial service'*.

Here again we have a situation where more needs to be done with regard to the quality of the information and insight that needs to be conveyed. Given that a complaint is any expression of dissatisfaction, the number of complaints received by a firm is an illusion. Large firms are more likely to have a larger number of customers and so the headline number of complaints is misleading. More meaningful would be complaints that have merit or are justified where the firm had to make amends either through its own assessment or via the Ombudsman.

The regulator should also be ready to investigate further when trends or patterns emerge in the justified complaints data. These patterns would reveal which products and/or firms are involved in similar types of justified complaints and so give cause for the regulator to investigate further.

Q9.a

To what extent do you think this would be helpful?

By improving the quality of the complaints data the regulator can reduce some of the sensationalism associated with the headline numbers. The regulator would be better placed to follow up on the complaints data in a more focussed manner. Stakeholders would also have a better understanding and be able to distinguish between genuine complaints and those that are unjustified.

Q9.b

Do you have any suggestions about what matrix we should mandate?

Please see our answers to 9.

Q9.c

Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

Even though it is important to have meaningful complaints data; this should not prevent firms from releasing the actual number of complaints received. However, firms can demonstrate why these complaints were made, how firms resolved them and also what the firms can do in future to address some of the issues that resulted in complaints that were justified.

Q10

Please tell us your ideas about how the FCA could be more transparent

We have integrated these in our previous answers and comments in this response.

Q11

Please tell us your ideas about information the FCA could release about individuals, firms and markets

We have integrated these in our previous answers and comments in this response. The onus should always be on effective disclosures rather than overwhelming the audience with information making it difficult to find the relevant content of the disclosure.

Q12

Please tell us your ideas about information you think the FCA could require firms to release

- With more than 50% consumers using internet banking[8] in the UK the FCA could require banks to display interest rates on each account online in a bid to be more transparent. This would help consumers to be more aware about how much interest they were earning on each of their accounts and whether they should consider moving their money elsewhere because, perhaps an introductory bonus rate has come to an end.
- Deposit takers should be required by the FCA to inform consumers when their savings exceed those that will be protected by the deposit protection scheme in the event of a failure of the deposit-taker. This will help consumers to take action to place their unprotected money with other institutions to protect their savings.

[8] http://www.maparesearch.com/news/article/online-banking-penetration-by-country

We trust that these comments are useful and would be pleased to meet with senior officials to explain them or to develop them.

Yours,

[redacted]
Chair Professional Standards & Market Practices
Committee, CFA UK

[redacted]
Chief executive
CFA Society of the UK

[redacted]
Policy Adviser CFA UK

About CFA UK and CFA Institute

CFA UK serves society's best interests through the provision of education and training, the promotion of high professional and ethical standards and by informing policy-makers and the public about the investment profession.

Founded in 1955, CFA UK represents the interests of approximately 10,000 investment professionals. CFA UK is part of the worldwide network of member societies of CFA Institute and is the largest society outside North America.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behaviour in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 110,000 members in 139 countries and territories, including 100,000 Chartered Financial Analyst® charterholders, and 136 member societies.

The aim of CFA UK's advocacy initiative is to work with policy-makers, regulators and standard-setters to promote fair and efficient-functioning markets, high standards in financial reporting and ethical standards across the investment profession. The society is committed to providing members with information regarding proposed regulatory and accounting standards changes and bases its responses on feedback direct from members or relevant committees.

Members of CFA UK abide by the CFA Institute Code of Ethics and Standards of Professional Conduct. Since their creation in the 1960s, the Code and Standards have served as a model for measuring the ethics of investment professionals globally, regardless of job function, cultural differences, or local laws and regulations. The Code and Standards are fundamental to the values of CFA Institute and its societies.

Evidence

citizens advice bureau

FSA Discussion Paper

DP13/1 - Transparency

April 2013

Myddelton House | 115-123 Pentonville Road | London | N1 9LZ | Tel: 020 7833 2181 | Fax: 020 7833 4371 | www.citizensadvice.org.uk

About Citizens Advice

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of nearly 400 independent advice centres that provide free, impartial advice from more than 3,500 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups.

In 2011/12 the Citizens Advice service in England and Wales advised 2.03 million people on 6.9 million problems, including over 2 million on debt and nearly 130,000 with financial products.

Response to proposals

We welcome the FCA's intention to improve transparency about its own activities and those of regulated firms, as well as requiring firms to disclose more information themselves.

From our point of view, the FCA needs to be seen to be actively regulating financial services to both act as a deterrent to poor corporate behaviour and to provide consumers with greater confidence. The discussion paper raises the prospect of publishing a range of information in addition to what the FSA has traditionally released and we would support greater transparency on all the regulatory action taken by the FCA. Indeed, we agree there should be a presumption in favour of publication unless there are compelling reasons against it.

Besides reassuring consumers in general, providing greater information helps consumers make informed choices when choosing a financial product or provider, in turn driving competition.

At present much of the information published is difficult for consumers to access. It can be difficult to find in the first place, unless one already knows it exists, and it is also presented in a format which can be difficult to read and understand. An effort to make information more widely accessible and easily understood by the general public would be a significant improvement.

Whistleblowing

We believe it would be helpful for the FCA to publish information about the type of information received, general issues raised and amount of action taken as a result of information received from whistleblowers. This would help encourage other whistleblowers to come forward, knowing that the FCA does take action as a result of whistleblowing. We do not believe there would be any drawbacks to this as the FCA will not be publishing any information on what the information was, where the whistleblower was from or other identifying information.

Enforcement and supervisory activity

There is a strong case for publishing more information about enforcement action and supervisory activity.

A more detailed picture of enforcement action would help consumers and stakeholders understand the challenges faced by the FCA as well as gaining a greater appreciation of the regulatory activity taking place.

While we accept that publishing more information about supervisory activity may tip off unscrupulous firms as to the areas which the FCA is paying less attention to at any given moment, we feel the benefits outweigh the risks. In any event, publication of information about supervisory activity in relation to some areas does not necessarily mean that there is supervisory activity in other areas. Firms would be unwise to rely on this as a guide to what the FCA is looking at.

Publishing more details of thematic work would also be welcome. The publication of findings of thematic work on incentives for staff potentially leading to mis-selling of financial products was helpful in demonstrating the importance which the FSA, and now FCA, attach to the issue

Redress

The discussion paper suggests that firms could be required to disclose how much they have paid out in redress to customers, a move we would strongly support. The context of these figures would of course be important, but as part of a wider package of transparency measures it would help show consumers which firms regularly find themselves having to pay out redress to customers and which are better at quickly remedying the situation when they make mistakes. We would expect to see information about the sum of money paid out in redress disaggregated by product, as well as the total number of customers paid redress.

Insurance claims

Publishing more information about insurance claims would also be welcome given the extent to which competition in the insurance market seems to have become principally about the headline price rather than the product features. If there is any truth to the impression that the extent of cover offered by insurance policies has been hollowed out to keep prices low, it would be borne out by analysis of insurance claims data.

Elizabeth House
116 Holywood Road
Belfast
BT4 1NY

26 April 2013

Dear Ms Macdonald,

FCA Consultation: Transparency

The Consumer Council welcomes the opportunity to respond to this discussion paper.

FCA Consumer Network
The Consumer Council is a member of the Financial Conduct Authority (FCA) consumer network. So far, we have found this network useful and has strengthened our relationship and communication with the organisation.

Confidentiality restrictions
As information held by the FCA is legally bound by confidentiality restrictions and its public censure process under the Financial Services and Markets Act, there have been a number of instances where it has not been possible for us to gain information that may help consumers.

For example, the report on the payments crisis during the summer of 2012 at Ulster Bank was not published by the Financial Services Authority (FSA) before becoming the FCA on 1 April 2013. Recently the FCA have announced their intention to conduct an enforcement investigation on this matter. But to help rebuild consumer confidence in the banking system, and regulation of the banking system, it is important there is openness and transparency. Consumers expect reports examining the cause and impact of emerging problems, such as the payments crisis which had a prolonged impact, are made available publically. We believe failure to disclose the reasons for such a serious error that caused significant inconvenience and detriment to consumers would not provide reassurance to them that the issues have been effectively addressed.

Therefore the FCA must examine how their investigations will be made public to address consumer concerns which may remain and respond to consumer demands for information which have not been satisfied. A key issue should

also be *timely information,* we are now ten months on and the financial regulator is yet to make a public determination on the payments crisis issue.

We also recognise that the confidentiality restrictions the FCA is bound by mean that it is difficult to disclose information about individual firms. Previously we have asked the FCA questions about specific firms such as the recent announcements on the Bank of Ireland mortgage rate hikes. We were disappointed in this case as the FCA were unable to provide any information and we were forced to search media reports to gain information. If a consumer organisation raises a specific query or complaint similar to that of a whistle blower we would like the FCA to provide a direct response on the issue and what action if any has been taken.

If the FCA is able to disclose information with the consent of the person who provided it or to whom the information or letter is addressed then this too would be useful. In addition, in cases where it would be beneficial for consumer organisations to communicate directly with the firm, we would like the FCA to pass on our details and support us in helping us make direct contact, with consent.

Supervision team to share thematic findings

The FCA firm supervision function has the power to gather insightful information on how firms are providing financial services to consumers.

There is an opportunity for the FCA to be more transparent and provide information to the consumer network with themed reports on the consumer issues they investigate. The Consumer Council meets regularly with banks operating in Northern Ireland (NI) to discuss areas consumers have identified that need improvement. If we were aware of the types of issues that the FCA is investigating and supervising, we would be able to complement this work and also fill in any gaps on areas of service and product provision that had been overlooked.

Previously the FSA supervision policy allowed for increased scrutiny of the largest firms with the largest number of customers across the UK. This could mean that firms and products available in NI could be given a lighter touch regulation.

Therefore whilst we welcome the proposal to report how many planned and unsupervised visits across sectors, we believe this should also be mapped to locations. We would like to know more about supervision in NI in general, what firm supervisory visits are taking place in NI, the types of issues uncovered for change and what improvements have been made recently. We would like to see the results of thematic work and also have an input in suggesting themes to be explored, based on consumer views.

Firms acting transparently
Equally, the FCA could ask firms to be more transparent in how they provide product and contractual information to consumers. For example there are still improvements to be made in the communication of foreign exchange fees, overdraft fees and terms and conditions on current accounts.

The FCA should take into account that consumers in NI have lower levels of financial capability than consumers elsewhere in the UK. Therefore the FCA should look in more detail at how firms operating in NI communicate products and contracts as consumers can only take responsibility when they understand what they have signed up for.

The Consumer Council's analysis of the Financial Services Authority's Baseline Survey,[1] found:

- Almost a third of people here believed they were only one month away from hardship if anything unexpected should happen;
- Half had no insurance for loss of income or property; and
- More than a quarter didn't get any independent information or help before choosing a financial service, like a mortgage.

The Consumer Council is currently undertaking a programme of work looking at how regulation could work better for consumers. This includes reviewing the regulatory framework, its application and outcomes for energy, water and financial institutions and markets. We believe further transparency issues may be raised as part of this and so will come back to the Consumer and Markets Intelligence team directly with any updates.

If you wish to discuss this response in more detail please contact [redacted]

Yours sincerely

[redacted]

Director of Policy

[1] Managing Money: How does Northern Ireland add up? The Consumer Council, (A research report based on the Financial Services Authority (FSA) UK Baseline Survey), 2007

0800 121 6022 · 028 9067 2488
complaints@consumercouncil.org.uk or info@consumercouncil.org.uk
Facebook: Consumer Council Northern Ireland
Twitter: ConsumerCouncil

DP13-1 Transparency discussion paper

Draft response by the Council of Mortgage Lenders

Introduction

1. The CML is the representative trade body for the first charge residential mortgage lending industry, which includes banks, building societies and specialist lenders. Our members currently hold around 95% of the assets of the UK mortgage market.

2. We welcome the opportunity to respond to the Financial Services Authority's (FSA)/Financial Conduct Authority's (FCA) discussion paper on transparency. This response sets out our overarching comments on transparency, as well as specific comments on some of the detailed proposals.

General comments

3. We welcome the FCA's commitment to transparency – in our view, transparency of regulation is crucial for the effective operation of the mortgage market for both firms and consumers alike.

4. The discussion paper is clear in its focus on what transparency means for consumers and the FCA's aims to improve transparency, such that consumers can make more informed choices or change their behaviour where appropriate.

5. We welcome the regulator's acknowledgement of the importance of balance between disclosing information which may be in the public interest whilst refraining from disclosing information where it would be unfair to a particular firm/individual. We support this approach but would urge the FCA to be clearer about what is meant by 'public interest' – this is clearly a subjective issue and will involve subjective decisions being made about disclosure. We believe that the FCA should include a set of guidelines within its transparency regime against which it will judge whether disclosures are in the 'public interest' and how the FCA believes that the disclosure will improve outcomes. Where a disclosure is deemed necessary, the FCA should also set out its reasoning.

Regulatory transparency for firms

6. **The paper could be clearer on the way in which regulatory transparency can work for firms**. In particular, we do not think that the paper adequately develops the role of FCA transparency in communicating regulatory expectations to firms. Firms, as well as consumers, will be stakeholders of the FCA and should be able to expect clear, consistent, and targeted disclosure from the regulator which takes into account their needs and the needs of the wider market. They should also be able to plan their product and consumer strategies with a good understanding of FCA expectations and the regulator should positively encourage firms to learn from the experience of others.

7. **Transparency about the regulator's objectives, expectations and operation is crucial for firms to be able to operate in the market with certainty and clarity.** This is particularly pertinent given the amount of regulatory change in the market at the current time. For mortgage lenders in particular, the structural regulatory changes come at a time of significant change as firms move forward in implementing the new MMR rules in a regulatory system where indications point to the amount of formal guidance being reduced.

8. **The FCA must be explicit about its expectations regarding good conduct and provide clear indications of what firm behaviours it considers to be positive or negative**. In our view, the communication of these expectations to firms in the market via the outcomes of thematic reviews, enforcement activities, and indirect routes, such as market-wide notices published on the FCA website, will not be adequate to ensure appropriate levels of awareness of the regulator's intentions/expectations. For example, in our recent response to CP12-35 on temporary product intervention, we raised concerns regarding the FSA's proposals to communicate temporary product rules to the market solely via their website. In our view, this communication approach would not be

sufficient to raise the appropriate level of awareness amongst firms affected by temporary rules. We suggested that the FCA should write a 'Dear CEO' letter to the group of firms directly affected, for example whether that is mortgage firms, insurance firms, etc, as well as placing the information on its website. A 'Dear CEO' letter would allow lenders to assess the impact on customers and legal ramifications, particularly given the possibility of unenforceability provisions being incorporated in the rules. **The principle of direct and targeted communication/disclosure should be a central part of the FCA's transparency regime**. The FCA can get its message across much more effectively and give regulatory issues appropriate visibility within firms, if it has a clear plan for getting communications to the right audience within firms and chooses an appropriate communications channel. It should not assume that any communication through any channel will somehow reach the right audience. Appropriate targeting will also increase the chances of good feedback.

9. The approach set out in Chapter 3 regarding the transparency of the authorisations process, and the disclosure of additional information to assist firms in understanding the FCA's requirements and expectations, is very helpful. Firms would welcome a similar approach from the regulator across other areas – **where the provision of clear, additional disclosure provides clarity about regulatory requirements and allows firms to structure their operations and develop new products with certainty**. We believe that the experience of firms, particularly regarding the impact of the regulator on firm confidence and the competitive environment/barriers to entry, will be crucial indicators of the FCA's success. This is particularly relevant given the regulator's objectives regarding competition in the market.

Targeting disclosures/communications

10. The CML believes that the FCA should be absolutely clear about the audiences at which its transparency and disclosure regime is directed. For example, a disclosure which is aimed at informing firms may be less appropriate for providing information to consumers. **Before making a disclosure, the FCA should be clear about which audience the communication is directed at and target its information requirements, and subsequent outputs, accordingly.**

11. The discussion paper sets out the lessons from the wider research on transparency, including a key message that disclosure, is not sufficient to ensure transparency [para 2.22]. As such, **we believe it is vital that the FCA sets out the objective that each communication/disclosure is intended to support.** There should not be a presumption of disclosure simply because data exists or can be requested – any data or information should only be released/requested if it supports the intended objective of the communication.

Contextualisation

12. We note the references to the contextualisation of data/information releases, in particular the proposals for mandated contextualisation of complaints data.

13. In our view, contextualisation is a key part of any transparency process. Any statistics or data released by the FCA should be contextualised whether on a firm-specific or sector-specific basis. Contextualisation aids understanding and helps to prevent data being misconstrued and potentially misreported.

14. **We feel strongly that any data/information that is released should be contextualised and we would like to see contextualisation as an overarching principle of the FCA's transparency regime.**

Unintended consequences

15. We welcome the FCA's intention to be clear about the net impact of any changes, including unintended consequences both to the regulator and to firms [para 6.4].

16. We have specific concerns about who is responsible for the impact/consequences of FCA disclosures once they are public. In particular where the data relates to product disclosure (eg annuities) and consumers or firms may act/base decisions on the information – are any subsequent impacts the responsibility of the firm/individual providing the data, or the FCA who is collating/presenting the data?

17. As part of the transparency regime, we believe that there must be a formal and consistent system for firms to alert the FCA of any negative unintended consequences. **There must also be a clear route by which firms can challenge and amend any disclosed information which is misleading and can be, or has been, taken out of context.** This system should set out a clear structure by which the FCA will respond to such alerts, including a requirement for responses/resolution from the FCA, and the timescales within which these will be undertaken.

Transparency framework

18. We note the FCA's intention to establish a 'transparency framework' [para 1.15] which will be used to identify transparency initiatives as well as measure and monitor the costs and benefits of these initiatives.

19. We would welcome more detail about the publication and operation of this framework. In particular, we would like to see detailed proposals about how costs and benefits will be measured, and what parameters will be used to judge the success of the FCA's transparency regime.

20. **It is important that this framework evaluates the success of the regime with respect to firms and the market as a whole and does not just focus on the benefits to consumers**. We would like to see specific reference to the impact of transparency on firms with a clear evaluation of the demonstrable benefits of the regime relative to its costs.

21. The transparency framework should also monitor and set out how the FCA will seek to address/rectify any unintended consequences of the transparency regime.

Chapter 3 – How the FCA could be more transparent

22. We note the FCA's intention to develop and publish a value for money strategy [para 3.6] which will include more disclosure regarding direct costs, as well as indirect costs such as s166 reports. The recent '*Journey to the FCA*' document was clear that Firm Systematic Framework (FSF) will allow for greater use of s166 powers under the FCA. Firms have already seen an increase in the use of s166 powers and are concerned to know more about the FCA's intended use of s166 powers, including when they will be invoked and how they will be used. It would also be helpful if the future value for money framework made an assessment of the overall benefit (to consumers, firms and the wider market) of the use of s166 powers relative to the cost to firms (and ultimately consumers) **–** this would lead to greater accountability regarding the use and efficiency of s166 powers as a regulatory tool.

23. We note the proposals to publish more about enforcement and supervisory activities. We request that the FCA have regard to the market impact of more disclosure in these areas.

24. In particular the FCA should have regard to our comments above regarding the contextualisation of any additional disclosure about these activities. **The subjective, and often specific, nature of these activities mean that disclosure without contextual information could lead to the information being misconstrued – with potentially damaging knock-on impacts on sectors or the wider market.** We are particularly concerned about the potential domino effect that could occur if consumer confidence in a particular type of product, or in a sector of the market, is negatively impacted by FCA disclosure, and the knock-on impacts this could have on legitimate activities by association. Much will depend on how the intervention is announced and explained.

25. We also have some concerns regarding the potential negative focus of additional disclosure in these areas – the emphasis seems to be on risk and the mitigation of risk. We appreciate that mitigating risk, and disclosure of risk, are key facets of the FCA's remit, but we believe that disclosure about good practice and good products would be just as useful to firms and consumers alike.

Chapter 4 – Information we could release about firms, individuals and markets

26. We welcome the proposals to publish more data regarding the authorisations process.

27. We note, and welcome, the proposals to develop a more consistent approach for publishing the results of thematic work on an anonymised/aggregated basis. As per our comments above, we

believe that the FCA should use these disclosures to highlight both good and bad practice. We have found the dialogue which we have had with the FSA on their thematic review interest-only policies very helpful in indicating where future action is needed and suggest that this collaborative approach to future improvements is a good template for how a transparent system can work.

Chapter 5 – Information we could require firms to release

28. We note the proposals regarding the mandated contextualisation of complaints data. As previously noted, we believe that the contextualisation of disclosure is key to ensuring that data/information is well understood.

29. We believe that it is important to put complaints statistics into context, both on a firm-specific and sector-specific basis. However, we note the FSA's recognition that developing mutually agreeable metrics has proven difficult. We would welcome the FSA consulting further on this matter, rather than simply switching the DISP matrix into a rule.

Contact

30. This response has been prepared by the CML in consultation with its members. If you have any comments or queries on this response, please contact [redacted]

April 2013

Carol Anne Macdonald
Policy, Risk and Research Division
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

23 April 2013

Dear Carol

Discussion Paper 13/1 - Transparency

Following the publication of this Discussion Paper (DP) I can provide our response.

In general the DP contained a number of sensible proposals which we would welcome.

We have no comments on Sections 1 or 2.

Section 3

We agree with the proposal to publish more information about your direct expenditure. This is important to us as we want to see that our fees are being used sensibly.

We agree with the suggestion of publishing all responses except where the respondent has specifically asked you not to do so. Without this transparency there is always a suspicion that you have ignored responses which do not support your proposals whilst accentuating responses which agree with your proposals.

Your proposal to provide more feedback to whistleblowers is sensible. Without feedback the whistleblower can feel that their action has been ignored and they will not be encouraged to speak-up in the future.

The suggestions in paragraph 3.21 are useful.

Your first suggestion in paragraph 3.24 will be useful, however, we suspect that the 2nd and 3rd suggestions would be less useful.

We especially welcome your suggestion in 3.6 to publish more information about particular areas of direct expenditure such as IT and indirect expenditure such as S166 reports. During recent years we have introduced strict controls over our own expenditure so it is good to see this discipline in the Regulator.

Section 4

We understand the desire to publish more information through the Conduct Risk Outlook. This needs to be balanced against the risk of making the document too large. This is already a comprehensive document and there is a danger that it will be unread if it tries to include too much information. In addition, we would welcome FSA Roadshows to accompany each version of the Conduct Risk Outlook, these could be industry-specific and would be useful especially where you do not intend to visit firms as frequently in the future.

We support the proposals regarding the authorisation of new firms. It would be useful to have a similar system for the authorisation of individuals. For instance there should be a constant measurement on the website showing how many applications are in the queue, along with the average time taken to approve/reject.

We understand the difficulties highlighted in paragraph 4.17. Firms must remain innocent until proven guilty.

Paragraphs 4.18 – 4.20 are a source of concern for us. We understand the desire to provide early warning indicators to firms. However, we fear that the system will also be used by Claims Management Companies (CMC) to generate unsolicited claims. The danger is that firms will have to spend a disproportionate amount of time providing information for “fishing expeditions” and defending speculative claims. The amount of redress can be taken out of context by the CMCs and used in promotional literature.

Section 5

Improving the ability of customers to compare products must be a positive development especially if the differentiation between price and value can be accentuated. In addition, this should also be applied to choosing an appropriate intermediary.

We understand the desire to open-up the annuity market. The tendency for consumers to accept the offer from their pension provider must be the largest driver in this area. This is made worse by the fact that most customers have no idea that they are able to effect the Open Market Option.

We agree that the publication of claims data, especially for add-on and non-core products would be a welcome addition to the market.

The publication of complaints data has been a success, especially as it is easy for the Press to use. However, we do agree, that more work needs to be done to contextualise the data. Would it be possible to establish a Working Party made up of the Regulator together with appropriate trade associations, or industry

representatives, along with consumer representatives to provide a joint narrative to accompany the data? Perhaps this could be a role for one of the three FCA Panels?

Section 6

The other area which should be considered is the disclosure of remuneration. In building societies we disclose full details of the remuneration for all directors. In practice, this tends to pick-up packages in excess of £100,000 (although obviously the figure will be higher for the larger societies). This would be good practice for the Regulator. In addition, full disclosure of bonus schemes, including any deferred elements should also be disclosed.

Yours sincerely

[redacted]
Chief Executive

[redacted]

THE FCA PRACTITIONER PANEL:

RESPONSE TO FSA DISCUSSION PAPER 13/1

'TRANSPARENCY'

APRIL 2013

Introduction

The FCA Practitioner Panel welcomes the publication of discussion paper DP13/1, on Transparency. We have engaged with the FSA on this topic on a number of occasions, and appreciated the opportunity to discuss some early thinking with FSA staff.

In general, the Panel believes greater transparency by both firms and the regulator can be a positive development, where the use of this tool leads to the desired regulatory outcomes. We support greater access to information that can assist consumers in making the right choices, but care must be taken that it is information that consumers can engage with in a meaningful way. The FCA's recent work in the sphere of behavioural economics may provide insights to help the organisation determine what information will be genuinely beneficial to the public, and in what format, and what type of data is likely to be mis-understood and cause detriment.

Executive Summary:

- The Panel supports a number of initiatives proposed in the paper, including:
    - Information to enable the public to hold the FCA accountable, including through NAO reviews, and greater information around supervisory and enforcement activities
    - Information that would assist firms to better understand regulatory priorities and areas of focus
- We do however raise concerns around:
    - The proposal to publish insurance claims data. We worry that the publication may have unintended consequences and that the proposed data may be mis-understood
    - We would urge the regulator to stay sensitive to the possibility that greater public insight into redress discussions may not only delay negotiations but also affect firms' willingness and ability to settle
    - The FCA should consider fairness to individual persons/institutions. We have concerns that the proposed publication of warning notice statements appears presumptive of guilt, and that it will work contrary to efforts to improve the reputation of the industry
- In addition, we suggest the FCA consider:
    - The timing and tone around publication of data
    - Regularly reviewing the available information to see if it is still fit for purpose

Detailed response:

How the regulator could be more transparent

The National Audit Office's new powers

The Panel strongly supports the new responsibilities handed to the National Audit Office (NAO), to assess the FCA and its policies for value-for-money.

We engage with the regulator on an annual basis providing feedback on the proposed budget, as well as regular interaction commenting on the likely effectiveness and efficiency of proposed new initiatives. Although our discussions with the regulator have been constructive and helpful, we have previously commented on the importance of assessing the overall impact of regulatory initiatives on the industry, and ensuring that value-for-money of individual initiatives and on-going pieces of work are evaluated on a regular basis. We have already engaged with the NAO regarding how they plan to use their new power, and will continue this dialogue with them going forward.

The FCA's Value for money strategy

We are also supportive of the regulator's intention to develop a value-for-money strategy. We would be happy to feed in our thoughts to the regulator on this strategy at an early stage to help develop thinking.

We are especially pleased to see the regulator mention the use of section 166 reports in the context of value-for-money assessments. The Panel has taken a keen interest in skilled person's reports, and their increased use and cost to the industry. Through our discussions with the FSA, we understand the FCA plans to use such reports more frequently going forward. In our view, such an approach would raise real questions around the specific criteria used to trigger a report, the consistency of application of these criteria, and the general cost effectiveness of a regulatory approach that relies more heavily on out-sourcing certain supervisory functions/expertise.

Transparency around its enforcement activities

We support the intention for the regulator to provide more detailed information around its enforcement activities. We especially welcome the proposal to provide greater clarity around its approach to enforcement and what the FCA is seeking to achieve through these activities. Such information would enable firms to better understand the regulator's priorities and areas of focus. We similarly support the regulator publishing data around the cost and average length of enforcement investigations, to help the public hold the FCA to account and ensure that regulatory resources are being spent efficiently. We would also encourage the FCA to be more open, where possible, to the relevant firm as to the process followed when it faces enforcement action.

However, we have concerns regarding the publication of warning notices. Such publication would work contrary to natural justice, where an individual may be innocent of the

allegations, and hurt efforts to improve trust in the financial services sector. We will submit a separate response to the consultation paper on this topic.

Information around firms, individuals and markets

Authorisations and thematic work

The Panel agrees with the regulator that greater transparency of the authorisations process would be helpful for firms to gain a greater understanding of regulatory expectations, and that this will be helpful in holding the regulator accountable to its statutory and voluntary timescales.

We are also strongly supportive of the regulator developing aggregated results of thematic work. Industry takes a strong interest in such work, and for participating firms the process is often fairly resource and time intensive. It would be helpful to have greater information not just regarding the regulator's future focus, but also aggregated feedback regarding the state of the market following the conclusion of the work.

Redress settlements

The FCA rightly recognises that there are legal constraints in place for the FCA to publish the amount of redress firms pay and the formula/criteria applied going forward. We also note that it is the FCA's intention to publish more details about individual firm redress schemes in the public notice going forward, and that the FCA will expect full openness on such redress information from firms as a condition to the regulator agreeing a settlement in the future. We would urge the regulator to be sensitive to the fact that greater public insight into final redress schemes could have the unintended consequence not just of delaying negotiations and settlements, but also affect firms' willingness and ability to settle as they will have to consider additional reputational implications.

Information the FCA could require firms to release

Proposed publication of claims data

The Panel does not believe that the publication of claims data would necessarily be conducive to achieving the right regulatory outcomes, and worries that such publication could have unintended consequences. For example, we would be concerned to see the media draw conclusions that a certain product is poor value for money purely on the basis of its premium vs. pay-out ratio (which could be due to factors such as the policy insuring against low-probability events). Should the regulator wish to go ahead with the publication of some form of insurance claims data, we would strongly encourage it to tie this work with its insights and on-going work in the field of behavioural economics to learn more about the type and format of data that would achieve its intended outcomes.

Additional considerations

Regular review of available information

We would encourage the FCA to regularly assess the usefulness of the information it provides (across all three categories above) in terms of ensuring that putting that data in the public domain is still leading to the desired outcomes. Such work can indicate whether the general public are interpreting the data in the manner which the regulator expected, or whether greater contextualisation/other data may be required.

Timing of release of regulatory information

We would further ask the regulator to be sensitive as to the timing of the release of certain information, especially where this may not be done regularly, and the tone adopted in the presentation of data. The Panel has had numerous discussions with the regulator on this topic, and have appreciated the regulator's consideration of this in its recent communications. How data is interpreted (especially by the media) is often dependent on the way in which it is presented and the commentary provided by the regulator. The FCA should therefore try to be sensitive as to the language used when commenting on data, and ensure that information is provided with the appropriate contextualisation.

Conclusion

In summary, the Panel is supportive of introducing greater transparency in a number of areas. We believe that further transparency around the regulator's own activities and the state of the market can be helpful both in terms of ensuring regulatory accountability, and in directing firms to focus on the right areas in their work. We have however asked the FCA be mindful around the timing and tone of regulatory information, and suggested that it should consider reviewing the information it releases into the public domain on a regular basis. We have also raised concerns regarding possible unintended consequences around the publication of claims data as well as greater openness of redress discussions and ask the regulator to consider how these could be mitigated.

We have welcomed our discussions with the regulator on this topic to date, and would be happy to provide further feedback on more detailed proposals later in the year.

THE FCA SMALLER BUSINESS PRACTITIONER PANEL:

RESPONSE TO FSA DISCUSSION PAPER 13/1

'TRANSPARENCY'

APRIL 2013

Introduction

The FCA Smaller Business Practitioner Panel welcomes the publication DP 13/1 on Transparency. We have previously engaged with the regulator on this topic on a number of occasions and have appreciated the interaction to date.

Overall, the Panel supports initiatives to increase transparency, although it is important that information published is not easily liable to misinterpretation or difficult to understand. As such, the regulator should remain sensitive to how information is likely to be received when published and always ensure data is provided with appropriate contextualisation. Our detailed comments are provided below.

Executive summary:

- The Panel supports initial FCA thinking around greater publication and transparency regarding:
    - Providing greater feedback to individuals regarding whistle-blowing
    - Publishing more detail around thematic reviews, early intervention and the redress process
- We would also encourage the regulator to consider:
    - The importance of communications channels and strategy in providing relevant information to smaller firms/supporting them in fulfilling their obligations
    - Releasing aggregated industry/sector information back to firms to allow them to benchmark themselves against industry averages
- We do however have concerns around:
    - The proposed publication of insurance claims data

Detailed response:

How the FCA could be more transparent

The Panel supports the regulator's intention to be transparent about its work, the decisions it makes and the actions it takes. We agree that regulatory transparency is an important aspect of ensuring accountability of the FCA.

Whistleblowing

We would strongly support policies that would provide more feedback to those in industry who have alerted the regulator to breaches or misconduct in specific firms or across sectors. As a Panel, we have tried to play a constructive role by making the regulator aware of where we believe there have been specific market/firm failures. The regulator rightly notes the importance of providing adequate protection for those who do the right thing, but in order for individuals to have confidence in this system and that the regulator is taking their concerns seriously, non-confidential information should be fed back as a matter of routine. We would also support the publication of aggregate data around whistleblowing. Such data could indicate the general confidence industry participants have in the process and be useful to assess whether further measures are required to encourage information sharing.

Likewise, as a Panel we have often not had information or updates back on specific issues we have brought to the FSA. We hope the FCA will be more willing to feed back progress on these issues to provide us with greater comfort that action is being taken. In order for this more pro-active and interventionist regulator to fulfil its objectives, it will need to encourage all channels of useful information going forward.

Means of external communication

The Panel has had positive engagement with Zitah McMillan and her team in the past year. We have had regular conversations around communication channels and strategy, including the development of the new FCA web-site. We continue to believe that, in terms of transparency of the regulator and in the spirit of sharing relevant information, it is key that information going forward is presented in a clear and detailed format to assist smaller firms to comply with regulation.

For instance, we are supportive of the regulator's intention to continue sending out weekly regulatory e-mail round-ups to smaller firms. We have previously also suggested the regulator should consider additional sign-posting to firms regarding what information is relevant to them. Greater assistance in understanding and interpreting relevant regulatory information will remain key for those smaller firms who cannot rely on large compliance departments or expensive consultants. The majority of firms want to ensure they meet requirements and do the right thing, but need to know what is expected of them.

Information the regulator could release about firms, individuals and markets

The Panel would welcome the regulator sharing more information with industry and the general public in relation to the firm and market data it collects.

Transparency around authorisations and thematic reviews

The Panel would strongly support the FCA disclosing greater detail around both the authorisations process and its key priorities/activities in relation to thematic work and early intervention.

We agree information should not be published on a firm-specific basis (and also recognise the legal constraints in this area) but would support anonymised and aggregated publication. We welcome the intention to publish instances of good practice to help guide firms. We would also encourage the FCA to do more to signal to the industry the areas where it has the most concern/will focus going forward.

Release of aggregated/industry information

It would also be very helpful for the regulator to provide aggregated industry/sector information which it collects, in order to allow firms to form a better understanding of the markets in which they operate, as well as enabling them to benchmark themselves against industry averages.

Given the extensive information provided by individual firms to the regulator, it should be possible for the FCA to share in an anonymised and aggregated fashion, information back to the industry. We believe this would be helpful both for firms in managing their own businesses, and for the FCA to achieve better regulatory outcomes.

Transparency around the redress process

The Panel expressed strong concerns earlier this year in relation to the information made available after the failure of the Arch cru funds. The FSA arranged a settlement in relation to the failings of HSBC, Capita and BNY Mellon who acted as the depositaries and Authorised Corporate Director for the funds; as well as instituted a redress scheme for affected consumers to claim from their advisors. We did not oppose advisors paying redress in cases where there had been mis-selling, but responsibility needs to be fairly shared.

We would thus be strongly supportive of the regulator taking steps to provide greater transparency around such settlement and redress schemes in the future. Without it, there is a lack of accountability of the regulator (in ensuring that there has not been preferential treatment provided to larger firms) and a lack of trust amongst the industry at large that the right thing will be done.

Information the FCA could require firms to release

Annuity scheme

The Panel agrees with the regulator that there is currently not enough transparency in the annuity market. We would support the regulator exploring options in this area, and whether or not more could be done to ensure providers make customers aware of alternative options in obtaining the best rate available.

Publication of claims rate

The Panel supports the consumer having access to relevant information to enable them to buy products that are good value for money. We are also in general supportive of efforts to establish a market whereby competition is focused on the right indicators for the consumer – i.e. not just the price of a product, but also whether the policy actually offers the coverage which the consumer would need. We have previously highlighted concerns in relation to the role of price comparison web-sites, which we have sometimes felt have played a role in distorting the market to focus excessively on price rather than value-for-money.

However, we would urge the regulator to exercise caution in deciding what indicators to use to determine whether markets function effectively. We would be concerned to see the regulator publish, as proposed, premiums vs. pay-out ratios, and are not sure what the publication of such indicators would achieve. As long as the customer receives all relevant information, customer preference and risk profile will determine what events they wish to insure against. For some customers, purchasing insurance against events that are relatively unlikely to occur still provide them with a peace of mind and comfort for which they are willing to pay (e.g. natural disasters insurance). The low probability of occurrence by itself would not make it a low-value product.

We believe there is a high risk in general that the publication of claims data can be mis-understood. Having said that, we are not opposed in theory to the publication of indicators where they clearly demonstrate the quality of complaints processes in firms. It is however important that the right indicators are chosen, and that these are appropriately contextualised so as not to be mis-understood by consumers and the media.

Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Carol-Anne MacDonald
Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

26 April 2013

Dear Ms MacDonald

DP13/1: Transparency

This is the Financial Services Consumer Panel's response to the Financial Services Authority (now Financial Conduct Authority) Discussion Paper on Transparency (DP13/1).

The Consumer Panel welcomes the FCA's discussion paper on this important subject. We firmly believe that transparency is a legitimate regulatory tool and, used effectively, can be a significant factor in improving accountability, firms' behaviour and consumer welfare and protection. We have long encouraged the FSA to increase the levels of transparency within the financial services industry and indeed itself. Therefore, we support in principle the ideas in the FCA's Transparency Paper.

We believe the suggestions we offer below will bolster the proposals. Specifically, we ask the FCA to:

- Consider the introduction of monetary rewards for whistleblowers, subject to effective screening to weed out fallacious allegations. The scale of reward could be linked in relevant cases to the proceeds of revealed financial crime or fines obtained from enforcement action. A whistleblower money reward scheme could usefully be combined with the offer of immunity from prosecution and a robustly enforced requirement that all firms have a fair and effective whistleblowing strategy in place.

- Consider the publication of Regulatory History Reports for firms to provide an accessible chronological summary of a firm's disciplinary record, covering the scale of enforcement fines and penalties, the names and number of directors sanctioned or prosecuted, the scale of compensation payouts, the number of complaints and the proportion referred to the Financial Ombudsman Service and upheld, the number of variations of permission, and so on.

- Produce periodically a comprehensive, high visibility, report that seeks to quantify the benefits as well as the costs of financial conduct regulation seen in the round;

- Randomly select each year a sample of FCA published cost-benefit analyses and subject them to rigorous peer review, as a spur to higher quality analysis;

- Publish a list of internal audit reports and consider, on a case-by-case basis, whether full publication of the audit would serve the public interest,

- Publish a periodic log of meetings held by senior FCA staff with external stakeholders, and;

- Embed changes to promote transparency in a clear and rigorous plan of action; as the Panel noted in its response to the FSA's 2008 DP, a code of good practice alone would be unlikely to prove effective.[1]

We also ask the FCA to require firms to:

- Present their complaints data in improved context e.g. firms should list complaints by brands;

- Ensure that annuitants have access to timely and appropriate information that makes clear the benefits of shopping around and of taking advice, and the distinction between full advice and execution only guidance;

- Ensure that any requirement to publish claims data for insurance products mandates the quality of the information, including its presentation;

We hope you find these points useful and expand on them in the main body of our response, which is attached to this letter.

Yours sincerely

[redacted]
Chairman

[1] In its response to DP 08/3 (26th August 2008) the Panel argued that a Code would only be of use "if it is rigorous and carefully enforced. There have been examples of codes of practice in the past that were set up with the best of intentions but which meant little in practice." DP13/1 acknowledges the failure of the DP08/3 Code.

Introduction

The FCA has emphasised the need to strike the right balance between fostering the public's legitimate interest in transparency and refraining from disclosure where there would be unfairness in doing so, where the public interest might be harmed, or where other legal consideration might prevent it. The Panel agrees that there may be occasions where public interest considerations outweigh the FCA's responsibility to be transparent. We are, however, concerned that the paper appears to place undue emphasis on restrictions without balancing these against the FCA's legal responsibility to adhere to the principle of transparency.

The paper notes that it is constrained by section 348 of the Financial Services and Markets Act 2000. It also implies that the following significantly restrict the provision of information:

- the due process requirement around public censure,
- restrictions under the Freedom of Information Act,
- the Data Protection Act; and
- Article 8 of the European Convention of Human Rights.

Listing these alleged prohibitive legislations without providing more context or in-depth exploration sends out the wrong messages to stakeholders. For example, although section 348 of FSMA prohibits the sharing of specific types of information, section 349 allows regulations to be made by Treasury to modify the effect of section 348 for the purposes of facilitating a public function. By making such modifications, Treasury provides the FCA with a number of 'gateways' to disclose information to certain third parties e.g. other UK or European Economic Area regulators. Also, the FCA has the ability to use its rule making powers more proactively. We note, for instance, that although the FSA was prohibited from publishing information about the complaints firms received, it introduced a rule change which required firms to individually publish data, thereby allowing the FSA to also publish this information in a central location[2].

Also troubling are the DP's references to withholding information because disclosure may 'harm' the public interest. Here the DP's reticence draws on the presumption that consumers may misunderstand the information. We agree that consumers may be swamped by too much information, but the onus should be on the FCA and firms to communicate in a simple, concise and effective manner. The FCA can itself learn how best to communicate using its new insights from behavioural economics. Even if the manner of disclosure falls short of ideal, it should be recognised that consumers have a wide range of capabilities and the disengagement of the less knowledgeable should not normally be taken as an excuse to deprive knowledgeable consumers of useful information. More importantly, there are many experienced public commentators as well as professional advisers who can and do use information released by the regulator and by firms to help consumers make more informed decisions.[3]

[2] Section 348 allowed the FSA (and now the FCA) to publish information about individuals if this information is already publicly available.

[3] The Oxera literature review accompanying the DP notes how information intermediaries can enhance the effectiveness of disclosure by reducing consumers' information-processing costs. Oxera cites some second-best arguments that question the value of disclosure – for example, it may facilitate tacit collusion amongst firms – but the answer is to deploy a range of policies to emulate first best – in the example, to use competition powers in tandem with disclosure to invigorate the market.

The Consumer Panel's response to the FCA's ideas

Whistleblowing

The purpose of a Whistleblowing Policy is to encourage employees to disclose any malpractice or misconduct of which they become aware, and importantly to provide protection for employees who report allegations of such malpractice or misconduct. An effective whistleblowing regime therefore has the potential to bolster compliance and provide intelligence, particularly in industries where detriment could have a significant impact on the lives of citizens e.g. financial services.

Under the Public Interest Disclosure Act 1998 employees in the financial services sector can bypass the general obligation on them to report to their employers (in the first instance), and go directly to the FCA. We believe that this places an extra duty on the FCA to ensure that it inspires confidence pre and post disclosure. Therefore, the Panel supports the FCA's proposals to improve its policy in this area, and specifically to give more details to the Whistleblower about the action that has been taken, or were under consideration, after they have contacted the FCA. Relevant and timely feedback is an essential part of the process, as well as a concerted effort to raise employees' awareness about their legal protections under PIDA.

We agree that the FCA should publish data about the number of whistleblowing incidents, including any action or indeed inaction taken as a result of information received. It is equally important that the FCA is rock-solid in protecting the identity of whistleblowers, and provides adequate information at the very beginning of the process on the policies it has in place to protect whistleblowers' identities, should they wish to be anonymous.

The DP provides no analysis of the incentives that drive – or inhibit - whistleblowing. The regulator receives 3,000 to 4,000 whistleblowing tip offs a year but finds it possible to act on only a small proportion - about 12%. Without further analysis, it is not clear whether the high proportion of in-actionable intelligence is a mark of weakness in the regulatory system. It may be. The FCA's approach to whistleblowing relies on "moral incentive"[4] but an honest individual's willingness to report malpractice may be compromised by a number of considerations: erroneous belief that a practice is ethical if commonplace; perceived disloyalty to friends; fear that a reported malpractice will not be effectively corrected; fear of career-destroying reprisal.[5]

The Panel has two recommendations:

- The FCA should ensure all regulated firms have an effective whistleblowing policy in place, one not diluted by a culture of bullying or intimidation or limited (in the case of former employees) by the wording of compromise agreements. Supervisory and enforcement action should be taken against non-compliant firms.

- The FCA should carefully examine the case for the introduction of monetary rewards for whistleblowers, subject to effective screening to weed out fallacious allegations. Where relevant, the reward could be linked to the proceeds of revealed financial crime or fines obtained as a result of prosecution, thus emulating American practice.

[4] Evidence by Mr Wheatley taken by the Parliamentary Commission on Banking Standards, 27th February 2013.

[5] Even if the provisions of the 1998 Act succeed in protecting the whistleblower from immediate reprisals by the accused firm, the individual's career may be undermined by resulting industry-wide reluctance to hire. Research suggests that fears of reprisal and of ineffectual remedial response are key reasons that inhibit potential whistleblowers (see, for example, Smith, R. (2010), "The Role of Whistle-Blowing in Governing Well: Evidence from the Australian Public Sector", The American Review of Public Administration, 40(6), 704-721).

The FCA could usefully learn from the practice of competition regulators. For instance, the Office of Fair Trading incentivises whistleblowing by offering rewards of up to £100,000 to companies and individuals reporting cartel activity that leads to fines or criminal prosecution. Moreover, the first company or individual to blow the whistle on a cartel may be eligible for immunity from prosecution. We believe these two incentives could be adopted and adapted for financial services. Monetary incentives can be linked to any fines eventually obtained as a result of an FSA action (e.g.10% to 20% of the fine obtained). We would like the FCA seriously to consider and consult on these two specific incentives, especially in light of its new responsibility to promote effective competition. Finally, the advent of the new FCA provides a good opportunity for the FCA to re-launch its whistleblowing reporting telephone number and its policy.

Enforcement

The Panel has long called for increased transparency in the area of enforcement. One example is our call for the earlier publication of 'warning notices' which marks the beginning of a disciplinary process against a bank, particularly as few cases fail beyond this point. It remains the Panel's view that consumers have the right to know about the alleged shortcomings of the firms with whom they deal at the earliest opportunity, so that they can protect themselves and be vigilant against unfair behaviour on the part of the firms. We advocated that making this information public at an earlier point could also encourage firms to work with the FCA to achieve a speedy resolution to enforcement proceedings, in order to minimise reputational risk. To date, the FSA has only been able to publish decision notices and final notices.

However, the new FCA now has powers to publish information about the matters to which warning notices relate, as it considers appropriate pursuant to section 391(1)(c) of FSMA. This measure aims to bring "greater and earlier transparency" to the regulator's enforcement process which we believe could help consumers make more informed decisions. The legislation imposes restrictions on the types of cases where publication can occur and the details that may be released. Also, the FCA will not publish information where it can be shown that publication would be unfair to the firm or individual to whom it relates. We urge the FCA to limit its interpretation of 'fairness' in this respect and be clear about what fairness may mean in this particular context.

We support the FCA's proposals to publish the cost of investigations and the average length of investigations. We believe that these initiatives have the potential to drive improvements in the FCA's own efficiency. This type of information could also form part of the firm's 'Regulatory History' report which we suggest publishing under the section "Going beyond the ideas in the Transparency Paper" below. We do, however, question the wisdom of publishing enforcement resources by sector given this may provide valuable insight to less scrupulous firms.

Redress and complaint data

The difference between firms with regards to complaints handling can be significant and publishing complaints data enables the FCA to better achieve its statutory objectives by encouraging firms to improve their performance. Also, the Panel believes that a robust complaints procedure enhances compliance, fosters trust, and when effective, can provide important market intelligence which can be used to improve services, ward off impending problems, and inform consumer choice. Therefore, the Panel welcomes the FCA's proposals for greater transparency in this area; specifically we support the proposals to publish information about the redress payments made to consumers, including the formula and the criteria the FCA applies. We also support proposals which will see the FCA publish more information about the settlement process. We note that the FCA envisages some difficulty in publishing payment data, stating that although it could use section 165 of FSMA to require firms to provide data on redress paid, the information it receives would be regarded as confidential under section 348, and so the

FCA would need firms' permission to publish. In our view a more effective way of achieving the required result would be for the FCA to use its rule making powers to require firms to publish this information which the FCA could then use, as it did when it required firms to publish complaint data, as noted above.

The Consumer Panel has long called for better contextualisation of complaints data, and so we welcome the proposal to force firms to provide more context around published complaints data to improve understanding of what the data shows. There is a real need to provide context in a way which does not make the final result difficult to comprehend. One area where we feel that the current level of context could be improved is reporting by brand. Under the current arrangements when publishing complaint data firms will list the brands covered but will not be required to list complaints by brand. We believe it would be advantageous for consumers to have details of complaints by brand since, despite having the same parent company, brands often have separate management and are regarded separately by customers. For consumers to make effective use of the information that the FCA publishes, it needs to reflect their perceptions of financial products, rather than the firm's organisational reporting structures.

There are other areas where we believe the FSA could improve the way it presents complaints data. For example, at present complaints data is only published for firms that receive 500 or more complaints in the relevant reporting period. We understand the case for publicising data on high profile household name firms, but believe that in setting the threshold so high the FSA has overlooked the importance of complaints to smaller, local or niche providers, which may be lower in volume but could affect more vulnerable consumers. For instance, some IFA firms might have significant numbers of complaints relating to their overall client base but fall short of the 500 threshold. Since all authorised firms are required to maintain a record of complaints we do not see that the costs involved in publication would be unreasonable.

Again this information could form part of the 'Regulatory History' report we suggest under the section "Going beyond the ideas in the Transparency Paper" below.

Greater product disclosure and product performance

The Consumer Panel supports the FCA's proposal for greater transparency, firm disclosure, and product performance, particularly in the annuity market.

We agree with the FCA's assessment of the current constraints faced by consumers in the annuity market. Indeed we have drawn the regulator's attention to these precise issues in the past. We also agree that the new FCA, with a wider remit which includes a competition operational objective has a duty to ensure that the market operates more effectively so that consumer detriment is reduced and that the market is competitive.

It cannot be emphasised enough that purchasing an annuity is an important decision for consumers reaching retirement and one that cannot usually be put right if the wrong decision is made. One of our main concerns has been consumers' inability to engage effectively with the annuity purchasing process, and the consequences of this lack of engagement, which can result in the purchase of the wrong type of annuity at an uncompetitive rate. We would therefore like to see appropriate and effective regulatory requirements in place. In our view this must include an assessment of how the Open Market Option operates, the barriers to shopping around, and perhaps more importantly appropriately targeted intervention to ensure that this market operates more effectively.

The Panel is especially concerned that consumers who do try to shop around will be confronted with understanding the differences between full advice and non-advice. Particularly when non-advise sites and service may look like a full advised service to a consumer, yet, the purchase of an annuity on a non-advice basis could mean the consumer paying as much or more than if he or she sought full advice. The issue here goes beyond transparency where charges are concerned, non-advice, as execution only,

is not underpinned by the essential consumer protection mechanism i.e there is no recourse to the regulatory redress channels, which represent the hallmark of full advice. Therefore optimal transparency around the type of advice consumers purchase and the consequences of those choices is crucially important.

Publication of claims data for insurance products

The Panel supports the FCA's proposal that firms should publish claims data on insurance products. We agree that this could work well for "add-on and non-core products such as warranty, home emergency, identity theft, and mobile phone insurance". We also believe that publishing information such as claims per customer, successful claims percentage following initial contact, premiums vs. payout ratios and the rate of claims reduced or refused for non-disclosure may make the market work better for consumers.

Like the FCA we believe that greater information disclosure may lead to consumers focusing not just on price but product value and quality. Claims data that reveals poor performance may incentivise firms to improve behaviour to avoid negative publicity.

However, publishing claims data in a way that consumers will understand and pay attention to is the challenge in this area. We are therefore of the view that greater focus on the quality, rather than the amount, of information available would help consumers to ensure that the insurance product they are buying is suitable for their needs.

Given the proliferation of comparison websites we would also like the FCA to assess how it can apply improved transparency in this area, for instance around website owners, sponsors and incentives.

Going beyond the ideas in the Transparency Paper

The Panel believes that there are other areas where the FCA can encourage transparency and be a more transparent regulator. We list these below:

Publish a Regulatory History Report about firms: The Panel is of the view that the information consumers need to make an informed decision may often be available somewhere but is rarely easily accessible or conveniently located in one place. We believe the collation and presentation of a regulatory history report would greatly improve the way in which consumers engage and use information already in the public domain. In addition, an easily accessible history of regulatory behaviour could put extra direct pressure on boards to improve a firm's reputation.

To this end we recommend that the FCA should facilitate, on its website, a section[6] where consumers and other interested parties can find out about the regulatory history of a firm or individual. This should include findings by FOS, contextualised complaints data, prosecutions both successful and otherwise, sanctions, closures[7] etc. As far as possible, the record of poor practice should have a money value attached – for example, the money amount of compensation paid - to enable comparison across firms and over time. It would be important to have a clear chronology to enable readers to discount, if they were so minded, those penalties that occurred in the distant past.[8] We note that there is already precedent for the collation and presentation of this type of information by regulators such as the Solicitors Regulation Authority.

[6] Possibly the FCA register

[7] Again we note that the information we refer to are mostly in the public domain. We do not believe it would require a disproportionate cost to collate, even if in the interim this requires links to be provided to other sites.

[8] Mr Roger McCormick, director of the Sustainable Finance Project at the London School of Economics similarly suggests a "Sustainability Report": "What Makes a Bank a "Sustainable Bank"?", McCormick, R., (2012), *Law and Economics Yearly Review*, Vol. 1., Part1

Publication of Governance Documents: There is more scope for the FSA to be transparent with regards to publishing governance information. It is our view that the FCA should release board agendas prior to the meetings taking place. Moreover, more extensive minutes should be available after these meetings. The current style of minutes does little to improve understanding of the Board's priorities. Consideration should also be given to the publication of a list of Internal Audits, and full publication of the related report if thought in the public interest.

Periodic major report on Conduct Regulation Benefits and Costs
The Panel recommends that, subject to resources, the FCA should produce periodically a comprehensive, high visibility, report that seeks to quantify the benefits as well as the costs of financial conduct regulation seen in the round. Such a report could be seen as supplementing National Audit Office investigative reports and would provide the FCA with an analytical basis to challenge industry investigations that focus exclusively on excessive regulatory costs. Consumers have a clear interest in less costly regulation, but there exist a danger as memories of current scandals dim that too little weight will be placed on the associated regulatory benefits. The 2006 publication "The Cost of Regulation Study" commissioned jointly by the FSA and Financial Services Practitioner Panel provides an egregious example of the tunnel vision and regulatory capture that the Panel believes should be steadfastly avoided.[9]

Cost and Benefit Analysis: To help spur improvements in the quality of analysis, and as a further guard against regulatory capture, the FCA should annually subject a small random sample of its cost benefit analyses to rigorous peer review. The value of such an approach was demonstrated by the Panel's commissioning of peer reviews of the CBA[10] in the 2011 Mortgage Market Review Consultation Paper.

Log of Senior Management Meetings: We believe that the FCA's leadership team can do more to be transparent about its stakeholder meetings. This information can then be used by interested parties to gauge if senior managers are striking the right balance between engaging with its various stakeholders. We recommend a quarterly publication of meetings held with external parties by senior management of the FCA and do not imagine that this would prove too difficult to administer.

Campaign on transparent charges: We would like to see an energetic campaign by the FCA to improve transparency around costs and charges. The Panel has long argued that the cost of financial services is often opaque, multi-layered and excessive. We note that although one of the consequences of the Retail Distribution Review will be increased clarity around the cost of services, we believe that there is considerable scope for more regulatory activities around clarity of charges, so that consumers can do more to compare prices and make informed decision on the type of advice they need.

Conclusion

The Consumer Panel appreciates the FCA's efforts to commit to being a more transparent regulator, and to holding the financial service sector up to higher standards of transparency. Nevertheless, as highlighted above, we believe the FCA can and should do more to truly commit to the principle of transparency and achieve real and tangible benefit for consumers. Only by setting itself higher standards can the FCA expect the industry to follow suit and rebuild the public's trust. We urge the regulator not to lose sight of the real detriment caused to consumers when markets work in opaque and mysterious ways.

[9] Deloitte (2006), "The Cost of Regulation Study". The Practitioner Panel qualified the findings by noting the addition of the FSA's "highly costly and time intensive" Treating Customers Fairly Initiative, which now lies at the heart of FCA philosophy.

[10] Peer Review of Part of Cost Benefit Analysis in Mortgage Market Review. A Report for the FSA Consumer Panel.

Finally, we hope that the FCA will place sufficient emphasis on the implementation of this change agenda, especially at a time when the regulator is stretched by the number and significance of other initiatives. If implementation takes the form of statements of principles alone then the desired outcomes will not be achieved. To this end we urge the FCA to focus on a robust change programme which will ensure that the letter and the spirit of these proposals are fully realised.

GROUP RISK DEVELOPMENT

Website:
www.grouprisk.org.uk

Email:
info@grouprisk.org.uk

CarolAnne Macdonald
Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

26 April 2013

Dear Madam,

Transparency Discussion Paper DP13/1

On behalf of Group Risk Development (GRiD), I am responding to the Financial Conduct Authority's Transparency Discussion Paper DP13/1.

Founded in 1998, GRiD encourages awareness and uptake of corporate sponsored group risk protection benefits – group income protection, group life insurance and group critical illness cover – on behalf of its members, which include providers, reinsurers and advisers.

Between them, GRiD members deal with the placing and insurance of the vast majority of cover in the group risk market and our membership has a collective wealth of experience built over years of operating in the group risk protection market. Our response to this discussion paper draws on this expertise and focuses on the areas where we are most able to make a contribution.

Our response has been compiled from a working group drawn from a representative sample of our membership and reflects our combined views, although it may not represent the views of each member company.

We are happy for our response to be made public and also to discuss any of the issues we have highlighted.

The discussion paper makes the point that transparency may be an effective tool in certain insurance markets but not work well in others and that the FCA's initial thinking is that this could work well for add-ons and non-core products such as warranty, home emergency, identity theft and mobile phone insurance. By contrast, long-term products are harder to compare and there is less relevance for commercial contracts than for retail products.

Perhaps add-ons, non-core and other types of products which are easy to compare could be used as a pilot. The FCA could then learn the lessons from such a pilot and consider whether to extend and, if so, for what and how.

We recognise that there could be a part for the group risk market to play in providing understanding and transparency of the claims process in due course. At the appropriate time, we would suggest that a work-stream specifically on transparency of group risk claims would be essential to ensure that disclosure focuses on aspects which are of relevance. We would be happy to lead on that.

Overview of Group Risk Protection Insurance

Employers will often promise certain benefits (e.g. occupational sick pay) to employees as part of the contract of employment. Rather than bear all of this risk themselves, many employers choose to take out group risk insurance policies to cover some or all of their liability.

A brief description of group risk protection insurance products (group life assurance, group income protection and group critical illness) is set out below:

- **Group life assurance -** is a policy taken out by an employer to provide a lump sum benefit and/or a spouse's/dependants' pension payable on the death of an employee whilst in service. While some group life benefits are provided as part of an occupational pension scheme others will be provided under 'stand-alone' schemes without any link to a pension scheme.

  48,068 schemes cover 8.39 million people for death benefits valued at £980 billion (40% of all insured UK life cover)[1]. This represents 28% of the working age population[2].

  The group risk industry paid out 7,843 death claims in 2011, valued at £786 million. The average claim was £94,889.[3]

- **Group income protection -** is a policy taken out by an employer to cover their promise to provide sick pay to employees if illness or injury prevents them from working for a prolonged period. It can also replace lost income where an employee has to take a part-time or lower-paid position because of illness or injury.

  If the employee cannot work due to illness or injury the policy will pay a benefit of a proportion of their salary. The benefit is paid to the employer and then passed on to the employee through the PAYE system. The benefit level is designed to ensure that the employee will be able to maintain a reasonable standard of living but still has a financial incentive to return to work.

[1] Swiss Re "Group Watch 2013"
[2] 29.73 million people in employment aged 16 and over - ONS Labour Market Statistics, March 2013
[3] GRiD 2012 Claims Survey

Insurers will also work with the employee and their employer to get them back to work as soon as it is appropriate – e.g. by providing access to physiotherapy or Cognitive Behavioural Therapy sessions. Insurers have expertise in this area and can provide access to excellent support services which may not otherwise be available to the employer and employee.

17,224 schemes cover 1.96 million people for annual income protection benefits totalling £56.8 billion (75% of all insured UK income protection cover)[4].

However, this only represents 6.6% of the working age population[5] so the vast majority of workers still do not have this valuable protection through their employer.

The group risk industry paid out £297 million in annual income protection benefits to a total of 14,277 families during 2011, thus saving the State considerable burden, both before and after State Pension Age. The average claim was £20,802 pa.[6]

- **Group Critical Illness –** is a policy taken out by an employer to provide a tax free lump sum to an employee on the diagnosis of one of a defined list of serious conditions or on undergoing one of a defined list of surgical procedures. There is usually a choice of base or core cover (which insures against some of the most serious critical illnesses) or base/core plus additional cover (which insures against a number of additional serious conditions too).

  The benefit is paid once the employee has survived for a specified period (14, 28 or 30 days). Most insurers will also offer the option of a benefit for a covered employee who is assessed as being permanently and totally disabled but not otherwise able to claim for one of the conditions covered by the policy, in which case, the employee usually needs to have been permanently and totally disabled for more than 6 months.

  Where cover is paid for by the employer, corporation tax relief is given on the premiums, the employer is liable for Class 1A National Insurance contributions on the premiums and premiums are treated as a P11D benefit for employees.

[4] Swiss Re "Group Watch 2013"
[5] 29.73 million people in employment aged 16 and over - ONS Labour Market Statistics, March 2013
[6] GRiD 2012 Claims Survey

2,457 schemes cover 339,073 people for critical illness benefits totalling £23.3 billion.[7] (Please note that this is still a relatively new product when compared with group life and group income protection so the coverage is not yet as extensive.)

The group risk industry paid out £42 million in critical illness benefits to a total of 661 families during 2011. The average claim was £63,774.[8]

It's important to recognise that employers are not obliged to provide any of these benefits and those that do therefore make a sizeable contribution towards protecting the UK population against the financial devastation of loss of earnings as a result of death, illness, accident or disability.

It is also important to recognise that employer sponsored group life assurance, group income protection and group critical illness gives employees access to protection at no cost and that, generally, a generous basic level of cover is given to all members of a group policy without the need to provide medical evidence and irrespective of their state of health. This is extremely advantageous – not only for those who might otherwise not be able to afford to make their own provision but also for those who have health conditions that might otherwise mean that they are either declined or charged extra premiums for cover under an individual policy.

The group risk market plays a significant role in supporting employers to provide protection products through the workplace. GRiD would therefore welcome the opportunity to provide any assistance required and to discuss our response in more detail. If this would be helpful, please contact me in the first instance.

Yours faithfully

[redacted]
Spokesperson
Group Risk Development (GRiD)

[redacted]

[7] Swiss Re "Group Watch 2013"
[8] GRiD 2012 Claims Survey

GROUP RISK DEVELOPMENT

Website:
www.grouprisk.org.uk

Email:
info@grouprisk.org.uk

GRiD's Response to the Financial Conduct Authority's Transparency Discussion Paper DP13/1

General

GRiD is not responding specifically to every point and question but would like to respond in detail to the points raised in Chapter 5 of the discussion paper relating to the publication of claims data on insurance products.

Chapter 5: Information that we could require firms to release – Publication of claims data on insurance products

GRiD is supportive in principle to the publication of relevant claims data on insurance products and gathered the first pan-industry Group Risk claims data in 2011, covering the years 2009 and 2010. In 2012, GRiD gathered this data for the year 2011 and expects to do this on an annual basis going forward. The press release issued on the results of the 2012 GRiD claims survey can be found by following the link below.

http://www.grouprisk.org.uk/documents/minutes/public/130102%20GRiD%20claims%20survey%20FINAL.pdf

To date, the GRiD claims data published has not included claims paid/declined statistics but we are voluntarily working towards greater transparency in this area. If this is to become a meaningful reality for customers though, it must be as part of a rigorous framework to ensure both credibility and fair comparability.

Paragraph 5.14 of the discussion paper makes the point that transparency may be an effective tool in certain insurance markets but not work well in others. There are a number of factors which impact on the Group Risk market such that transparency may indeed not work as easily in this market as in others (such as retail markets). Some of these factors are set out below.

Commercial Products

Group risk policies are commercial contracts which primarily support employers in meeting their contractual promises and legal obligations to their employees. The employer is generally the policyholder, the employer pays the premiums and claims are made by the employer in respect of their employees. Generally any claim is paid to the employer (or the trustees of the employer's pension scheme in the case of Group Life).

Group Risk policies are generally intermediated (i.e. the policy is taken out through a broker or consultant who is responsible for advising the employer on the design of the benefit structure, who will be covered by the policy, the suitability of the policy and the selection of a provider) so these policies operate through a tripartite relationship between the employer, their adviser and the insurer/provider.

Retail customers do not make the Group Risk purchase so transparency of claims in this market would not influence them particularly. Equally, some employers or trustees who make arrangements may choose to self-insure part or all of the risk. The benefit to the end member arises as a consequence of the contract of employment so, to some extent, whether the risk is insured or not is irrelevant.

It is for this reason that the ABI released pan-industry market statistics for retail life, income protection and critical illness claims for 2011 in December 2012 but did not release similar information for Group Risk protection policies.

The integral employment relationship adds a level of complexity that doesn't exist in the retail market and claim disputes can often be a result of a breakdown in the employment relationship or errors in the exchange of information between a number of parties.

The Employment Relationship

The complexity of the employment relationship is especially pertinent in the case of Group Income Protection, which is used by employers as an integral part of their formal absence management or attendance programme, together with additional support services (which are often provided by Group Income Protection providers for free or at a heavily discounted price).

Both employees and employers get access to a wide range of extra support that can be used on a daily basis – even if a claim is never made. Such support services can include absence management, Employee Assistance Programmes, HR advice, GP help-lines, online health assessments, second opinion services, fast-track access to CBT and physiotherapy, counselling, occupational health and more.

Group Income Protection has therefore evolved beyond a pure insurance product to a rehabilitation and support service underpinned by insurance. The test for a valid Group Income Protection claim is not whether someone is ill/ disabled or not but whether that prevents them from working with reasonable adjustments made by their employer. Group Income Protection providers support employees to help them return to work – often before they become a claims statistic!

Unlike retail policies, there are three parties involved in a claim under a Group Income Protection policy - the employee, the provider and the employer. The employment relationship can be fragile on occasions and one of the challenges we face is how best to capture and report the effect on claims that breakdown of the employment relationship can have since this can result in some reticence towards rehabilitation.

In addition, employers can be forced into making a claim with doubts around the validity of an absence in order to achieve clarity. In such cases, even though one party may have had reason to doubt that the claim was valid, it would currently be recorded (and ultimately reported) as declined.

GRiD is particularly keen that all of these factors are taken into account if the FCA wishes to consider publication of Group Risk claims data and is happy to work towards this with the FCA and other bodies such as the ABI and MAS.

Consistency of Recording

In terms of Group Income Protection particularly, there are difficulties in measuring declined claims on a consistent basis and we continue to work with the ABI and within GRiD in order to achieve this.

Consistency is crucial here and since there is no formal prescribed format for holding data - providers each record absence/notifications/claims using their own systems and categorisations. Because of this, percentage of claims paid data can be distorted by return to work cases, withdrawn cases, goodwill payments and lump sum settlements - as some can be captured as declined. The more we encourage back to work interventions, the more important it is to us as an industry that we capture these in a way that reflects positively rather than negatively.

For example, notification of absences is encouraged at different points (say at week 4, 6 or 8) by different providers. This means that proportionately some will be advised of more absences than others. Since many employees return to work before a claim is formally assessed, if claims are counted from initial contact rather than from receipt of formal claim, proportionately, the percentage of claims paid will be distorted, will not be comparable between providers and lower percentage paid figures will not necessarily be a sign of unwillingness to pay.

For Group Critical Illness there are also differences in the structure of the product (e.g. the use of a pre-existing and related conditions exclusion in order to facilitate relatively high levels of cover without the need to provide medical evidence) compared to the retail market and this will also distort comparisons between the respective markets.

The discussion paper states that "we are mindful that we would only wish to present data that was sufficiently rigorous and where it would not cause unreasonable conclusions to be drawn". We fully endorse this approach and would want to focus on aiding employer understanding.

Data Errors and Eligibility Misunderstandings

The fact that Group Risk policies are commercial contracts leaves additional room for data errors and eligibility misunderstandings that can result in declined claims. Generally, the Group Risk market is relatively accommodating where genuine errors or omissions have occurred. However, some will be declined – perhaps through no fault of the provider.

Good Will or "Without Liability" Payments

Finally, Group Risk providers do make good will and without liability payments and lump sum settlements in situations where an employer has fully engaged with their services within a rehabilitation programme or when an employee's recovery would be aided by severing ties with their employer. Such payments are entirely at the provider's discretion and are generally made in order to support the employer through a difficult situation.

There is a need to capture such payments as positive actions and this again is an area where consistency is vital.

Level of Detail the FCA could require Insurers to Release

GRiD would want to be fully engaged in the process to determine what information the FCA could require Group Risk providers to release. To date, the GRiD pan-industry high level claims data published has included number and value of claims paid by product line (including goodwill and without liability payments and lump sum settlements) and top causes of claims.

We would particularly suggest that Group Risk claims should be counted from receipt of formal claim rather than from "initial contact" (as suggested in the discussion paper) since a great deal of initial contact for Group Income Protection cases is employers seeking advice over a particular situation or initiating early absence intervention and the rehabilitation process, rather than initiating a claim.

We would also make the point that premium to claims ratios can be misinterpreted. Group risk products are long-term arrangements and neither the press nor the customer can be expected to take account of the requirement for providers to make sufficient reserves to enable them to meet all of their potential liabilities.

Conclusion

We agree that, done well, this work could deliver real transparency about the genuine value of products but a league table approach will not be helpful as there are many other value factors to consider when selecting a provider, as well as price and claims paid statistics.

Additionally, for the Group Risk market, there are factors that can distort claims statistics and we recognise the need to work together as an industry to mitigate these distortions and to capture and record claims consistently.

We would therefore be keen to build on the work that we have already undertaken voluntarily to gather pan-industry claims figures and we see a significant role for GRiD in taking this work forward together with the FCA and the ABI. If a separate work-stream on claims transparency for Group Risk products would be useful in due course, we would be happy to lead on this.

Meanwhile, we continue to work with our members and the ABI on this.

Group Risk Development (GRID) April 2013

HISCOX

Hiscox Insurance Company Limited
Response to FSA Discussion Paper (DP13/01) Transparency

Hiscox Insurance Company Limited

Hiscox is an international specialist insurer and reinsurer. We provide market leading products and excellent service to individuals and businesses with unusual and often complicated insurance needs. A FTSE 250 company, we can trace our roots in the Lloyd"s market to 1901. We employ over 1,400 highly professional staff, have offices in 11 countries and customers all over the world.

In 2012 the Hiscox Group controlled premium income of £1,792 million, had a combined ratio of 85.5% and a return on equity of 16.9%. Hiscox Insurance Company Ltd is an important part of the Group, insuring over 150,000 small businesses and over 65,000 higher value households across the UK.

We have a reputation for quality and integrity and are most proud of our exceptional claims service.

Executive summary

Hiscox welcomes the opportunity to respond to DP13/01 „*Transparency'* and supports the FCA"s objective to enable consumers to make sound and suitable decisions when choosing which product is appropriate for their needs. However, we feel strongly that publishing certain data, in particular claims statistics, would not result in better outcomes for consumers because:

1. The data would not be easily comparable and would therefore be more likely to mislead consumers.
2. By placing the focus on a general insurance product „paying-out", this will feed the incorrect belief that consumers are entitled to a pay out, regardless of fortuity or loss. Historical data is not the only way that the benefits/quality of an insurance policy can be assessed.
3. There are likely to be unintended negative consequences on the overall market as the focus will be on statistics rather than demonstrating the right behaviours.

The change in firms" behaviours, when dealing with complaints, is credited to the publication of complaints data. We feel that this is actually due to the overall increased regulatory focus on complaints handling, including enforcement action and thematic reviews. Hiscox Insurance Company supports transparency in the general insurance industry. In fact we continue to publish our complaints numbers even though they currently fall below the required threshold – despite our view that this is of little benefit to consumers for the reasons given in this response paper.

It is typical human nature to compartmentalise information. Consumers will tend to see data as good or bad and if it does not appear to be either, it will have little value. Our overall concern is that if claims information is provided in a manner that is over simplified (i.e. without the appropriate context) the information will be misleading.

Hiscox
1 Great St Helen"s
London EC3A 6HX

T +44 (0)20 7448 6000
F +44 (0)20 7448 6900
E enquiry@hiscox.com
www.hiscox.com

HISCOX

General comments

Chapter 5

Publication of claims data on insurance products

In order to make a judgement on the information provided, consumers will need some kind of a baseline. We feel that there is no way to set a „baseline" without causing customer detriment and a negative impact on the market.

Some insurance products do not pay out as customers expect

Part of the value of an insurance policy is that it enables a policyholder to mitigate the risk of a potential financial loss, whether or not the loss actually occurs. For example, taking certain business risks knowing that a policy will respond should a certain event occur. When assessing claims information, low claims are likely to be perceived negatively by consumers, whereas, a high payout ratio would be seen to demonstrate „value" to the customer. We are concerned that this would further feed the incorrect belief that customers are entitled to a payout, regardless of fortuity or actual loss.

Customers purchase general insurance products to transfer their risk in the event of a contingent, uncertain loss. PPI was mis-sold to customer groups who did not meet the eligibility criteria or had no need for the product itself. Therefore, they would have been *unable to claim* as distinct from a policy under which an insured event had not occurred. The FCA's focus needs to be on educating the customer to enable them to make informed decisions based on their particular needs. In the same way that a customer would not be encouraged to judge an investment product based solely on historical returns but encouraged to understand the risk of capital loss, a customer needs to understand the degree of risk covered by a policy. There is also a danger of encouraging the view that general insurance policies should at some point pay out, as this has the potential to encourage exaggerated or fraudulent claims.

Providing 'relevant information' in a way that can be 'clearly understood'

Claims information will only ever have any value to consumers if it's presented in a comprehensive and comparable way – for example, by presenting the same product data within a similar target market. This may be possible for products like mobile phone insurance or warranty, but will be difficult where firms are innovating products and comparable products are not available. Using household insurance as an example, there will still be difficulties in easily and clearly comparing this data. The types of coverage vary between household products and publishing this data could cause a customer to choose a product that does not meet their needs. For example, if you looked at the number of claims only, a firm that is quick to pay low value claims may appear more positively even if they pay fewer high value claims than other firms.

The FCA will also need to consider what period of time the data published would represent as one year of data can so easily be distorted by events that may impact some insurers or some aspects of cover.

The FCA will need to be clear as to what they want the published information to demonstrate about firms, what firm behaviours they wish to drive, and test the requirements thoroughly to ensure the intended outcomes are being achieved. The figure which the FCA chooses to focus on as a measure of good conduct is inevitably where firms will strive to be viewed favourably. This could also have a negative prudential impact on the market.

Publishing certain claims data could encourage firms to enter into new markets where they have little or no experience/knowledge because low claims ratios at other specialist firms appear to be attractive. Specialist firms will have been developing their niche product over long periods of time to meet the needs of particular customer markets.

For clarity, we have assumed for the purposes of this discussion paper that the scope of the claims data the FCA is proposing to require firms to provide is limited to "consumers" (i.e. those purchasing outside of their trade and profession). A wider scope that includes larger commercial insurances creates further complexities, such as distribution methods, and the potential for further customer misunderstanding. For example, the FCA will need to consider a customer's understanding of the product and the risks involved (including catastrophe or terrorism insurance cover).

Hiscox
1 Great St Helen's
London EC3A 6HX

T +44 (0)20 7448 6000
F +44 (0)20 7448 6900
E enquiry@hiscox.com
www.hiscox.com

HISCOX

Contextualisation of complaints data

The FCA states that it wishes to „build on the success of publishing complaints data", crediting the increased focus on the quality of complaint handling with the publishing of this data. While we agree that publishing more contextualised data may be beneficial, we believe that firms" increased focus on complaint handling has been as a result of the FSA"s focus in supervisory visits, its TCF work, and recently the complaint handling related enforcement action. There is a risk that firms are now focussing more on the metrics, which could mean they are dealing with complaints with excessive haste or are producing artificially low complaint numbers, rather than acting in the best interests of the individual consumer. Where a broker is involved in a transaction, it is possible they are dealing with a complaint and including it in their own statistics rather than reporting back to the insurer. The existing published information also risks misleading consumers as described in the section above.

Table 1 below shows actual complaint data published by firms for the first half of 2012. We believe the data being published could lead to incorrect conclusions or at best be irrelevant. In the sample shown below in Table 1, RSA had the highest complaint volumes in the first half of 2012. This could be considered as a bad thing from a customer perspective, when in fact, RSA could have a superior complaint handling process which is better at identifying complaints or they may actually be inviting complaints by proactively collecting customer feedback (for example, through surveys). From the data published the customer would also not be able to tell if RSA has a much larger book of business than the other firms, or whether the complaints related to one issue such as PPI. Even if complaints information was broken down into more detail, for example by complaints per 1000 policies sold, there is the question of whether fewer complaints make a firm a better insurer or the product more suitable.

	2012 H1 (01/01/12 - 30/06/12)			
Firm	Opened	Closed	Closed in 8 weeks	Upheld by firm
Hiscox	**373**	**398**	**98%**	**44%**
Chubb	Under Threshold			
Zurich Insurance PLC	2,367	2,503	88%	75%
Allianz Insurance Plc	4,158	4,164	95%	45%
AXA (Including John Lewis and M&S)	4,723	4,442	91%	36%
NFU	2,128	2,163	87%	54%
RSA (Including More Th>n)	7,616	7,155	88%	55%

Table 1 *Source -* ***www.fsa.gov.uk***

We believe that the Financial Ombudsman Service should continue to publish information, including case studies and outcomes, that they feel will better inform consumers. They could work with the FCA to look at how the information they publish could be of more value to consumers and allow them to make more informed choices.

Hiscox Insurance Company Ltd

From: [redacted]
To: transparencyDP@fsa.gov.uk
Subject: DP13/1 Transparency - comments
Date: 04 March 2013 17:01:45

Dear Ms Macdonald,

I write now in my personal capacity; the views below do not represent those of my employer.

I welcome today's DP13/1 on Transparency, notably the sections on whistleblowing and enforcement. However, I would respectfully suggest that the regulator may be missing a trick or two. In order to encourage firms, and especially their senior management, to take more notice of regulation, ie, to raise the cost to them of breaches of the FSA and, soon, the FCA rulebook, why not:

1. Require that firms enforced against write to every shareholder explaining the nature of the breach(es) and how they have dealt with it(them) and propose to prevent any repeat in the future; this communication to include a copy of the FSA enforcement notice. In the case of the shareholders who really count, ie, the institutional funds, the communication should be addressed to each member of the board of trustees or other body responsible for oversight of the fund as well as to the institutional fund managers. In order to maximise the effect, the firm or these parties should be required to send copies to all the underlying owners, eg, in the case of a pension fund, all the retirees and those who are currently contributing to the fund should also receive the letter and enforcement notice material.

2. Require firms to set out the same information as in 1. above on the face of the annual report and accounts, ie, the failing(s) and penalty(ies) should be spelt out in the chairman's report to shareholders, together with full details of the remediation costs (including not only direct costs, eg, section 166 skilled person work, but also hours of management time spent on the issue). These charges should also appear, clearly itemised, in the financial statements so that they can be easily identified by users, especially City analysts, who may then mention them in their research notes, which are read by market players, like the institutions fund managers – the people who really matter. Most of the time, investment managers pay negligible attention to compliance failings so this would be one way to gain their attention;

3. Impose forward-looking penalties: firms are often able to excuse/blame misconduct on 'past behaviour', which 'is all behind us' and 'it won't happen again'... until it all too often does albeit in a slightly different form. One effective way of concentrating minds on a continuing basis is to take a leaf out of the Japanese FSA's book – it has made use of temporary bans that stop a firm doing business in specific products where a breach has occurred; this has the advantage of upsetting forward budgeting and profit forecasting so is much more disruptive and effective a punishment than a negotiated fine.

I look forward to reading the final response to the DP.

Yours sincerely

Financial Conduct Authority

Response to FSA Discussion Paper DP13/1 – Transparency

Name: [redacted]

Position:

Company:

Capacity: Individual

Other Capacity:

Q1. Publishing more about whistleblowing.

Q1.a What information do you think would be helpful?

Happy with the ideas being considering by the FSA

Q1.b What do you think would be the potential benefits?

Improve climate for whistle blowers

Q1.c What do you think are the potential drawbacks

None

Q2. Publishing more about our enforcement activities.

Q2.a To what extent do you think this would be helpful?

Good idea

Q2.b What additional information about enforcement activities should be published?

As much as legal constraints allow

Q2.c What do you think are the potential benefits?

Stop problems in the wider industry earlier

Q2.d What do you think are the potential drawbacks?

I believe the potential risks are an acceptable cost

Publishing more supervisory activities and outcomes.

Q3.a To what extent do you think this would be helpful?

Very helpful

Q3.b What additional information about supervisory activities should be published?

S166 work (why/what/results).

Statements made by companies where they indicate they do not have issues in respect of potential systemic problems in the industry highlighted by the FSA/FCA.

Q3.c What do you think are the potential benefits?

Help create correct culture

Q3.d What do you think are the potential drawbacks?

Benefits outweigh potential risks

Q4. Publishing more about our authorisations work.

Q4.a To what extent do you think this would be helpful?

Good idea

Q4.b Is there any other information you would like us to publish in relation to the authorisations process? Why?

No

Q5. Publishing more about thematic work.

Q5.a Do you think this would be helpful?

Very helpful

Q5.b What sort of information would you expect to see?

What was the trigger. What the industry are doing or not doing and why.

Q5.c How would you like this information to be made available?

Via website

Q5.d What are the potential drawbacks?

None

Q6. Publishing more about redress.

Q6.a Do you think this would be helpful?

Good idea

Q6.b What sort of information would you expect to see?

Information based on average person set out in plain English

Q6.c How would you like this information to be made available?

FSA/FCA and company websites

Q6.d What do you think are the benefits?

Help improve decision making

Q6.e What do you think are the drawbacks?

None

Q6.f Do you think this would be helpful?

Yes

Q7. Transparency and the annuity market.

Q7.a Do you believe the FCA has a role to play in increasing transparency in the annuity market?

Yes

Q7.b What is the best way the FCA can improve transparency into the annuity market?

Clear data by company on OMO take up and comparable data on standard annuity rates in the industry

Q7.c Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

None sufficient to preclude action

Q8. Publication of claims data for insurance products

Q8.a To what extent do you think this would be helpful?

Very helpful

Q8.b What information about claims data would be useful to publish?

A simple upheld/decline ratio by product type to allow easy comparison

Q8.c What do you consider are the benefits of this idea?

Improve market standards

Q8.d What do you consider are the drawbacks?

None

Q9. Mandating contextualisation of complaints data

Q9.a To what extent do you think this would be helpful?

Essential

Q9.b Do you have any suggestions about what matrix we should mandate?

Figures have to be meaningful, so dependant on the company and product the figures should provide useful benchmarks, e.g. percentage of claims, surrenders or maturities as applicable

Q9.c Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

We need to see more meaningful publication of root cause (not consequence) analysis of both upheld or declined complaints. We need to see clear statements from companies that they have no issues or actions they are taking as applicable

Q10. Please tell us your ideas about how the FCA could be more transparent

Nothing to add to comments above

Q11. Please tell us your ideas about information the FCA could release about individuals, firms and markets

Nothing to add to comments above

Q12. Please tell us your ideas about information you think the FCA could require firms to release

Companies need to ensure that products deliver as promised. We need to see clear unambiguous statements from companies that products are delivering as promised or if not what proactive action they are taking to address the problem

ILAG

Investment & Life Assurance Group
The Practitioner Voice

CarolAnne Macdonald
Policy, Risk and Research Division
FSA
25 The North Colonnade
Canary Wharf
EC2V 7HQ

26 April 2013

Dear CarolAnne,

DP13/01 Transparency

ILAG is a trade body representing members from the Life Assurance and Wealth Management Industries.

ILAG members share and develop their practical experiences and expertise, applying this practitioner knowledge to the development of their businesses, both individually and collectively, for the benefit of members and their customers.

A list of ILAG members is at the end of this submission.

Overview

We are pleased to have the opportunity to respond to this Discussion Paper.

Although this submission is focussed on Chapter 5 we would like to make a general point that ILAG believes that transparency and disclosure of relevant information will enable the regulator to take a consistent approach to regulation and enforcement.

Insurers do want to publish relevant claims statistics and to promote the value that they, as an industry, are making to society. A lot of work has been carried out in the pure protection area to improve the claims journey for customers so that genuine claims are paid in a quick and efficient manner.

Despite the efforts of the Iindustry to make application forms clearer and easier to complete, we cannot avoid the instances where individuals continue to provide incomplete or inaccurate information on which the risk being presented is assessed. As a result, there will always be a number of claims that are declined.

If all claims were to be accepted, insurance premium rates would need to increase considerably to accommodate non-disclosure. The Iindustry also needs to guard against instances of fraud to protect the vast majority of honest policyholders.

Claims can be declined for a variety of genuine and valid reasons and we are concerned that declinature rates are portrayed in the right way that is fair to individual firms, promotes good insurer behaviour and TCF principles and also encourages the correct purchasing decisions

Investment & Life Assurance Group Limited. Registered in England and Wales: company no 06295782
Registered office: Grant Thornton House, Kettering Parkway, Kettering NN15 6XR.
Correspondence address: Nightingales, Queens Road, Princes Risborough HP27 0JR

by consumers.

Our responses to the section in Chapter 5 on the publication of claims data on insurance products are attached. We have looked at the questions from a protection viewpoint only.

We would welcome the opportunity to enter into discussion or further debate with the FCA in order to better understand the reasons behind the paper in order to reach a solution that achieves the best result for all parties involved.

Yours sincerely

[redacted]
Administration Team

Investment & Life Assurance Group Limited. Registered in England and Wales: company no 06295782
Registered office: Grant Thornton House, Kettering Parkway, Kettering NN15 6XR.
Correspondence address: Nightingales, Queens Road, Princes Risborough HP27 0JR

Response to questions – Transparency

Chapter 5 - Publication of claims data on insurance products

1. To what extent do you think this would be helpful?

The benefits of a listing of claim rates by provider could be seen as an aid to consumers if presented clearly and in a structure that is simple for the customer to understand.

There appears to be a sub-text where it is perceived that 'insurers seek to avoid paying out' – this is not an accurate conclusion.

In certain markets where there is evidence of poor provider behaviour resulting in low or very low claims payouts, publishing claim statistics could be beneficial to improve those behaviours or restore consumer confidence.

For other markets, such as pure protection disability products, a lot of background information would need to be provided to understand the different levels of performance. We would be concerned if consumer purchasing decisions were being significantly influenced by claim statistics that were potentially misleading. (See question 2).

Given the range of products which fall within the FCA's remit, we suggest that initially the FCA should work towards disclosure of statistics relating to the general insurance products listed in the Discussion Paper. Wider disclosure could then be considered in the light of the success of such disclosures.

Additionally, the introduction of the Consumer Insurance (Disclosure and Representation) Act 2012 seeks to balance the responsibilities of providers and consumers and further reinforces the need to focus on the customer and to clarify what providers seek from information included on application forms.

2. What information about claims data would be useful to publish?

It would be useful to publish the proportion of claims paid or the total in monetary terms. This could potentially be carried out at firm level but would more easily be provided at industry level. More focus should be placed on the good job that the insurance industry does and to promote the value that it adds in order to restore consumer confidence.

Moreover, there should be comprehensive reasons behind the non-payment of claims by product lines. So, if claims are not being paid then consumers need to be educated into the reasons for this eg non-disclosure or not meeting a CI condition.

If claims are being declined for non-disclosure, fraudulent behaviour, or for reasons linked to product options driven by customer choices, then the insurer should not be penalised by 'appearing lower in the league table'. It is inevitable that claim disputes will attract professional and social media attention and will to some degree shape public perception. If the focus on the payment percentage is translated into a league table to rank providers, this will not take into account, where appropriate, the valid reasons for not achieving a 100% payment rate.

It is vital that customers are appropriately informed of what is, and what is not, covered, as well as understanding their rights and obligations to minimise misunderstanding between the insured and insurer. The industry, including aggregators, has a duty to ensure both sides of this equation are appropriately represented.

All *valid* claims are paid and the reason why this is not 100% for all providers should not be used to suggest 'poor performance'.

Investment & Life Assurance Group Limited. Registered in England and Wales: company no 06295782
Registered office: Grant Thornton House, Kettering Parkway, Kettering NN15 6XR.
Correspondence address: Nightingales, Queens Road, Princes Risborough HP27 0JR

Our view is that primarily the claims statistics should be calculated across all firms within the industry.

Publishing statistics at a firm level may not increase consumer understanding or confidence. Our concern is that the consumer will focus purely on the claim paid statistic for individual firms. An industry wide set of claims statistics, using a set criteria, would be more beneficial for consumers. Publishing statistics at a firm level could then be a matter for competitive marketing unless there are detailed methodologies developed to ensure the figures are consistent and comparable

Time taken to accept and settle a claim payment is a good statistic to provide to consumers. This can manage expectations of consumers but also highlight some of the good work the industry has been doing on making life-only claims speedier.

In addition we would like to consider how the claims statistcis could incorporate cases where insurers have paid claims over and above the terms of the policy. These would be referred to as exgratia but could highlight more lenient approaches the claims payment which may be a more valuable guide for the consumer than the pure claim stats.

3. What do you consider are the benefits of this idea?

The main benefit is that it can help to remove the consumer perception that insurers are avoiding claims. Rather than focus on the claims that are not paid, and the reasons for this are rarely reported and explained, the focus should be on ensuring that consumers are aware of why claims paid rates are not consistently at 100% and that pay- out rates can be in the region of 85/95% for the protection industry. If this is advertised it would demonstrate the value of the policies sold and confirm that insurers do pay out the vast majority of claims.

In addition it may help to remove some of the uncertainty and mistrust from the consumer's perspective and send a message to consumers that insurers are happy to publish these statistics. Provided they are produced on a consistent basis and an appropriate explanation is provided then it may help to educate consumers and stress the importance of disclosure.

A clear summary explaining why some claims are not paid would be useful to consumers.

A further benefit would be the use of a consistent methodology which all firms would use to ensure that the statistics were meaningful. This should help firms explain the reasons for non-payment in a clearer way.

4. What do you consider are the drawbacks?

The underlying perception that the higher claim paying companies are better than the lower paying firms oversimplifies the performance of protection providers in some product areas.

This is especially so with products such as income protection, which are not directly comparable and where there is a degree of choice regarding the way in which each customer's product is structured. Depending on the product and the choices made by the consumer at outset, there is a far higher level of complexity that could mean any simplified approach results in the comparison of 'apples against pears' which misrepresents the real performance.

There are other external factors that can affect the claims data and how these statistics are presented eg FOS decisions. FOS can make small adjustments to claims payments in the area of 'distress and inconvenience' which would be reported as a 'changed outcome' and so would not be reported as a successful claim.

Investment & Life Assurance Group Limited. Registered in England and Wales: company no 06295782
Registered office: Grant Thornton House, Kettering Parkway, Kettering NN15 6XR.
Correspondence address: Nightingales, Queens Road, Princes Risborough HP27 0JR

A primary concern is that claim statistics split by individual firm could be used to develop a rating table which could be wrongly used to inform consumer purchasing decisions. It is possible that company A could decline more claims than company B but have a more lenient/fairer approach to claims payments. There are a number of factors which determine claim payout rates and these must be understood in order to make an informed decision on what the likelihood is of payout is for a particular individual's circumstances.

In addition if a company is new to the industry their volume of claims may be very low and not statistically credible. If they are unlucky and 1 out of 2 cases are declined due to fraud then the claim payout stats would suggest a 50% payout ratio which may not be representative of the claims philosophy of the company.

Moreover, by publishing payout statistics there is the inbuilt assumption that payout rates should be 100%. This is unrealistic but consumers may not realise this.

Ends

Investment & Life Assurance Group Limited. Registered in England and Wales: company no 06295782
Registered office: Grant Thornton House, Kettering Parkway, Kettering NN15 6XR.
Correspondence address: Nightingales, Queens Road, Princes Risborough HP27 0JR

ILAG Membership

Members

Affiliate Members – AFM
Ageas Protect
AXA Wealth
Barnett Waddingham
Canada Life Limited
Capita Life and Pensions Services
CFS
CGI
Defaqto
Deloitte LLP
Ecclesiastical Insurance Group
Ernst & Young
Family Investments
Fil Life Insurance Limited
Friends Life
General Reinsurance (London Branch)
Grant Thornton
Hannover Re UK Life Branch
HCL Insurance BPO Services Limited
HSBC Bank PLC
Hymans Robertson
Just Retirement Limited
KPMG
London & Colonial Assurance PLC
LV=
Mazars
Met Life UK
Metfriendly
MGM Advantage
Milliman
Oxford Actuaries and Consultants plc
Pacific Life Re
Partnership Assurance
Phoenix Group
Pinsent Masons
PricewaterhouseCoopers
Reliance Mutual
RGA
Royal London Group
Sanlam Life & Pensions
SCOR Global UK Limited.
Skandia UK
Suffolk Life
Sun Life Assurance Company of Canada
Swiss Re (UK Branch)
The Children's Mutual
Towers Watson
Unum
Wesleyan Assurance Society
Zurich Assurance Limited

Associate Members

AKG Actuaries and Consultants Ltd
Steve Dixon Consultants and Actuaries
McCurrach Financial Services
NMG Financial Services Consulting Ltd
Squire Sanders
State Street Investor Services

Investment & Life Assurance Group Limited. Registered in England and Wales: company no 06295782
Registered office: Grant Thornton House, Kettering Parkway, Kettering NN15 6XR.
Correspondence address: Nightingales, Queens Road, Princes Risborough HP27 0JR

Institute
and Faculty
of Actuaries

Discussion Paper DP13/1 : Transparency

Financial Conduct Authority

30 April 2013

About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries (IFoA) is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the actuarial society in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the actuarial profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.

Institute and Faculty of Actuaries

Carol Anne Macdonald
Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

30 April 2013

Dear Carol Anne

Discussion Paper DP13/1 Transparency

The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to this discussion paper. This response has been prepared by some of our members who practice in both General Insurance and Life Assurance.

The IFoA believes that transparency is a valuable element for consumers to understand financial products. We agree with the discussion document that a benefit of transparency is to help consumers make more informed choices. However, the limitations on that benefit depend on the disclosure of relevant information that can be clearly understood. To that end, we wish to comment on two specific issues arising out of section 5 of the document.

Improved transparency in the annuity market (Paragraphs 5.6 to 5.10)

The problems that consumers can experience when engaging with the annuity market are well articulated in the text. However, we would question whether the additional disclosures envisaged in these sections would improve the practical operation of the market.

One concern we have identified is how significantly the design of an annuity will affect the amount in payment. It is difficult for consumers to value the inclusion of escalation rates, guarantee periods, returns of capital and differing survivors' annuities. These factors also have material impacts on the expected term of the annuity. Providers will use differing mortality and investment assumptions that may mean it would be unreasonable to extrapolate the relative pricing from a benchmark annuity to the specific circumstances of the individual.

The value for money argument is also dependent on the design of annuity where terms are enhanced due to medical or lifestyle conditions, or even due to postcode. Guarantees are relatively more expensive for those eligible for enhanced annuities, or who live in high mortality areas, than for the healthy. The opposite is true for escalation. Thus, it is important that like-for-like comparisons are made and that these represent the annuity the consumer actually wants/needs.

We believe that to improve the effectiveness of annuity market operations it is key to improve the access to relevant comparison quotes and advice, while applying the lessons of the FCA's work on behavioural economics.

Publication of claims data on insurance products (Paragraphs 5.11 to 5.17)

The aim of the FCA's proposals on product disclosure is to improve consumers' decisions in the market of the value of products (5.4). We agree with the view expressed that if consumers better understood the value of products this could improve consumers' decisions in the market.

However we do not consider that the publication of claims data is necessarily the best way to help consumers understand the value of products. Our main concern is that, in the FCA's own words, unless presentation of any data is "sufficiently rigorous and where it would not cause unreasonable conclusions to be drawn", it might serve to confuse rather than to enlighten.

Likely products for which additional disclosure has been suggested by the FCA as working well are add-on or non-core products such as warranty, home emergency, identity theft, and mobile phone insurance (5.14). Ratios have been suggested in paragraph 5.15 such as claims per customer; successful claims percentage following initial contact; premium vs. payout ratios; reducing/refusing claims due to non-disclosure.

By way of example of the challenges and costs to producing rigorous and meaningful claims data, consider the measure of successful claims percentage following initial contact for the home emergency product. Whether at a market level or a firm level, for this statistic to reliably inform the consumer the measure needs to be consistent across firms. A firm which encourages the consumer to contact it on a help line either by phone or app may record "first contact" quite differently from one that doesn't offer such a facility and have a low ratio, which may be misleading. To compound this, first contact may be with an intermediary firm rather than an insurance firm - i.e. the denominator and numerator reside in different firms.

Similar challenges exist in the above example in the measure of claims per customer, in terms of the definition of a claim. Even in measures of reduction or refusal of claims due to non-disclosure, it is not clear whether the statistic may show prevalence of customer fraud as much as any indication of product performance.

Of the measures cited in the paper, we feel that the most useful would be the premiums versus payout ratios. This is typically measured as loss ratios measuring the claims amounts incurred across the product over a year divided by the corresponding premiums. If used for products which are not expected to be volatile (such as products exposed to weather or others exposed to infrequency large claims), this measure could give an indication of value for money. The definition of this loss ratio would however need to be very clear: measures of claims amounts based on claims paid for example could be inappropriate where claims may be reported late. Here the least inappropriate measure may be the claims incurred booked in a period divided by the premiums "earned", albeit that this measure could understate or overstate the value of a product where a company is growing or reducing its sales of a product. It should be borne in mind, however, that there may be "peace of mind" value in insurance products over and above any such quantified financial value.

The FCA may wish to consider the extent to which focussing efforts on costly data collection with potentially limited benefits should be limited. We consider that there could be as much, if not more benefit in focussing on appropriate educational material for the consumer and clear English explanations for product features and benefits presented in a way that the consumer gains a better understanding of the value of products.

26th April 2013

CarolAnne Macdonald
Policy, Risk and Research Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Response submitted via e-mail

Dear CarolAnne,

Transparency (DP13/1)

Thank you for inviting comments on the FSA discussion paper on Transparency.

The International Underwriting Association of London (IUA) represents international and wholesale insurance and reinsurance companies operating in or through London. It exists to promote and enhance the business environment for its members. The IUA's London Company Market Statistics Report shows that we believe that premium income for the London company market in 2011 was approximately £22.313bn.

General Comments

We fully support a transparent regulatory framework that is accountable and open to scrutiny. A transparent regulatory framework creates credibility, reassures stakeholders and consumers alike and also helps to reduce regulatory uncertainty for firms. We would make the following general comments;

i. We agree that the ideas outlined in the discussion paper would be helpful and believe that they would contribute to greater transparency, increased consumer protection and will give firms a better understanding of regulatory expectations.

ii. We are pleased to see that the regulator recognises that not all disclosure aids transparency, that there is a necessity for disclosure to be reasonable, proportional and legitimate and that it is important to be clear about the net impact of any changes (including the potential for unintended consequences).

iii. We note that the paper outlines publishing more information about enforcement activities including the average length and cost of investigations which we fully support. We would like to see the regulator provide as much information as possible with respect to all regulatory costs and allocation of resources, split by sector and by type of activity. This should include details of the rationale for increased regulatory activity in specific areas, underpinned by evidenced consumer detriment or bad practice by regulated firms. Ultimately, how regulatory costs are managed is of the utmost importance to firms, especially in light of the recent and proposed increases in regulatory fees. It is imperative that the costs of regulation are open to scrutiny, fully justified, proportionate and that the regulatory regime offers a service that is effective, efficient and of benefit to customers and industry alike.

iv. We welcome the ideas put forward to publish more information about supervisory activities and the authorisations process. We would like to see the approach outlined in the paper expanded to other areas, for example, applications/approvals for appointed representatives and the approved person process, and for the information to be readily and easily available from the regulators website.

v. The paper considers that some of this information would be published annually within the performance account. In the discussion paper DP08/3, it concludes that disclosure was most likely to be effective where it was directed at altering firms' behaviour, and with this in mind, we would suggest that more frequent publication of this information would be of greater benefit as any intended impact would be achieved in a timelier manner, keeping customers and stakeholders better informed, reducing the scope for customer detriment and helping to achieve regulators objectives.

Specific Questions

Thematic Reviews

We agree that publishing thematic work on an anonymous aggregated basis would be helpful and provide more information to firms and the general public about the regulators concerns or highlight good practice. Information that would be useful includes;

- Background to the area of thematic work, including a reminder of the relevant rules that are applicable.
- The concerns of the regulator and reasoning behind the concerns.
- The expectations of the regulator and the required outcome.
- Examples of good and poor practice.

Product Disclosure – Publication of claims data on insurance products

With respect to requiring firms to publish desensitised claims data on insurance products, we would agree in principle that for the some areas of the consumer/retail market this would be of benefit to consumers, particularly for the products identified in the discussion paper. However, we would caution against applying this approach to all sectors of the insurance market and note that the regulator acknowledges there are some products that have low claims per customer for valid reasons. With this in mind and considering the London Market caters for many specialist risks (our members are primarily focussed on wholesale non-life (re)insurance), we do not agree that this approach would be appropriate for many areas of the London Market as presentation of claims data may cause unreasonable conclusions to be drawn. In addition, it is difficult to see how meaningful data could be elicited for the subscription market and most notably for niche and reinsurance markets. Finally, claims data is commercially sensitive information, the publication of which could be of detriment to the insurer and insured concerned.

We hope our comments are useful in identifying areas and ideas for greater transparency. We would be pleased to clarify or expand upon our comments as required.

Yours sincerely,

[redacted]
Market Services Executive
International Underwriting Association of London
[redacted]

CarolAnne Macdonald
Policy, Risk and Research Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

19th April 2013

Dear CarolAnne

Re: Discussion paper DP13/1 on transparency

I have pleasure in enclosing The Investor Relations Society's contribution to the above discussion paper.

The Investor Relations Society's mission is to promote best practice in investor relations; to support the professional development of its members; to represent their views to regulatory bodies, the investment community and government; and to act as a forum for issuers and the investment community. The Investor Relations Society represents members working for public companies and consultancies to assist them in the development of effective two way communication with the markets and to create a level playing field for all investors. It has over 650 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250.

Thank you for giving us the opportunity to participate in this discussion on transparency. Transparency is at the heart of best practice investor relations. The Society wholeheartedly supports the current disclosure and transparency regime and is a rigorous upholder of the principles of universal, proactive and prompt dissemination of information to shareholders. We believe that a company's Board should provide the lead in engendering a culture of transparency within the organisation with the IR team supporting this in acting as a conduit and not as a gatekeeper.

In our contribution we respond to the red box-outs to varying degrees depending on which areas we consider to be of greater importance for our members. You will find our thoughts on the following pages.

Kind regards

[redacted]
Chair of The Investor Relations Society's Policy Committee
[redacted]
[redacted]

Whistleblowing, enforcement, supervisory committees

Potential whistle blowers are more likely to act if they have faith in the system. Anything that can serve to promote this is therefore in the interests of transparency and financial markets as a whole. We think regulators' demonstrating what constructive action they have taken in previous cases goes a long way to doing this. Details on enforcement activities are part of this process.

It is important that names or detailed descriptions of individuals or companies accused of misconduct should be treated with care by the FCA following whistle blowing activities. As with other aspects of regulation, a prescriptive approach is less than ideal and each whistle blowing case should be treated on a specific basis.

Information on what is – and what is not – possible, explained clearly both following particular cases, but also generally as a matter of policy would, in our view, be advantageous.

We believe that shareholders have the right to trade their shares with the knowledge that the markets are operating efficiently and that the price they pay or receive for their shares will not have been distorted by the actions of third parties. We have therefore strongly supported the robust enforcement stance taken by the FSA to prosecute market abusers in recent years such as insider traders. We noted the proactive and public stance taken by director of enforcement Tracey McDermott (for example prosecutions brought by the FSA on Richard Joseph and Christian and Angie Littlewood) and consider statements such as this: "Insider dealers are motivated by greed and a belief that they can make easy money at the expense of others…sentences imposed should make it clear that insider dealing does not pay", to be both accurate and helpful in combating market abuse. We are pleased to see that Ms McDermott will be continuing in her enforcement role at the FCA in addition to sitting on the Board.

More reports on supervisory activities and outcomes would certainly be helpful, particularly on the delineation of the two new regulatory bodies. Further explanation to companies on the FCA's dual role as the UKLA and the level to which its remit has altered in the migration from FSA is welcome as well as consistent detail on what the FCA scrutinises and the processes followed. We also think the FCA handbooks could be more easily searchable and user-friendly.

Authorising firms, contextualisation

We think point 4.10 which references plans to publish in an anonymous, aggregated form the average length of time it takes to authorise firms and the broad reasons why firms both withdraw from an authorisation and why their applications are refused is a positive move and will assist other firms in the future as well as giving a useful overview to current market participants. We also think that contextualisation of complaints data is sensible as this would help link transparency to wider discussions and demonstrate the importance of corporate transparency to all stakeholders. As previously stated we consider that the culture of the company starts with the Board and we support it where regulators can demonstrate the tangible advantages to companies of transparency of process – as well as to investors and consumers.

Summary

As supporters of transparency and best practice corporate governance we are pleased to see the FCA begin its tenure with this discussion paper. Looking ahead, we are expecting to see a continuation of the tougher stance taken on market abuse by the FSA in recent years. Our members require the confidence of knowing that capital markets operate fairly and in good conduct in order for them to present a true and fair portrayal of their company's performance and strategy to investors, and we consider that the steps proposed in this paper will assist in ensuring that this is the case.

From: [redacted]
To: transparencyDP@fca.org.uk
Subject: Response to DP13/01
Date: 26 April 2013 17:09:17

The Just Retirement Group is one of the UK's leading providers of retirement products and services. Just Retirement Limited is the UK's largest provider of enhanced annuities, and the second largest provider of equity release lifetime mortgages. Just Retirement Solutions Limited provides customers with specialist financial advice on equity release. The Open Market Annuity Service, or TOMAS, is an online and telephone based, non-advised business focused on helping people to make the most of their pensions savings and is designed to let them choose the right annuity options for their circumstances.
Just Retirement welcomes the desire for greater transparency in the regulatory process where the objective is to drive better outcomes for consumers. As a member of the ABI, Just Retirement would endorse the comments that they have submitted on behalf of their members.

In the ABI response, comment is made that that FCA should report on performance measures around the supervision process. In our view reporting of performance is important and should extend beyond just supervision to all areas where FCA should be transparent about the outcomes it is seeking to achieve and their delivery against those outcomes. We also believe that FCA should be transparent about the number of instances where PRA has exercised its power of veto.

In addition we would add some further comments on chapter 5 of the discussion paper, and in particular the impact that transparency might have on outcomes for annuity customers.

As the paper notes, there are long standing concerns about the effective operation of the open market option, the consequence of which is that customers making lifelong decision may be losing out of significant amounts of income.

In accordance with its statutory objective to protect consumers, we would see that there is a need for the FCA to address the long standing failure of some firms to provide consumers with adequate information about their option to shop around for the best annuity rate which can result in significant detriment to a customer. Transparency can play a part in achieving this objective, but where firms continue to fail to treat their customer fairly, we would expect FCA to take enforcement action to protect vulnerable consumers.

1) We think that there is a need for the regulator to promote the need for customers to better understand the complex and lifelong commitment that they will be entering into, and promoting either directly or through the Money Advice Service the value of receiving proper information, guidance and advice before entering into an annuity arrangement. PICA (Pensions Income Choice Association) will shortly be launching a website which will allow consumers to find an intermediary to help them make informed decisions about their retirement choices. Our view is that the regulator could be transparent by being explicit about its support for this type of initiative.

2) Whilst we accept that there is a clear set of rules in COBS 19 in respect of what is required from providers in their wake up letters, we do not feel that these sufficiently address all the risks in the annuity sales process, for example how firms engage with retiring customers beyond the content of those packs. We believe that there is a

greater role here for the FCA to be transparent about the way that it will supervise firms in this area. A Dear CEO letter, similar to that issued recently regarding inducements would be a good way to achieve this transparency, and could include, for example, guidance on the standards that are expected from firms who contact retiring customers with a view to retaining those customers on internal annuity rates rather than shopping around. This could build on the ABI mandatory code that requires firms to ask customers a series of questions about their circumstances, which is in effect a template for evidencing that customers are being treated fairly. We believe that FCA should require firms to retain a record of the answers to these questions in order that it can effectively supervise firms and evidence that fair customer outcomes are being achieved.

3) We are also concerned by the current gap between contract and trust based schemes, and feel that the FCA should be transparent in the work that it proposes to undertake with the Pensions Regulator to close this gap. We would welcome the FCA urging the Pensions Regulator to adopt the standards that are set out in the ABI Code of Conduct for Retirement Choices.

4) In terms of how FCA might require firms to be more transparent, we believe that were firms offer a lower internal annuity rate to customers reaching retirement than that would be available to the same customer exercising their open market option, this should be clearly disclosed to the customer. We believe this would be best achieved by the inclusion of an FCA prescribed risk warning in the wake up pack.

I trust that you will find this helpful, and if I can provide any additional information, please do not hesitate to contact me.

Regards

[redacted]
Head of Compliance Monitoring and Development
Just Retirement
[redacted]
www.justretirement.com

the United Kingdom.

Any e-mail or telephone communication with Just Retirement (whether business or personal) may be monitored and recorded for business purposes.

For more information about us please visit http://www.justretirement.com

References to Just Retirement refer to the applicable entities of the Just Retirement group including Just Retirement (Holdings) Limited (registered number 05078978), Just Retirement Limited (registered number 05017193), Just Retirement Solutions Limited (registered number 05125701) and Just Retirement Management Services Limited (registered number 04682458), each being registered in England and having their registered address at Vale House, Roebuck Close, Bancroft Road, Reigate, Surrey RH2 7RU. Just Retirement Limited and Just Retirement Solutions Limited are authorised and regulated by the Financial Services Authority.

From: [redacted]
To: transparencyDP@fca.org.uk
Subject: Transpareny Discussion Paper
Date: 24 April 2013 17:03:37

Dear Madam,

Discussion Paper 13/1 Transparency

LIIBA is the Trade Association representing Lloyd's Insurance Brokers. Lloyd's brokers generate some £1.9bn in invisible exports. London Market brokers introduce virtually all of Lloyd's business and a significant proportion of London companies business, as well as placing considerable volumes of business in International Markets. They handle in excess of £60bn of insurance premiums and claims annually. Some of our members also handle significant amounts of small/medium sized commercial, as well as, personal insurances.

Comments have been sought on Discussion Paper 13/1 on the subject of Transparency. LIIBA in general welcomes transparency and supports many of the proposals which are contained within the Discussion Paper, particularly where that disclosure will help customers make the correct decisions when purchasing products and which help the Market function more efficiently. However, we have some concerns about the dangers of transparency when it might unfairly impact upon the reputational risk of the regulated entities.

We believe that there are limitations on the complexity of information that can be processed by consumers and that excessive information does undermine the benefits of providing information. We also have some concerns about the safeguards which would need to be put in place to protect sensitive or confidential information being published where it relates to individuals and market participants and protections which might be offered to those who "whistleblow".

Responding to some of the specific questions raised in the Discussion Paper;

Chapter 3 – How the FCA can be more Transparent

Publishing information and action which has resulted as a consequence of whistleblowing.

Care must be taken to protect those who have participated in the whistleblowing. The benefits of being transparent are negated if that should ultimately prove to be a barrier for potential informants coming forward. It is difficult to see how the FCA would be able to make such an informed decision, on a case by case basis, on whether to publish the details of any particular case. Care should also be taken not to reveal confidential information as part of the quest for overall transparency.

Publishing More about Enforcement Activities

There might be value in publishing enforcement activities, if that offered a clearer picture in what the FCA was seeking to achieve through enforcement activities, and illustrating what lessons had been learned.

There would be benefit in comprehending the length and cost of investigations and some of the challenges which have been faced.

Publishing More about Supervisory Activity

Anonymous aggregated information of planned and unannounced supervisory visits across individual sectors would be of interest particularly if it was broken down by cost and benefit, in terms of whether any evidence of wrong doing was found.

However, we believe that any future regulation which would involve releasing information about the individual names of firms who are subject to a s.166 order would be inappropriate. The potential risk to reputation could be significant, particularly so when the results of the s.166 may be inconclusive or evidence no wrong doing, but which time it would be too late to address the harm caused. We have noted CP13/6 - Reforming the Enforcement Guide and in particular paragraph 6.7 in this regard.

Chapter 4 – Information about Firms, Individuals and Markets.

The time it takes in which to authorise firms and the reasons applications are refused.

This would be of valuing in aiding new firms to know what was expected of them. It may be inappropriate to name the reasons for the refusal of any individual applicants.

Publishing the results of Thematic Work

Publishing on an anonymous aggregated basis to put the industry "on notice" would have benefits, if it acted as an incentive for firms to act without the need for more robust supervisory or enforcement action.

Chapter 5 – Information which firms would be required to release

Publication of Claims Data

It is difficult to understand why publication of claims data might be helpful and improve the outcome for consumers or change firm behaviour. There may be many reason why some insurances have low claims or indeed why a claim has failed. This would seem to be a costly exercise with little perceived advantage.

Yours faithfully,

[redacted]

Chief Executive

[redacted]

Financial Conduct Authority

Response to FSA Discussion Paper DP13/1 – Transparency

Name: [redacted]

Position: Head of Compliance & Financial Crime

Company: Liontrust Fund Partners LLP

Capacity: Authorised Firm

Other Capacity:

Q1. Publishing more about whistleblowing.

Q1.a What information do you think would be helpful?

Publishing identified and developing themes and trends are helpful to the industry generally, but we would caution over specifically flagging that this was as a result of whistleblowing. It is more likely to alarm the investing public rather than reassure. The key is speed. Whistleblowing events are likely to flag issues very quickly ??? the regulator needs to be equally speedy notifying the industry. Dear CEO letters for matters of urgency and quarterly updates for less serious events.

Q1.b What do you think would be the potential benefits?

In reality, whistleblowing should provide a quick route to highlighting issues and poor/bad practice. This requires a well resourced FCA to allocate experienced staff to determine a rapid response including validation of the issue raised. We would expect a better flow of information to take place if this were the case.

Q1.c What do you think are the potential drawbacks

Judging from the run of unfair dismissal court cases there may be significant reluctance for a whistleblowing event to be reported. Whistleblowing is a dilemma: it can expose bad/fraudulent activity quickly on one hand but the whisleblower is likely to lose his job despite employment protections. In reality colleagues, who may believe that there career is also at risk, may make the whistleblower's job untenable. The FCA runs the risk of being accused of dividing the industry by encouraging whistleblowing. Is there evidence that it has worked elsewhere? Is it suggesting that the FSA had little inkling of the true extent of industry 'bad practice' over many years of regulating the industry (SIB from 1985; FSA from October 1997)? The FSA had four statutory objectives to uphold: maintain market confidence, foster

financial stability, protect consumers and reduce financial crime. We would seek assurance that the easy option of blaming the former regulator will not be pursued. A key element of the RDR is to re-build trust with investors; as compelling as it might be whistleblowing may have an adverse and opposite effect. Trust within companies may well deteriorate which could have a detrimental impact on investor outcomes.

We do not query the relevance of the DP, indeed we are supportive, but would ask whether this has been raised with ESMA or whether it has been prepared in consultation with other regulators in Europe. As a regulated business it would be inconvenient to receive a similar European consultation in 6 months time.

Q2. Publishing more about our enforcement activities.

Q2.a To what extent do you think this would be helpful?

Highlighting achievements and lessons learned would be particularly beneficial in reviewing and mapping internal systems and controls. Investors should also be reassured by the diligence of regulation.

Q2.b What additional information about enforcement activities should be published?

The current flow of published judgements and press releases is timely, proportional and helpful. It would also be helpful on an annual basis to dissect the enforcement activities into their elements thus enabling the industry to identify and focus upon ‘hot spots.’

Q2.c What do you think are the potential benefits?

Publishing enforcement activity could provide investor reassurance by indicating the depth, diligence and strength of regulation.

Q2.d What do you think are the potential drawbacks?

Publishing enforcement activity could provide investor reassurance by indicating the depth, diligence and strength of regulation.

Publishing more supervisory activities and outcomes.

Q3.a To what extent do you think this would be helpful?

Supervisory activity disclosure continues to be welcomed. It is a good reference point to test or challenge internal risks and controls.

Q3.b What additional information about supervisory activities should be published?

No response provided

Q3.c What do you think are the potential benefits?

We regard open regulation as helpful to the business. Although we are IMA members, as a small firm we are conscious that we do not necessarily benefit from larger company resources and may not receive early information shared at the trade body level. Any opportunity to receive greater feed back or guidance is valuable and welcomed.

Q3.d What do you think are the potential drawbacks?

The release of too much information is probably counterproductive. The bigger picture and 'reasons why' should be sufficient.

Q4. Publishing more about our authorisations work.

Q4.a To what extent do you think this would be helpful?

Broadly we are in favour, particularly where there are common or thematic reasons, but whilst statutory time limits are useful it would be more helpful, as proposed, to receive information on typical or average turnaround times.

Q4.b Is there any other information you would like us to publish in relation to the authorisations process? Why?

It would be helpful to receive information on themes and trends which have passed over the FCA's desk as a mechanism to monitor 'hot topics.' It acts as a regular and powerful aide memoire.

Q5. Publishing more about thematic work.

Q5.a Do you think this would be helpful?

Yes, we recognise that we regularly review our systems and controls procedures but, and in anticipation of a more regular output, it would help make the periodic reviews more relevant and meaningful by incorporating outcomes from regular FCA conducted thematic reviews.

We believe that the FCP would find it helpful if to run round table groups (large, medium and small) to gather intelligence at firm level as part of the preparation for DPs and CPs. The use of large groups and the industry trade body offers a sensible way forward but we are convinced that the additional practical knowledge shared by medium and smaller groups would improve the quality of research to the benefit of the consultation process.

Q5.b What sort of information would you expect to see?

We have found previously circulated results of thematic reviews helpful in gauging the regulators stance on current issues. It is particularly helpful to have supporting examples of good and poor outcomes.

Q5.c How would you like this information to be made available?

As regularly as is practicable and as soon after thematic work is undertaken. If appropriate, 'first thoughts' would be helpful if the review uncovers unusual or potentially systemic issues. There seems no point waiting for all of the results to be available before committing to a paper. It might help dialogue with the industry if additional disclosure could be made to the fund groups' trade body IMA. If there is an issue which has been found that applies to one or two firms there may well be issues found elsewhere. As a half-way house the IMA are in a good position to interpret and help drive industry change when needed.

Q5.d What are the potential drawbacks?

No response provided

Q6. Publishing more about redress.

Q6.a Do you think this would be helpful?

Not necessarily: the problem with all backward looking indicators is that it shows a position that could be a year or more out of date. This is unacceptable at best and misleading at worst if potential investors are to be persuaded that the industry has changed. We could see that there is a case for publishing details on firms which have demonstrated a persistent or serial string of misdemeanours but not necessarily for an isolated low impact incident.

Q6.b What sort of information would you expect to see?

Large monetary figures attract headlines. It might be more realistic to set the figure in some sort of context. It might be the formulae process that the FCA uses in arriving at the penalty. A % of assets under management, or assets under administration, or company profits. This would but the financial penalty in some form of context.

Q6.c How would you like this information to be made available?

No preference

Q6.d What do you think are the benefits?

It would highlight firms which have made more than one appearance as well as potentially exposing them to excessive press intrusion. It may also demonstrate the proposed remedial action and timetable for conclusion.

Q6.e What do you think are the drawbacks?

Whilst this may not be terminal for companies with household names it could easily cause a small firm to cease trading with an adverse economic outcome for staff.

Q6.f Do you think this would be helpful?

No response provided

Q7. Transparency and the annuity market.

Q7.a Do you believe the FCA has a role to play in increasing transparency in the annuity market?

Our knowledge of this market precludes a meaningful response.

Q7.b What is the best way the FCA can improve transparency into the annuity market?

Our knowledge of this market precludes a meaningful response.

Q7.c Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

Our knowledge of this market precludes a meaningful response.

Q8. Publication of claims data for insurance products

Q8.a To what extent do you think this would be helpful?

Our knowledge of this market precludes a meaningful response.

Q8.b What information about claims data would be useful to publish?

Our knowledge of this market precludes a meaningful response.

Q8.c What do you consider are the benefits of this idea?

Our knowledge of this market precludes a meaningful response.

Q8.d What do you consider are the drawbacks?

Our knowledge of this market precludes a meaningful response.

Q9. Mandating contextualisation of complaints data

Q9.a To what extent do you think this would be helpful?

Unlike life companies, fund firms do not have contractual relationship with their investors. For many firms, including Liontrust, investors use funds because they have received advice from an intermediary. We receive many calls seeking information from investors because we happen to manage their investment fund. We treat them exactly the same as if they were a direct investor and record their query accordingly. We are mindful that financial platform agreements have clauses that prevent fund firms from directly contacting fund investors who have accessed their funds through a platform. In a post RDR world these complaints should be answered and recorded by the relevant adviser. This may lead to two complaints being raised rather than one. Currently, and in common with the industry, some 75% of Liontrust business is received through platforms which give an indication of the potential issue.

Q9.b Do you have any suggestions about what matrix we should mandate?

No response provided

Q9.c Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

No response provided

Q10. Please tell us your ideas about how the FCA could be more transparent

No response provided

Q11. Please tell us your ideas about information the FCA could release about individuals, firms and markets

No response provided

Q12. Please tell us your ideas about information you think the FCA could require firms to release

No response provided

26 April 2013

CarolAnne MacDonald
Policy Risk & Research Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Dear Ms MacDonald,

Response to DP 13/01 – Transparency

On behalf of LV= I am submitting the following comments to assist with the issues raised in chapters 4 and 5 of the above discussion paper.

We would be happy to discuss these in more detail if required.

Yours sincerely

[redacted]
Head of Group Compliance
Enc.

Chapter 4: Information we could release about firms, individuals and markets

We are proposing to develop a consistent approach for publishing the results of thematic work on an anonymised/aggregated basis.

Q• Do you think this would be helpful?

We agree that a consistent approach to the publication of the results of thematic work on an anonymised/aggregated basis would be helpful providing this information is published in a timely manner.

We agree the results of thematic reviews should continue to remain anonymous/aggregated until it's clear the legalities of any issues are understood. Where a final notice is issued, it's right at that point to make the industry and consumers aware of individuals' details to promote confidence in the regulation of firms and transparency in the marketplace as a whole.

The outputs from thematic reviews help the industry to test its current assumptions and where relevant amend practices or procedures. Consistency in the way that information is presented can only help this process.

Q• What sort of information would you expect to see?

The current FSA approach is a good starting point. We'd like to see the information currently produced but enhanced with more examples of good and poor behaviour, especially those observed in the reviews. As stated above, it is important that the information is made available in a timely fashion.

Q • How would you like this information to be made available?

We consider the current position as a good template, where we receive consultation guidance followed by finalised guidance. This two step timetable allows stakeholders (for example providers and consumer groups) to challenge or ask for clarification on key points. It would be beneficial to see more examples in the finalised version of the guidance.

Q • What are the potential benefits?

These will be useful in helping shape our thinking on how to take any guidance forward. They help to stimulate debate within companies and raise industry standards.

Q • What are the potential drawbacks?

On occasions comments are made suggesting "read–across" into other areas. In the past we've seen examples where there's a lack of context. These can provide confusion, as it's unclear how points raised in the report are relevant to another product/activity. The report either may not contain enough depth to shape direction, be appropriate or relevant for other areas, or contain sufficient regulatory application to aid the "read-across". A lack of clarity also undermines efforts to have a consistent view on issues across the industry and the wider stakeholders.

We are proposing to publish, with the firm's consent, how much it has paid out in redress and disclose more details about the redress scheme in the public notice. Do you think this would be helpful?

Q• What sort of information would you expect to see?

Redress disclosure should be focussed on the principles of the redress programme, and not the amounts involved. When quoting data, it is difficult to provide a balanced message in context to the size of the book or the nature of the breach identified in the way that specific firm operated. However what would be of use to the industry are the principles on which the redress exercise was agreed, as this will add value to firms seeking to proactively implement their own redress programmes on what is appropriate in the circumstances.

Q• How would you like this information to be made available?

No response.

Q • What do you think are the benefits?

No response.

Q • What do you think are the drawbacks?

No response.

Chapter 5: Information that we could require firms to release

We think the annuity market could be more transparent and easier to understand.

Q• Do you believe the FCA has a role to play in increasing transparency in the annuity market?

Yes. A combined effort between the Government, Industry, Money Advice Service and the FCA is needed, with we believe, the FCA leading it.

We do think the problem is the amount of information and low level of customers' understanding around in-retirement solutions. Customers have a naivety and a need to trust what the ceding schemes or financial advisers tell them. There's also a lack of customer engagement as the products are seen as too complicated and a large percentage automatically leaves their annuity to be dealt with by their pension provider.

Q • What is the best way the FCA can improve transparency in the annuity market?

It's down to the industry to try and educate, but engagement is still difficult.

We're aware there's an FCA thematic review of annuities with a paper due soon, and the ABI good practice is currently bedding in. Once these have progressed, we suggest it will provide a good deal of information to help stimulate further debate and responses to the subject of transparency.

It's our view customers may also be put off by the cost of advice, especially in a post RDR world. Those with smaller pension pots, who also tend to be those in lower paid roles, with less financial awareness are unwilling to look elsewhere, may be confused by open market choices, or haven't the time to investigate further. This section of the retirement market tends to stick with what's offered by their ceding scheme, or if not available, the first provider they come across or are referred to.

Auto-enrolment taking place near retirement is also a good time to engage and educate the customer, aiding clearer customer understanding and expectations of the options open to them in retirement.

Where a provider doesn't give enhanced rates, we propose it becomes mandatory to ask limited lifestyle questions, and where enhanced rates are applicable, refer the customer to either an independent, or an individual supporting provider, or panel.

Q • Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

The industry needs to be careful with what our customer's expectation of transparency is. There is currently so much information in the marketplace that it scares the average customer, with the unintended risk of information overload. Transparency also needs to make things simpler to re-engage the population with their retirement planning. Less is more; strong, clear, simple messages are more likely to stop customers "switching off" than providing a large amount of technical words and figures, which customers will not want to read.

Also some ceding scheme pensions have particularly good annuity rate guarantees which outweigh the rates available across the market. OMO isn't always the best option.

Publication of claims data for insurance products is one idea that we think could help improve the outcome for consumers and change firm behaviour.

Q• To what extent do you think this would be helpful?

The publication of claims data would require careful consideration. For high volume products, such as general insurance, we question whether any benefits of publishing claims data would be outweighed by the costs associated with obtaining, preparing and publishing the data with no discernible benefit for consumers.

However, for some products, such as life protection products, claims data publication could be helpful. For some years now, LV= has been at the forefront of publishing its claims statistics for all its life protection products. In our view this isn't a practice shared across the industry and we would question the motivation of individual firms who don't.

We fully support transparency of claims data for certain insurance products as long as all data is compiled on an agreed basis and therefore creates a full and balanced picture.

Q • What information about claims data would be useful to publish?

For some products it would be useful to publish why claims are not paid, including where a customer does not have the required cover and where fraudulent claims have been made. As an industry we're too often seen unfairly as 'wanting to get out of paying a claim'. Publishing the reason behind not paying the claim would help this perception. It would also help transparency if this was split down by product type, as the proportion of each type of business completed by individual providers can create significantly different overall results as viewed by customers.

In order to be effective and meaningful, any resultant report needs to be simply laid out presenting the information in a consistent manner so as to be readily understood by customers.

The compilation of such reports must demonstrably provide a benefit for consumers whilst not being cost-prohibitive for firms.

Q • What do you consider are the benefits of this idea?

By making it mandatory and meaningful we show a level playing field, consistent across all companies, providing the regulator and customers a true indication on a like for like basis.

Q • What do you consider are the drawbacks?

We consider the use of a minimum threshold of claim numbers for each company before publication a fair and reasonable suggestion, as a low number of claims could produce disproportionate results.

We think that mandating contextualisation of complaints data would improve understanding of the key messages.

Q • To what extent do you think this would be helpful?

Mandatory contextualisation may provide a more level playing field enabling interested parties to more readily analyse the data. However care needs to be taken when agreeing benchmarking to avoid any chance of skewing the data.

If mandatory contextualisation is agreed, the agreed wording must be kept to the simplest form required for each product group to provide a meaningful and easily understood comparison. The metrics must not be over-engineered and implementation of the agreed wording must not incur unnecessary costs for firms. A cost benefit exercise should be published to demonstrate the additional benefits a mandatory contextualisation would bring over and above the current regime.

Exceptions must be catered for, e.g. when a book of business is in run off or when legacy complaints are dealt with on a book of business that no longer exists.

Q • Do you have any suggestions about what matrix we should mandate?

Providing one matrix in a 'broad-brush' approach will not allow for a level playing field and will either:

- produce anomalies where data from different business types will not fit cleanly into the matrix, and
- skew data by attempting to fit it into the matrix.

We consider it very important to encourage a level playing field when reporting data and therefore consider that different contextualisation will be required for different products.

In addition, to ensure that comparisons are meaningful for long tail policies, we suggest using the number of transactions in a period against the number of complaints about those transactions would be a more relevant metric.

Q • Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

No response.

LLOYD'S

CarolAnne Macdonald
Policy, Risk and Research Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Via Email: transparencyDP@fsa.gov.uk

26 April 2013

Dear CarolAnne

DP13/1: Transparency Discussion Paper

We have read the above discussion paper and given consideration to the issues of interest to the Society of Lloyd's. We welcome the FCA's commitment to improving transparency and would like to make the following comments in response to the paper.

How the FCA could be more transparent

We welcome the FCA's intention, as part of its value-for-money strategy, to publish more information about particular areas of direct expenditure such as IT and indirect expenditure such as s166 reports.

Regulatory fee-setting

We believe that the FCA should be more transparent about its regulatory fee-setting than the FSA was. Each year regulatory fees are proposed with a lack of information about how these figures have been reached. This makes it difficult for industry to comment on whether the proposed fees are reasonable or not.

FCA Handbook

The FSA Handbook was a complex and opaque document that most people – including financial services professionals – found difficult to interpret and to use. The FCA has inherited portions of this instrument and we note the FCA's intention that "*over time, the way our principles, rules and guidance are presented and organised in our FCA Handbook, and in non-Handbook material, will inevitably change.*"

FCA efforts to enhance supervisory transparency should therefore include assessment of the extent to which its Handbook is an effective tool for setting out its rules clearly and concisely. It should consider whether those affected by its rules understand the FCA Handbook and whether there are steps that could be taken to make it a more straightforward document and therefore to enhance comprehension of the FCA's requirements.

Public consultations

'Journey to the FCA', published in 2012, suggested[1] that, in the development of policy, the FCA would seek to develop engagement opportunities with market representatives, firms and other stakeholder groups. In principle, we welcome this. Direct engagement is a helpful tool in building immediate understanding of the stakeholders' views. Certain aspects are easier to raise in meetings and more background information can be obtained through direct discussion. However, we would be concerned if the FCA intended that such engagement should replace, rather than supplement, the use of more formal Discussion and Consultation Papers.

We responded to the 'Journey to the FCA' with our concerns on this point. Public consultations are necessary to ensure that all stakeholders have an opportunity to develop and share their views on policy issues. The FCA's wide remit makes it unlikely that it will directly engage with all the financial firms for which it has supervisory oversight. Limiting consultation to particular industry representatives means that other parties do not have opportunities to present their views and the FCA would therefore have an incomplete understanding of the industry position.

We note the suggestion in paragraph 3.12 that the FCA *"rather than publishing a selection of consultation responses…could publish all responses except where the respondent has specifically asked us not to publish their response.*" We agree with this approach. The old FSA approach of publishing only a selection of responses appears out of step with practices elsewhere. Most other international policymaking organisations publish comments received to consultations on their websites in full, sometimes with details of their responses to the comments.

Information the FCA could release about firms, individuals and markets

We agree that the FCA could release further information about firms, individuals and markets to the benefit of consumers and industry, although there will be costs involved in the publication and presentation of information. Therefore, the FCA should do a cost-benefit analysis before implementing any of the proposed changes. We support the FCA's ideas of greater transparency around its authorisation process and thematic reviews.

Information the FCA could require firms to release

Publication of claims data on insurance products

We have read the response submitted to you by Lloyd's Market Association (LMA) and agree with their arguments on the difficulties of presenting claims data in a form that would not be misleading. We believe that your recent Occasional Paper, "*Applying behavioural economics at the Financial Conduct Authority*" is relevant to this proposal. The Paper makes the case that providing more information does not necessarily result in better consumer decision-making and therefore improved consumer outcomes. As the Paper says:

> *"There is evidence that extra information may lead consumers to make poorer decisions by distracting them or making them under- or over-react to emotionally charged topics."*

[1] *Journey to the FCA*, pages 45 - 46

Oxera's "*Review of literature on regulatory transparency*", prepared for the FSA in September 2012, must also be taken into account. It suggests that:

> *"…even where all conditions have been met, consumers may not use relevant information to make an economically rational decision, even if that information is disclosed in an appropriate manner and form."*

Consequently, it is essential that this proposal is considered very carefully, and proper account is taken of the problems that would arise, as detailed in the LMA's response. Many firms believe that this proposal will be damaging to them and to the availability of products that are valuable to consumers. The implications of the publication of a premiums vs. payouts ratio is that insurer profitability is somehow an undesirable feature, an approach contrary to that of the PRA, the insurance prudential regulator. Consequently, there is a real risk that the proposal, if implemented, would cause damage to firms and to products, without bringing about the hoped-for benefits to consumers.

Contextualisation of complaints data

We do not support mandatory contextualisation of complaints data and believe that this should remain voluntary. The introduction of a standard matrix for contextualisation would not be appropriate in all cases and may provide misleading messages to consumers.

We believe that firms should be able to continue to choose to contextualise their complaints data if they believe that it would be beneficial to consumers. Firms are best placed to decide if and what contextualisation is appropriate.

Please do not hesitate to contact me if you have any questions in relation to this response.

Yours sincerely

[redacted]
Head, Government Policy and Affairs
Lloyd's General Counsel's Division

[redacted]

[redacted]
Regulatory Developments Director
Lloyds Banking Group plc

25 Gresham Street
London, EC2V 7HN
[redacted]

26 April 2013

Sent via e-mail to: transparencyDP@fsa.gov.uk

Dear CaroleAnne,

Lloyds Banking Group response to the FSA Discussion Paper on Transparency (DP13/1)

Lloyds Banking Group plc (LBG) takes this opportunity to formally endorse the comments put forward by the British Bankers' Association (BBA) in response to the FCA's Discussion Paper on Transparency as a Regulatory Tool (DP13/01). In addition to the ideas advanced in the BBA's paper, we would add the following comments.

Product Disclosure

We support the FCA's vision of banking markets in which customers are better able to understand products and evaluate cost and service levels associated with them. Customers need the right information, in an appropriate quantity and format, on a timely basis, to enable them to make sound choices when choosing financial products and providers.

At LBG, we continue to address concerns about transparency in Personal Current Accounts (PCAs) through our work on tools to enhance customers' understanding and active management of their accounts. We are, for example, currently working with the Office of Fair Trading and two other banks to trial the inclusion of 'foregone interest' on PCA bank statements. Helping customers who hold money in non-interest bearing accounts to see how much interest they could have earned elsewhere helps promote stronger awareness of the relative costs and benefits of their financial products.

We are pleased that the discussion paper recognises the important role that comparison websites have to play in promoting transparency. We are working with some key providers in the market and support moves towards more sophisticated sites which can give consumers tailored recommendations based on their own circumstances and transaction patterns. These sites could reflect factors such as service quality and product features, rather than just price.

Generally, FCA interventions designed to affect consumers' behaviour (e.g. transparency remedies) should be trialled and tested with consumers before they are rolled out. Whilst we do not purport to endorse a particular policy objective, we note a report published last year

by the Behavioural Insights Team at the Cabinet Office, which shows the power of this approach.[1] We would also propose that the FCA conduct regular post-implementation reviews of interventions to ensure the desired outcomes have been achieved and remain appropriate.

We also welcome the recent public statements by Martin Wheatley on the benefits that behavioural economics can provide, especially around customer behaviour. Behavioural economics can be particularly helpful in informing the design of transparency initiatives which engage customers.

Contextualisation of complaints data

To drive consumer understanding of data, we propose that the format of any contextualisation should contain more narrative. For example, the publication could comprise two documents: the first, a summary of what the data indicates; and the second, an appendix containing the actual complaints data. In terms of the content of the narrative, we propose the inclusion of:

- a statement of whether or not the volume of reported complaints has increased or decreased;
- an explanation from both the firm and the FCA on the causes of the volume activity
- an assessment by the FCA of the firm's current complaint handling systems
- a statement by the firm which acknowledges the improvements in its complaint handling processes, whilst also identifying further plans for improvement

We also support the provision of a breakdown of complaints data to help consumer understanding, i.e. showing complaint volumes which between PPI and non-PPI complaints. This provides existing and potential customers with better insights into service quality.

As regards the FCA's proposal on the matrix which should be mandated, LBG supports the current matrix of complaints per 1,000 current accounts, as these represent the most widely used banking product in the UK.

Please do not hesitate to contact me on the details above should you wish to discuss the above further.

Yours sincerely

[redacted]
Regulatory Developments Director
Lloyds Banking Group plc

[1] "Test, Learn, Adapt: Developing Public Policy with Randomised Controlled Trials", Cabinet Office, 2012

LLOYD'S MARKET ASSOCIATION

Suite 426
Gallery 4
One Lime Street
London EC3M 7DQ

Tel. 020 7327 3333
Fax. 020 7327 4443
lma@lmalloyds.com
www.lmalloyds.com

26 April 2013

CarolAnne Macdonald
Policy, Risk and Research Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Email: transparencyDP@fsa.gov.uk

Dear CarolAnne

LMA response to FSA Discussion Paper (DP13/01) on transparency

The Lloyd's insurance market underwrites insurance business from over 200 countries and territories worldwide. In 2012, premium capacity was in excess of £24 billion.

The Lloyd's Market Association (LMA) represents the 57 managing agents at Lloyd's which manage the 90 syndicates underwriting in the market, and also the 3 members' agents which act for third party capital. Managing agents will be "dual regulated" firms by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) and members' agents will be regulated by the FCA.

We appreciate the opportunity to contribute to this discussion. Whilst this response is distilled from the views of our members, the views of individual members may differ. Sections and paragraphs cited relate to those in DP13/01.

Summary

We fully support the FCA's objectives to enable consumers to judge the appropriateness of products, where this is not possible with current practices. However, we do not believe that the proposals set out in paragraph 5.15 are likely to achieve those objectives for the following reasons:

1. Policies of indemnity are different to policies of benefit and the proposed claims data may mislead consumers due to insurance providers' differing business models, practices and products.
2. In many circumstances, it would be impractical for consumers to access and assess such data prior to the point of purchase.
3. There is a risk that insurance providers could focus on their performance data, rather than on the value of their policies' terms and conditions.
4. Too great a focus on performance data could incentivise the relaxation of fraud controls, resulting in a conflict between the FCA's statutory objectives of consumer protection and market integrity.

We believe a combination of consumer education together with the publication of more relevant, focussed information from FCA thematic work and the continued use of existing powers under the Unfair Terms in Consumer Contracts Regulations 1999 would provide a better long-term solution.

We expand on these and other points below.

Chapter 5

Paragraph 1.5 states that the FCA must consider proportionality. Previous "mass" mis-selling problems (endowment mortgages, private pensions and, to a certain extent, PPI) related to long-term products with relatively large costs, where poor performance or mis-selling of these products had the potential to cause significant consumer detriment. However, the products in respect of which the FCA is proposing that claims data disclosure might enhance transparency (warranty, home emergency, identity theft and mobile phone insurance) are typically 12-month policies with relatively low costs and low levels of cover. The proposed data disclosure could result in additional costs to firms as well as increased regulatory costs required to police such disclosures - costs which ultimately could be passed on to consumers. The FCA would need to ensure that data is comparable, and produced to the same standard, for it to be of value to consumers or regulators.

An additional risk is that firms might focus on the data they are required to disclose, rather than the value of their policies' terms and conditions. This could lead to a homogenisation of policies which could stifle innovation and competition.

In addition, it is unclear how consumers would use disclosed claims data for certain "add-on" product types without being able to draw comparisons against similar data for 'mainstream' products. Any widening of scope to the proposals would further increase costs for consumers.

We would also urge the FCA to avoid any mandatory disclosure of claims data in relation to commercial insurance policies. Where buyers are advised by professional brokers, we do not believe that publication of the proposed data would add value, and it could be misleading, especially in the large and catastrophe risk classes of business.

Relevant and understandable information

Paragraph 1.4 states that being transparent is about disclosing *relevant information* in a way that can be *clearly understood*. Different firms operate different business models. This is essential for effective competition, innovation and demographical coverage and will inevitably lead to the skewing of the claims data proposed in paragraph 5.15.

Paragraph 2.4 states that, with hindsight, enhanced product disclosure did not adequately consider the types of information that consumers would be able to engage with, interpret and act upon to seek out the best deal. We believe that publishing statistical data, without appropriate contextualisation, could further confuse consumers, detract from their consideration of a policy's benefits and ultimately lead to poorer outcomes.

We are also concerned about the practicality of consumers accessing such data prior to the point of sale, particularly when purchasing products the FCA suggests are suitable for this type of disclosure. For example, we think it unlikely that a consumer purchasing a mobile phone would have either the desire or ability to research such data whilst standing in a shop.

Therefore we believe that disclosure of the claims data proposed in paragraph 5.15 is unlikely to be relevant and clearly understood.

Below we discuss the four data elements proposed in paragraph 5.15 and in the appendix we provide examples of how such data could prove to be misleading to consumers.

Claims per customer

The number of claims per customer in a class of business will be partially dependent on a firm's business model and risk portfolio. For example, some firms operate in niche sectors, whereas others have higher customer volumes across wider demographics (geographic and consumer type). Therefore, in respect of household policies, firms which target high net worth consumers may have lower claims volumes, but larger losses per claim, than those which cover wider demographics. This metric could prove misleading if the business models or products are not directly comparable.

Successful claims percentage following an initial contact

Data on successful claims will be skewed by the refusal of those which are fraudulent. According to a 2012 Association of British Insurers (ABI) report on insurance fraud[1], in 2011, insurers uncovered dishonest claims amounting to almost £1 billion, despite the industry investing almost £200 million each year on fraud identification. As well as improving their own anti-fraud systems, firms fund industry initiatives such as the Insurance Fraud Bureau (IFB), a not-for-profit organisation specifically focused on the detection and prevention of organised and cross-industry fraud, and the Insurance Fraud Enforcement Department (IFED), a specialist police unit dedicated to the identification and prosecution of insurance fraudsters.

Insurers which (a) operate in demographics which are susceptible to fraud, and (b) employ strong anti-fraud controls, could be painted in a bad light by the publication of this data. This would appear to represent a clash of the FCA objectives to secure an appropriate degree of protection for consumers, and to protect the integrity of the UK financial markets.

We believe data on successful claims could only provide an accurate picture of a product's historical performance when considered in the context of a firm's business model.

Premium vs. payout ratios

As in the claims per customer example, data on premium vs. payout will partly be dictated by a firm's business model. Higher premium compared to payout would not necessarily indicate "low value" products or excessive profits for insurance providers. Insurers continue to operate under highly competitive (internationally) trading conditions and in its 2012 "Approach to insurance supervision" paper[2], the PRA reminded them of the importance of both disciplined underwriting and adequate reserving. Indeed, in paragraph 124 of the paper, the PRA stated that its assessment of insurers' financial strength and solvency would include "... reserving of general insurers and the adequacy of technical provisions for all insurers; the profitability of underwriting (for example by scrutinising the claims and other performance ratios of general insurance firms)..."

The suggested metric will not differentiate between insurers with higher premium rates and/or costs, driven by prudence, and those with high profit margins and/or lower premiums and poor reserving. Appropriate pricing and reserving are critical to an insurer's solvency and ability to pay claims and we would urge the FCA not to implement metrics which could undermine this.

The proposed premium to payout ratio also overlooks the relative efficiency of insurance providers.

---

[1] "No Hiding Place. Insurance Fraud Exposed", 13/09/2012

[2] "The PRA's approach to insurance supervision", The Bank of England/Prudential Regulation Authority, October 2012.

We believe it would be unfair if providers which have invested in technology, streamlined business processes, and implemented appropriate remuneration structures were to be portrayed as profiteering compared to less efficient competitors.

Reducing/refusing claims due to non-disclosure

The fraudulent making or inflation of claims is a real and growing issue for the insurance industry. According to the ABI report, 139,000 fraudulent claims were identified by insurance providers in 2011, adding some £50 to the average premium for consumers. Indeed, recent proposals from the Ministry of Justice reflect the fact that whiplash claims have reached epidemic proportions.

Data concerning the rejection or reduction of claims payments would be susceptible to the same skewing as data concerning "successful claims percentages", for the reasons given above. In addition, a distinction should be made between the following situations - (a) rejection/reduction in a claim due to non-disclosure; and (b) full payment of part of a claim with refusal of another part due to lack of coverage (part payment).

Again, we believe data on successful claims could only provide an accurate picture of the performance of a product when considered in the context of a firm's client base and business model. DP13/01 does not provide any indication of why non-disclosure might be of particular concern to the FCA, where a perceived problem could be cured by publication of the proposed data. Our view is that focussed thematic reports on specific products by the FCA or the Financial Ombudsman Service, highlighting factors relating to complaints due to alleged non-disclosure, would provide more useful guidance to consumers.

The role of intermediaries

General insurance products are policies of indemnity and therefore inherently different to policies of benefit and other financial products, where consumers have an expectation of realising a tangible benefit at some future point in time. The value that policies of indemnity offer is "peace of mind", which is a difficult value to quantify, particularly regarding "compulsory" insurance purchases (for example, motor policies, buildings policies required by mortgage lenders, and travel policies required for visa purposes) where their compulsory nature largely means price, rather than terms and conditions, becomes all important.

This limitation of value assessment has, to some extent, been exploited by aggregators which provide quotations, in ascending price order, without any assessment of a consumer's requirements. Pertinent questions, such as the voluntary excess a consumer would be comfortable with, may not be highlighted. It is a consequence of such price-focussed selling that some consumers will purchase products which do not meet their requirements or expectations, when making a claim.

Paragraph 5.12 states that intermediaries could help consumers aggregate and compare firms' disclosure on claims. However, paragraph 2.9 warns that aggregators may promote those firms that provide the biggest commission. We would ask whether, for policies sold via intermediaries, premium/payout ratios should be calculated on a gross premium basis or 'net' of brokerage/commission, and how the difference would be treated and disclosed. We previously stated the LMA's views on commission disclosure in our response to the FSA's Guidance Consultation on the practice of "payment for order flow".

We agree with the supposition in 2.9, that aggregators neither present a full cross-market picture, nor deal adequately with complex products or consumer requirements. Paragraph 4.16 states that the FCA is tasked with being proactive and interventionist to nip mis-selling in the bud. However, the usefulness of the metrics proposed in paragraph 5.15 would be limited when consumers

purchase through an aggregator or other intermediary, as the metrics relate only to the insurance provider, and not to sales practices or product suitability.

Recommendations

We are supportive of the suggestions the FCA puts forward in chapter 4, regarding thematic work and authorisation processes.

Whilst we appreciate that the FCA must balance its requirement to be as transparent as possible, with the limitations of what can legally be disclosed, we would urge the FCA to limit the publication of information to that which is of relevance and value to firms and/or consumers. Publication of excessive information leads to "white noise" through which important information can become lost.

Information for firms

We support the FCA's proposal to publish the average length of time it takes to authorise firms, and the reasons why applications are refused, for the reasons the FCA provide in the paper, in particular, (a) to make firms more aware of FCA requirements and expectations; and (b) to highlight how improvements to applications might reduce delays in FCA processing.

Information for consumers

In our response to FSA CP13/02 on the funding of the Money Advice Service (MAS), we stated our belief that the Money Advice Service is an important one and should be sufficiently resourced. We also stated that increasing consumer awareness of financial products and providing better financial education should play an important part in ensuring consumers make informed decisions. In the longer term, the correct balance needs to be struck between the "buyer-beware" principle and regulation. Financial education (including through the MAS) enables this and the aim should be to reduce the need for regulatory intervention through informed consumers in the competitive market.

Our view is that the FCA should work closely with the FOS to publish relevant and understandable consumer information, based on thematic reviews and complaints, to highlight matters concerning coverage, claims handling, non-disclosure and other matters. We welcome the creation of separate sections for 'firms' and 'consumers' on the new FCA website, since we believe this should assist consumers in locating relevant information.

The LMA would be happy to provide additional information, should you have any questions on the points above or on related matters. Please contact kees.vanderklugt@lmalloyds.com.

Yours sincerely

Director of Legal and Compliance

Appendix

The table below shows the consumer claims data (left hand column), proposed in DP13/01 for two firms, A and B. The right hand column provides the reasons for the differences in the data of the two firms.

Claims data element	Firm	Result	Reasons
Claims per 1000 customers	A	100	• Low volume business in a niche market • Targets high net worth customers
	B	150	• Writes higher volume business • Wide demographic, including higher risk customers
Successful claims percentage	A	95%	• Targets high net worth customers • Customers have high degree of product understanding • Low levels of fraudulent claims • Weak fraud detection controls
	B	75%	• Wide demographic, including higher risk customers • Customers have lower degree of product understanding • Higher levels of fraudulent claims • Strong fraud detection controls
Payout as percentage of premiums	A	99%	• Aggressive pricing for targeted demographic • Sometimes writing below technical price • Reserving at lower end of acceptable range • High operating costs • Relatively weak financial strength • Low degree of policyholder protection
	B	85%	• Disciplined pricing • Reserving at higher end of acceptable range • Low operating costs • Relatively high financial strength • High degree of policy holder protection
Reduction/refusal due to non-disclosure	A	10%	• Targets high net worth customers • Customers have high degree of product understanding • Low levels of fraudulent claims • Weak fraud detection controls
	B	25%	• Wide demographic, including higher risk customers • Customers have lower degree of product understanding • Higher levels of fraudulent claims • Strong fraud detection controls

Financial Conduct Authority

Response to FSA Discussion Paper DP13/1 – Transparency

Name: [redacted] **Position:** General Manager

Company: Managing General Agents' Association **Capacity:** Other

Other Capacity: as a trade association

Q1. Publishing more about whistleblowing.

Q1.a What information do you think would be helpful?

We consider that it would be useful if the FCA published a regular report on whistleblowing activity providing aggregate data, by firm type, case type and whether or not supervisory action has resulted directly from the information received.

Q1.b What do you think would be the potential benefits?

We believe that publishing data on whistleblowing activities will be well received by consumers and has the potential to enhance the FCA???s public image. Feedback provided to individual whistleblowers, where requested, may have the benefit of encouraging future whistleblowing activity.

Q1.c What do you think are the potential drawbacks

The biggest challenge will be maintaining confidentiality and protection of the whistleblower, due to the proposed increase in communication with them. Additionally, any publicity given to whistleblowing may increase the incidence of frivolous or gratuitous whistleblowing, which will have no benefit to consumers or the regulated community and may require an increase in regulatory resources, resulting in an increase in FCA fees for our members.

Q2. Publishing more about our enforcement activities.

Q2.a To what extent do you think this would be helpful?

We believe that the publication of additional information about enforcement activities would be useful to our members.

Q2.b What additional information about enforcement activities should be published?

The information set out in 3.21 of the DP would be useful.

Q2.c What do you think are the potential benefits?

Providing more information about enforcement action should provide reassurance to diligent firms and assist Senior Management oversight of their own activities, helping to ensure that they continue to remain fully compliant.

Q2.d What do you think are the potential drawbacks?

The publication of additional information of this nature is unlikely to engage the firms that are most at risk of enforcement action. There is also the danger of information overload. If too much information is published it is difficult for firms to know what are the most important things to read.

Publishing more supervisory activities and outcomes.

Q3.a To what extent do you think this would be helpful?

No comment

Q3.b What additional information about supervisory activities should be published?

No comment

Q3.c What do you think are the potential benefits?

No comment

Q3.d What do you think are the potential drawbacks?

No comment

Q4. Publishing more about our authorisations work.

Q4.a To what extent do you think this would be helpful?

No comment

Q4.b Is there any other information you would like us to publish in relation to the authorisations process? Why?

No comment

Q5. Publishing more about thematic work.

Q5.a Do you think this would be helpful?

No comment

Q5.b What sort of information would you expect to see?

No comment

Q5.c How would you like this information to be made available?

No comment

Q5.d What are the potential drawbacks?

No particular comment to make

Q6. Publishing more about redress.

Q6.a Do you think this would be helpful?

No comment

Q6.b What sort of information would you expect to see?

No comment

Q6.c How would you like this information to be made available?

No comment

Q6.d What do you think are the benefits?

No comment

Q6.e What do you think are the drawbacks?

No comment

Q6.f Do you think this would be helpful?

No comment

Q7. Transparency and the annuity market.

Q7.a Do you believe the FCA has a role to play in increasing transparency in the annuity market?

No comment

Q7.b What is the best way the FCA can improve transparency into the annuity market?

No comment

Q7.c Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

No comment

Q8. Publication of claims data for insurance products

Q8.a To what extent do you think this would be helpful?

We consider that information, if presented in a fair and consistent way, has the potential to be useful to consumers. However, we are not convinced that the industry can publish sufficiently ‘digestible’ data that consumers could immediately use to help them inform their purchase decisions.

We see no value in the publication of claims data for ‘non-problem’ products or sectors of the market.

Q8.b What information about claims data would be useful to publish?

No Comment

Q8.c What do you consider are the benefits of this idea?

No Comment

Q8.d What do you consider are the drawbacks?

Customers may not, in reality, be minded to actively review claims data for add-on and non-core products, due to their intrinsic nature.

The number of products on which data would have to be published (there are many types of add-on and non-core products available in the market). Would reporting on all be practical?

Distortions in claims data; this might arise, for example, when data on newly underwritten products is compared with data on similar products which are already established.

The impact of fraudulent claims on the data presented.

Difficulties in collecting information from insurers which are based ‘offshore’ and therefore fall outside FCA jurisdiction. This may result in a non-level playing field.

The cost of data collection, including changes to reporting systems, which would ultimately have to be reflected in the product price paid by consumers.

Q9. Mandating contextualisation of complaints data

Q9.a To what extent do you think this would be helpful?

No comment

Q9.b Do you have any suggestions about what matrix we should mandate?

No comment

Q9.c Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

No comment

Q10. Please tell us your ideas about how the FCA could be more transparent

No comment

Q11. Please tell us your ideas about information the FCA could release about individuals, firms and markets

No comment

Q12. Please tell us your ideas about information you think the FCA could require firms to release

No comment

Financial Conduct Authority

Response to FSA Discussion Paper DP13/1 – Transparency

Name: [redacted]

Position: MD

Company: Ovation Finance Ltd

Capacity: Professional Firm

Other Capacity: Bristol

Q1. Publishing more about whistleblowing.

Q1.a What information do you think would be helpful?

Simply knowing that some action has been taken would be a great help.
Secondly, the outcome. If the activity in question turns out to have been lawful, then the whistleblower needs educating.

Q1.b What do you think would be the potential benefits?

Encourage whistleblowing. I have whistleblown twice, and both firms seem to be still trading, creating the impression that no action has been taken.

Q1.c What do you think are the potential drawbacks

No response provided.

Q2. Publishing more about our enforcement activities.

Q2.a To what extent do you think this would be helpful?

No response provided.

Q2.b What additional information about enforcement activities should be published?

No response provided.

Q2.c What do you think are the potential benefits?

No response provided.

Q2.d What do you think are the potential drawbacks?

No response provided.

Publishing more supervisory activities and outcomes.

Q3.a To what extent do you think this would be helpful?

No response provided.

Q3.b What additional information about supervisory activities should be published?

No response provided.

Q3.c What do you think are the potential benefits?

No response provided.

Q3.d What do you think are the potential drawbacks?

No response provided.

Q4. Publishing more about our authorisations work.

Q4.a To what extent do you think this would be helpful?

No response provided.

Q4.b Is there any other information you would like us to publish in relation to the authorisations process? Why?

No response provided.

Q5. Publishing more about thematic work.

Q5.a Do you think this would be helpful?

No response provided.

Q5.b What sort of information would you expect to see?

No response provided.

Q5.c How would you like this information to be made available?

No response provided.

Q5.d What are the potential drawbacks?

No response provided.

Q6. Publishing more about redress.

Q6.a Do you think this would be helpful?

No response provided.

Q6.b What sort of information would you expect to see?

No response provided.

Q6.c How would you like this information to be made available?

No response provided.

Q6.d What do you think are the benefits?

No response provided.

Q6.e What do you think are the drawbacks?

No response provided.

Q6.f Do you think this would be helpful?

No response provided.

Q7. Transparency and the annuity market.

Q7.a Do you believe the FCA has a role to play in increasing transparency in the annuity market?

No response provided.

Q7.b What is the best way the FCA can improve transparency into the annuity market?

No response provided.

Q7.c Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

No response provided.

Q8. Publication of claims data for insurance products

Q8.a To what extent do you think this would be helpful?

No response provided.

Q8.b What information about claims data would be useful to publish?

No response provided.

Q8.c What do you consider are the benefits of this idea?

No response provided.

Q8.d What do you consider are the drawbacks?

No response provided.

Q9. Mandating contextualisation of complaints data

Q9.a To what extent do you think this would be helpful?

No response provided.

Q9.b Do you have any suggestions about what matrix we should mandate?

No response provided.

Q9.c Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

No response provided.

Q10. Please tell us your ideas about how the FCA could be more transparent

No response provided.

Q11. Please tell us your ideas about information the FCA could release about individuals, firms and markets

No response provided.

Q12. Please tell us your ideas about information you think the FCA could require firms to release

No response provided.

Partnership Assurance

Response to DP13/1 - FSA Discussion Paper on Transparency

About Partnership

Partnership is a long established UK insurer specialising in the design and manufacture of financial products for people whose health and lifestyle means that their life expectancy is likely to be reduced. Partnership aims to offer higher retirement incomes than traditional providers through undertaking a detailed assessment of people's health and lifestyle conditions.

Partnership has a broad offering in the retirement sector and offers a full range of Enhanced Annuity solutions, from clients who smoke or have minor health impairments, through to serious conditions such as cancer. Partnership is also the largest provider of annuities for Long Term Care funding in the UK and a leading campaigner for reform in financing social care for the elderly. It also offers specialist protection solutions for clients who have been declined cover from standard providers and entered the equity release market in 2011 with an Enhanced Lifetime Mortgage.

Partnership believes an efficient and transparent annuity market is one of the essential building blocks required to enable UK pensioners to meet their financial needs in retirement and that increased transparency will help create a more efficient market from which customers, distributors and providers will all benefit. Partnership is a member of the ABI, represented on the board of the Pensions Income Choice Association and has been active in sponsoring research and broad industry initiatives with the Pensions Policy Institute, International Longevity Centre and others to determine solutions to current challenges in the retirement income market.

Partnership feels it can best add value to the debate over increasing transparency in the annuity market rather than considerations of transparency in the context of regulation more generally. Hence the comments below are restricted to the discussion and the specific questions raised in Chapter 5 of the discussion paper.

Response to the questions raised in Chapter 5 of the DP on Annuity Transparency

The conventional annuity market in the UK was 400,000 pension funds worth £12.8bn in 2012 and is projected to grow as personal pension and occupational money purchase funds mature. While the proportion of retirees using the OMO has increased steadily to 48% in Quarter 4 2012, this still leaves 52% of conventional annuities or 210,000 pension funds, on 2012 figures, being purchased internally from the existing pension provider. Internal annuities tend to be less competitive than external annuities and this represents a very significant amount of income that retirees are not accessing. In particular, Partnership research shows that over 50% of those retiring could qualify for an enhanced annuity and a significant increase in income. In practice, only 5% of those buying an annuity through their accumulation pension provider received an enhanced rate.[1]

[1] All figures source: ABI

Competitive rates are attained by the vast majority of funds passing through the Open Market.[2] Partnership's view is that increasing transparency has a very important role to play in helping retirement customers understand the value offered by shopping-around, thereby increasing the retirement income they receive as a result.

Q1. Do you think the FCA has a role to play in increasing transparency in the annuity market?

Partnership strongly support all moves and initiatives for transparency in the annuity market, especially increasing the use of the Open Market Option and believes that FCA focus in this area would help to reinforce the trend developing in the market towards greater transparency.

Q2. What is the best way the FCA can improve transparency in the annuity market?

Partnership note the FCA refers to the ABI Open Market Option Code of Conduct. Partnership supports the introduction of the Code and would encourage the FCA to take a keen interest in how pension providers are adopting the Code both in terms of ensuring that the required disclosures are of a high standard and also that the Sales Process defined in the Code is being consistently applied, with good records kept. Partnership would also like to see the customer outcomes from each pension provider recorded and reported on.

Furthermore, Partnership would encourage FCA to look at appropriate intervention if these initiatives are not being applied consistently.

Pension providers should be encouraged to publish annuity tables for both internal and open market option business so that customers and the press can be well informed about the competitive position of the market. If the current ABI transparency initiative does not succeed in successfully delivering this result across a wide range of pension and annuity providers, Partnership would welcome an FCA initiative to support or provide this outcome.

FCA should also make it clear that the ABI Code is a minimum standard of conduct in this area for all providers, not only those who are members of the ABI.

Paragraph 5.9 of the discussion paper raises the question of barriers to shopping around that might exist on the supply side. In our view supply side issues relate to:

- How retirees with relatively small pots can cost effectively get the help they need to access the open market and obtain an good outcome, and
- Fostering a market in which there is sufficient capacity for effective competition from annuity providers across the age profile of those looking for annuities.

FCA (and indeed PRA in the case of the second of these) should take these issues into account when considering their approach to this market.

[2] See for example " Annuity Markets: Welfare, Money's Worth and Policy Implications", Cannon & Tonks, 2011

1Q3. Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

Partnership does not believe that the proposals suggested above would add significant further cost or administration overheads into the pension vesting process above those required of major providers currently. We also see little risk of detriment should increased transparency result in any providers withdrawing less competitive annuity rates from the market.

Increased transparency could also potentially put pressures on cross subsidies that exist among groups of annuity policyholders. However, Partnership believes that greater fairness is achieved by making the rate as specific as possible to the individual (for example, via individual underwriting) and would see any narrowing of cross-subsidies as a positive development, not a negative.

Pension Income Choice Association

response to

FSA Discussion Paper on Transparency, DP13/1

About PICA

The Pensions Income Choice Association (PICA) is a membership funded group set up in July 2009, representing a diverse group including product providers and advisers who operate in the annuities and retirement market.

The Association is run by a management group which has representatives from Bluefin Group, Just Retirement, Making Sense of Retirement, MGM Advantage and Partnership Assurance with Tom McPhail, from Hargreaves Lansdown, as chair.

PICA is dedicated to promoting the importance of reviewing pension assets at retirement to determine the most appropriate solution for the needs and circumstances of every individual.

PICA welcomes the opportunity to respond to the FSA's Discussion paper on Transparency (DP13/1). We have restricted our comments to those issues raised in Chapter 5 around increased transparency in the annuity market.

Overview

Every year hundreds of thousands of individuals at the point of retirement are missing out on their right to shop around to secure the best possible income for their retirement. This process of shopping around can potentially increase income in retirement by thousands of pounds over the course of a typical retirement. It can also make sure the income shape and benefit structures chosen are the right ones, therefore helping people choose the right option not just for themselves but also for their partner and family.

There are some legitimate reasons why people may accept the solution they're offered by their incumbent pension scheme. The size of the fund may be too small to place on the open market; guaranteed annuity rates could be available that are particularly attractive or the scheme may offer highly competitive rates. All of these are valid reasons, but these do not account for the relatively low numbers of people who exercise their right to move their pension savings to another provider.

It is important to note that significant steps are being made by product providers to encourage more shopping around. The Association of British Insurers' (ABI) Retirement Choices Code of Conduct came into force on 1 March 2013. It is a welcome step to improve awareness of the right to shop around, the availability of enhanced annuities, and the questions people need to ask themselves to achieve the optimum solution. We are hopeful the ABI code will make a significant difference to the numbers of people shopping around, although it is too early as yet to determine the impact it is making.

As well as highlighting to more people the right to shop around, it is also essential that consumers know where to access help and support to guide them through the retirement process. To help that process the Pension Income Choice Association (PICA) has appointed a commercial organisation to design and build a website which will allow people to find an intermediary to help them make decisions around their retirement. The intermediary directory has been developed in conjunction with a range of stakeholders including government departments, trade associations and consumers organisations. The customer journey within this directory will help people to find an intermediary suitable for their needs – for instance, taking into consideration the availability of support given the size of pension fund available for investment; whether face-to-face assistance or telephone or internet solutions are preferred, and whether it is regulated advice or simply help and support.

We would welcome the FCA's explicit support of this directory and any steps FCA can take to encourage its widespread adoption by all stakeholders – including ABI, providers, workplace schemes through the Pensions Regulator, the Money Advice Service, TPAS and others.

Responses to the specific questions outlined in the DP

Q1. Do you think the FCA has a role to play in increasing transparency in the annuity market?
Q2. What is the best way the FCA can improve transparency in the annuity market?

We believe the FCA does have a role in increasing transparency in the annuity market. However, there are a great number of stakeholders who have an interest in the retirement market, and already a large number of current and forthcoming initiatives which aim to increase the number of consumers who shop around for a better deal.

It would be helpful if the FCA explicitly encouraged initiatives that aim to help people make the best decisions regarding their retirement savings, such as ABI's Code of Conduct and PICA's intermediary directory. There is also a gap surrounding trust-based defined contribution schemes and FCA could work with tPR to plug this gap by extending the ABI Code of Conduct provisions to all workplace pension schemes. A further additional step would be to incorporate the ABI Code of Conduct initiative into the Treating Customers Fairly regime. In that way all providers and regulated advisers would need to take the Code into account when considering how best to communicate with and help customers. This would, for example, specifically cover the point where a provider is given information by a client (such as details of a health or lifestyle condition) but then does not act upon that information.

The benefits to be achieved by shopping around can be substantial. For example, research conducted by Life & Pensions Moneyfacts for MGM Advantage as at 2 April 2013 showed the best income achievable for a £10,000 pot was £745.92 while the worst open market rate was £609.84, a potential increase in income of more than 22%(1). Many people will be able to receive even higher rates if they disclose health and lifestyle conditions to annuity providers. The highest rate for someone with 'moderate' health conditions was £811.00, 33% above the 'worst' income(1).

It's also worth noting the 'worst' rate available on the open market could be far from the lowest level of income a consumer may receive. Many customers have pension savings with providers who don't disclose the annuity rates they offer to internal customers, but the likelihood is many will be substantially below the worst publicly available rate.

(1) Life and Pensions Moneyfacts research for MGM Advantage, April 2013. Example shown for 75-year-old with £10,000 pot, single life, 10 year guarantee

If, in the medium-term, the current range of initiatives do not substantially increase the numbers of customers who shop around for the best solution, the FCA may wish to get more directly involved in finding further solutions. These could include, for example, a mandatory requirement for all customers to shop around at retirement, although that approach does come with its own challenges which would need to be addressed.

Q3. Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

It's important any regulatory scrutiny appreciates that shopping around is not just about finding the best conventional annuity rate. The array of retirement income options available to today's pensioners means a multi-step process is required. Choosing the most appropriate product, or combination of products, is the first step. If an annuity is most suitable, the shape of that annuity becomes crucial – for example, whether to build in benefits for partners and family, or if income should increase in payment to counter the effects of inflation. Only once the product and shape are chosen does choosing the best rate come into play.

This approach will mean more people get the best possible outcome from their retirement savings and result in significant increases in income for many people. Even a retiree in a pension scheme that offers the highest conventional annuity rate in the UK might still improve their income significantly if they qualified for an enhanced rate which takes into account their health and lifestyle.

It is also important any regulatory change instigated by the FCA is agreed in tandem with the Pensions Regulator so the same opportunities are given to all consumers, whether they hold an individual pension scheme, or are a member of a defined contribution workplace pension scheme. It is crucial everyone approaching retirement is actively motivated to shop around for the best deal, and take advice, not just those customers in personal arrangements.

Further information

If you would like further information regarding the our submission please contact –

[redacted]
Principal, Making Sense of Retirement Limited
[redacted]

Or

[redacted]
Pensions Technical Director, MGM Advantage
[redacted]

Executive Summary

Introduction

RBS welcomes this consultation on how the FCA and the financial services industry can be more transparent. The Key Comments section immediately below outlines our main points; this is followed by more detailed comments on the individual questions posed in the Discussion Paper.

We would be happy to elaborate further on any of the points made in this response and look forward to engaging with the FCA in this area. In the first instance, please address any enquiries to:

[redacted]
Director, RBS Regulatory Affairs
The Royal Bank of Scotland Group plc
280 Bishopsgate (Level 5)
London EC2M 4RB

[redacted]

Key Comments

- **Data** - we would request the FCA to provide more clarity on what data will be published, how it will be presented, and in which context. In order for greater transparency to be effective, disclosures need to be smarter - providing sufficient context and clarity to allow consumers to make more informed choices. It is necessary to strike a balance between the desire for transparency and legitimate concerns regarding commercial sensitivities and the need for certain types of data to remain confidential. The FCA should also consider how it will manage the potential for greater disclosure to generate a significant increase in exposure to reputational risk.

- **Firms' transparency** - there are costs, direct and indirect, associated with transparency. It is essential that an appropriate balance be maintained between those costs and the benefits achieved as a result of that transparency - how does the FCA propose to achieve/deliver this outcome? Greater transparency should in any case be supported by effective consumer education so that consumers can incorporate this information into their decision-making. We would further request that the FCA consider whether some information would be more appropriately conveyed via the Money Advice Service (MAS) and to consider how its transparency proposals align with the MAS agenda together with its future role in disclosure processes.

- **FCA transparency** - we encourage the FCA to make available: details of all FOI requests it receives and the subsequent FCA responses; details of all research it has commissioned - especially that from external suppliers; and more information regarding its supervisory activity and outcomes.

- **Enforcement** - the publication of information about FCA enforcement activities is likely to be of interest to firms and consumer groups alike. In order to be meaningful, this information needs to be presented simply and with sufficient context to provide an understanding of the rationale for the enforcement and the subsequent potential risk/impact. The FCA should include an estimate of the costs associated with each enforcement action it undertakes.

- **Redress** - we consider that the publication of redress figures would be unhelpful. Total redress figures comprise several cost components that would need to be identified to provide a full picture, and much of this information will be commercially sensitive. It would be more relevant to publish data covering the principles,

approach and basis of calculation of redress payments such as definitions of refund, compensation, and reimbursement.

- **Claims data** – While the publication of claims data for insurance products could help improve the outcome for consumers and change firm behaviour, the type of claims data to be published requires careful consideration. This will ensure that consumers do not make a choice based purely on the likelihood of lodging a successful claim. We agree that mandating the contextualisation of complaints data would improve understanding of the key messages. We should aim at one or two sets of contextualised complaints data – in our view FSA reportable per 1,000 and FOS per 1,000 could be appropriate along with uphold rates.

Detailed Comments

Chapter 2: Background

General points

We are fully supportive of the FCA's intention to carry out its work 'in a way that is as open and accountable as possible'. We welcome the general approach of increasing transparency in areas including product information; the manner in which the regulator carries out its functions; and the effectiveness of that regulatory activity. We broadly agree that increased transparency could help inform firms of the FCA's focus and influence their behaviour. We would however like further clarification from the FCA on how it considers the proposals included in the Discussion Paper will align and supplement its wider suite of transparency initiatives e.g. disclosures regarding misleading financial promotions, and the publication of warning notices.

We believe that the disclosure of all information derived from thematic reviews or other supervisory activities should always be on an anonymous basis. Individual regulated firms should not be identified and the information should not allow the identity of firms to be deduced even if the name is not formally disclosed. This is necessary to avoid unintended consequences on firms, consumer behaviour and the market in general. The exception to this is the existing situation where publication of the firm's identity is a part of disciplinary/enforcement process.

However, we consider that the greatest challenge is the use of increased disclosure to support the new FCA objective of promoting effective competition. Section 2.5 talks about the FCA's review of firms' disclosures to ensure they enable consumers to understand and engage with the market. Section 2.10 mentions a greater role for FCA to ensure that firms disclose appropriate information to enable third parties (consumer websites, aggregator sites) to do a better job at enhancing transparency. We consider it is a fundamentally important that the FCA defines the processes that will support this and that it should provide clarity and consult further with firms.

We would request further clarity on whether firms will be given the opportunity to agree any data/information published beforehand – including the way in which it is to be presented and the context that will be provided. Care should also be taken to ensure that an appropriate balance is maintained so that transparency is applied to both "good" and "bad" aspects identified as relevant to consumers and therefore worthy of publication.

Cost/benefit analysis

The FCA should ensure that there is no unnecessary duplication e.g. where the same data elements are required to be disclosed in different formats in support of different transparency or regulatory initiatives. Wherever possible the FCA should make use of data it already has rather than requiring firms to make additional submissions and ongoing, transparency initiatives should be subject to review to ensure that they continue to meet the original objectives in the most cost efficient manner.

The cost both to the FCA and regulated firms associated with successive changes to reporting/disclosure requirements, and subsequent changes to systems and working practices is significant. The potential impact of any incremental costs associated with greater disclosure will be to divert resources and investment from activities

that could be considered to be more directly beneficial to consumers. One specific example concerns increased volumes of spurious claims from Claims Management Companies – that divert resource away from dealing with those customers who have genuine issues and complaints and can prevent their timely resolution. Consequently, we believe that the FCA should seek to limit the number of changes to disclosure requirements and ensure that a clear and significant benefit to consumer outcomes exists before making changes to disclosure rules. If any changes are envisaged there should be sufficient time for transitional arrangements.

Consumer type

Whilst it is important that consumers '*understand and engage with the market*', it is also important to remember that the term 'consumer' encompasses a very wide range of individuals and organisations. Disclosures should be pitched at the correct level for the relevant consumer. It is not necessarily appropriate for disclosures associated with a product intended for sophisticated/experienced investors to be pitched at the same level as those intended for a consumer with little or no experience of investments. It is also important to set out criteria/parameters for firms when disclosing product features so that consumers are enabled to compare different products by reference to same/similar features. Lastly, it is important to remember that *'the best deal'* for one consumer is not necessarily the best product for another. Firms should be required to be transparent and offer adequate information to consumers - but consumers should be required to take responsibility for selecting the best available option for their own needs.

We seek clarity on how the FCA envisages regulating information displayed by price comparison websites (e.g. disclosures made to the FCA will be passed on to third parties; or the FCA will regulate to require firms to supply data directly to such third parties; or the FCA will regulate to require firms to publish data that can subsequently used by be any third party.)

Regardless of which of the above applies, we would like to seek clarity on the controls envisaged to ensure that any such consumer website or aggregator site uses the information in an appropriate way. For example, how will the FCA ensure that aggregator sites do not provide a distorted view of the market that is incomplete or biased against any single firm or group of firms? As the DP acknowledges, concerns have been expressed *'about the independency or quality of intermediaries',* but the paper does not outline in any detail how this concern should be addressed.

Chapter 3: How the FCA could be more transparent

We would ask the FCA to consider what other internal material could be published in addition to the minutes of board meetings. In particular we feel that greater transparency around policy development would be beneficial. This would allow stakeholders to review the types of issues under consideration by the FCA and, if appropriate, provide input at an early stage which will have the potential to improve the overall efficiency of the regulatory process.

We support FCA initiatives in developing a website that is easier to navigate and strongly encourage the promotion of best practice and equal accessibility across various departments of the FCA. We note that in the past, important policy documents such as CEO letters were only published on the Small Firms section of the website, although they would have been equally relevant to larger firms.

We would encourage the FCA to publish/make available:
a) Details of all FOI requests it receives and the subsequent FCA responses unless there are very good and disclosed reasons to the contrary;

b) Details of all research it has commissioned - especially that from external suppliers. Information should be provided on the objectives/rationale for the research; the process used to select the party commissioned to undertake the research; copies of the final result/reports; as well as any follow up actions intended as a result of the research;

c) More information regarding its supervisory activity and outcomes - particularly in those areas where the FCA believes there is a significant risk to its consumer protection and integrity objectives (while avoiding disclosure of a firm's identity until the review is final). Understanding those topics that are of particular relevance for the FCA at any point in time would assist firms in the ongoing review and prioritisation of their internal processes/policies.

Whistleblowing: saying more about what we've been told and the action we may have taken

We are considering saying more about what we've been told and any action we may have taken as a result of whistleblowing. • What information do you think would be helpful? • What do you think would be the potential benefits? • What do you think are the potential drawbacks?

We are supportive of the FCA initiative to increase transparency around whistleblowing - subject to maintaining an appropriate degree of confidentiality to protect both the whistleblower and the firm concerned.

Feedback to individual whistleblowers seems sensible. Obviously an individual whistleblower may not wish to be contacted and receive feedback - but where this is requested, it should be possible for the FCA to provide confirmation that the matter has been investigated, the overall result of that investigation, and whether any further regulatory action is likely. We do however have reservations as to the value of aggregated feedback and would flag concerns over the difficulty in ensuring that individual firms and/or the whistleblower should not be identifiable from the information disclosed.

Potential benefits of such disclosure include encouragement for others to use the whistleblowing process if it is seen to be taken seriously by the regulator. Equally firms may well update/amend their own procedures based upon the data made available (e.g. improve their own internal whistleblowing procedures or change working practices within the firm to take account of lessons learnt).

An explanation as to why the FCA has focussed on one particular area rather than another may assist stakeholders in understanding where the regulator perceives greater risk to its objectives and consequently a raised risk and/or impact on consumers.

Publishing more about our enforcement activities

We could publish more about our enforcement activities in our annual performance account. • To what extent do you think this would be helpful? • What additional information about enforcement activities should be published? • What do you think are the potential benefits? • What do you think are the potential drawbacks?

Our view is that providing greater detail on enforcement activities is likely to be of interest to firms and consumer groups alike. In order to be meaningful, this information needs to be presented simply and with sufficient context to provide an understanding of the rationale for the enforcement and the subsequent potential risk/impact. A potential drawback is the likelihood of a response from the media and/or claims management companies that is disproportionate to the actual level of risk. This could lead to poor consumer decisions and unnecessary strain on firms' resources.

Publication of more information regarding the scope and costs associated with investigations would be helpful – although in our view average (mean) costs are of very limited value. It would be much more helpful were the FCA to include an estimate of the costs associated with each enforcement action it undertakes. Such information should be readily available from the FCA's internal records and could be included at minimal additional cost. This information would assist stakeholders to assess the FCA's investigatory efficiency and the cost vs. benefit of regulation and regulatory action.

Publishing more about our supervisory activity

We could publish more supervisory activities and outcomes. • To what extent do you think this would be helpful? • What additional information about supervisory activities should be published? • What do you think are the potential benefits? • What do you think are the potential drawbacks?

We are concerned that issues could be raised without sufficient evidence. This could result in non-issues becoming problematic e.g. claims management company (CMC) activity on interest only mortgages. We restate our worry about possible disproportionate responses from interested parties stated in the section above.

Chapter 4: Information we could release about firms, individuals and markets

Transparency of our authorisations process

We are proposing to publish the average length of time it takes to authorise firms and the reasons why applications are refused. • To what extent do you think this would be helpful? • Is there any other information you would like us to publish in relation to the authorisations process? Why?

We can see the value in providing an aggregated summary of why authorisations are turned down as this could guide new applicants. We ask whether increased disclosure could be extended to the approved persons applications?

We support the publication of information about authorisations, variations of permissions or other similar data sets with details of time to process, reasons for delays, reasons for withdrawal of applications etc. This will facilitate a better understanding of the overall application/approval process.

Information regarding the application for and granting of waivers, anonymised details of waiver requests and the resultant action taken by the FCA would also be helpful and would help maintain a level playing field for participants. For example, with regard to the recently introduced mobile phone recording requirements, some firms felt at a disadvantage - believing that others had been granted waivers. In fact, the FSA confirmed that no waivers had been given and consequently firms' concerns were unfounded.

Where the application has taken more than the target time to process some explanation should be provided such that stakeholders can interpret the data correctly e.g. if the firm submitted an incomplete application or FCA took longer than normal to process the application for some reason.

Information should be provided so that the data can be viewed in context – i.e. did the application relate to a complex business involving a wide range of regulated activities, or was it an application for a very small business focused on a specific business area.

Transparency of our thematic reviews and early intervention

We are proposing to develop a consistent approach for publishing the results of thematic work on an anonymised/aggregated basis. • Do you think this would be helpful? • What sort of information would you expect to see? • How would you like this information to be made available? • What are the potential benefits? • What are the potential drawbacks?

RBS supports this proposal in so far as firms cannot be identified by the data. As stated above, it would be helpful to firms to understand what topics are of particular relevance for the FCA. However, we have some concerns on how this would work in practice. We note that generally the larger firms are easily recognisable by references to the number of accounts, customers, etc.

Transparency of the redress process

We are proposing to publish, with the firm's consent, how much it has paid out in redress and disclose more details about the redress scheme in the public notice. Do you think this would be helpful? • What sort of information would you expect to see? • How would you like this information to be made available? • What do you think are the benefits? • What do you think are the drawbacks?

Complaint resolution centres on fairness to consumers. On an individual case by case basis a fair outcome needs to be delivered in the interest of both consumer and firm. We consider that this is the most appropriate way in which to judge a firm's performance in terms of whether consumers have received appropriate compensation.

We consider that the publication of redress figures would be unhelpful. There would have to be a significant level of detail provided around any such publication. Total redress figures comprise several cost components that would need to be identified to provide a full picture, with the complication that much of this information will be commercially sensitive. Furthermore, there may be unintended consequences of such disclosure, including pick up by CMCs and greater reluctance from firms to pay compensation and settle enforcement cases if the full extent of redress programmes were to be disclosed.

It would be more relevant to publish data covering the principles, approach and basis of calculation of redress payments such as definitions of refund, compensation and reimbursement.

It may also be helpful to see published data on the number of redress payments per year per individual firm; turnaround times for dealing with complaints; and more detailed data to understand if redress is paid at the end of an investigation or at the outset as a gesture of goodwill. Reference should also be made to the percentage of complaints by reference to the overall consumer base of the firm, to put data into context.

Chapter 5: Information that we could require firms to release

We believe that the FCA already receives a significant amount of data from firms via their regular returns and would request that they consider how this could be used as a source of information to support increased transparency.

We have a broader concern that it will be difficult for disclosure itself to meet the objective of making the value of products offered more transparent. Comparison of price, rates etc. are one part of the equation, but 'quality' is much more subjective to an individual consumer. We request more detail on the types of information that the FCA anticipates gathering and publishing to aid a comparison of quality.

Improved transparency in the annuity market

Do you believe the FCA has a role to play in increasing transparency in the annuity market? • What is the best way the FCA can improve transparency in the annuity market? • Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

We believe that transparency and consumer understanding are two sides of the same coin. In our view, the most urgent issue to address is that many consumers are surprised when the time comes for them to purchase an annuity. Consumers need to be educated collectively and consistently, on what they should expect to do and when. Consumers should be told when they start saving for a pension that at some point, they will need to purchase an annuity. If this message is regularly reinforced, they will be primed to compare offers when the time comes to purchase an annuity. This would then allow them to ask the relevant questions of both their pension providers and also any annuity providers with whom they may engage. It should also be highlighted to consumers that opportunities to gain enhanced annuities exist and should be explored when making comparisons.

We would like to make the additional point that evidence of consumers continuing to buy annuities direct from their pension provider does not necessarily indicate that they are badly informed, or poor consumer outcomes. It is not unusual for a pension provider to satisfy a consumer's annuity needs (even after they shop around) if there are nominal differences between rates as the speed and ease of purchase can be the deciding factor.

We note the FCA recognition at 5.10 that the features of the annuity market make comparisons particularly difficult and welcome their intention to undertake further work with industry and consumer bodies to ensure that there are not unintended consequences – we consider that this will be vital.

Ideally, well-informed consumers, acting in a timely fashion, with assistance from services offering to compare annuity providers (if necessary, on an advised basis), is the solution.

Publication of claims data on insurance products

To what extent do you think this would be helpful? • What information about claims data would be useful to publish? • What do you consider are the benefits of this idea? • What do you consider are the drawbacks?

The publication of claims data for insurance products is one idea that we think could help improve the outcome for consumers and change firm behaviour. This has the potential to improve transparency for consumers as well as allowing providers to benchmark themselves against their peers and make it easier to assess whether they are out of line in terms of delivering good consumer outcomes.

The type of claims data published requires careful consideration to ensure that consumers do not make a choice based purely on the likelihood of lodging a successful claim - although we can see some value in the examples included in the paper. We are unsure whether including more sophisticated data such as premiums versus payout ratios would be useful - it may not be understood by most consumers. In general, we consider that it will be difficult to simplify insurance data sufficiently and to ensure a consistent language which is easily understood by consumers.

It may be useful to publish claims by cover type, e.g. for home insurance this would include core cover, accidental damage, personal possessions, home emergency and legal protection. Also common decline reasons, even at a thematic level, may be useful to enable consumers to see which cover offers most value.

In our view, a key benefit would be to aid comparisons between providers and to potentially afford consumers with more information to support the identification of those products that best meet their cover needs.

We note however that claims performance is not the only indicator of the value of an insurance product. A potential drawback is that consumers could make decisions based solely on published claims data, or choose to exclude cover that is of value - despite having high 'decline' rates.

Contextualisation of complaints data

To what extent do you think this would be helpful? Do you have any suggestions about what matrix we should mandate? • Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

We believe that mandating the contextualisation of complaints data would improve understanding of the key messages.

The key to complaints data being meaningful and helpful to consumers is that true comparisons can be made. For example, if we are to continue to use the per 1,000 accounts and this is to be mandated, the FCA needs to ensure that there is clarity on the definition of an 'account' - this will help ensure that published data is consistent. We consider that it is very important to contextualise complaints data. Mainly, this is so the media and consumers are able to see a breakdown of complaints data related to individual business sectors, as opposed to an organisation as a whole. This is important as some products, by their nature, will generate different volumes of complaints than others.

However, further clarification is required. For example, it should be decided how much, if any, additional detail is published. Too much information could prove distracting for the consumer, and may not assist them in making good purchasing decisions. It may be that an amendment to the current 'voluntary contextualised matrix' would be more appropriate (see our response in the section below).

The move to publishing FSA and indeed Financial Ombudsman Service (FOS) complaints data has had a very positive impact on the focus within firms of complaint handling. In our view the behavioural benefits are already clear and the point of diminishing returns may have been reached.

Overall, we consider that mandating contextualised data would improve understanding of the key messages. However, when requesting information the FCA will need to provide clarity as to what they require. Our concern is that it will be very difficult to specify the parameters for the data required from firms. Objective comparison will be undermined if firms interpret the format of data requested differently. An added complication is that the underlying systems in individual firms may not support availability of data in the prescribed format.

We note that the FSA has to date been unable to identify a matrix that satisfies all parties (5.21). This is not surprising as all firms currently utilise many metrics that could potentially be included (e.g. Customer Satisfaction with Complaints Handling/QA scores/Operational MI around closure timescales etc). However, unless these metrics are uniform and consistent across the industry, their publication will be of limited benefit to consumers.

Our interpretation is that the creation of a mandatory matrix will inevitably mean the release of more data together with standardisation. At present the discussion paper does not provide sufficient detail on the measures that could be included in this matrix and the intention as to how they would be used. We would strongly recommend that the FCA re-examines the current version of the FSA voluntary matrix. We are concerned that by simply providing more data there is a risk of analysis distortion e.g. when per 1,000 complaints are released now, the media tend to pick up on volume.

We should aim at one or two sets of contextualised data – in our view FSA reportable per 1,000 and FOS per 1,000 could be appropriate along with uphold rates.

RBS Group has used the previously published FSA voluntary contextualised matrix since the publication of complaints data commenced in the second half of 2010. We use this to publish complaints data for our businesses on our website. The matrix currently communicates the total number of complaints opened and closed per broad product category throughout the previous six months; the percentage of these complaints that were closed within eight weeks; and the percentage of these complaints that were upheld.

Although the current matrix details complaints that have been resolved within eight weeks, we consider that it would be more helpful to let consumers know how many complaints have been resolved sooner than this, for example within one, two or four weeks. This would give the consumer a much better insight into how quickly the business can rectify problems.

Finally, in order to increase the opportunities for consumers and the media to access this information, firms may also consider publishing these figures in their annual reports. Doing so could help raise public awareness and confidence in firms' attitudes towards complaint handling.

Chapter 6: Conclusions

No comments on this section.

Appendix 1: The Legal Framework

The FCA should balance the legal requirement to make information available with legal obligations on firms to keep consumers' information confidential. Firms should not be required to disclose customers' data unless this information is anonymised.

--- End ---

Financial Conduct Authority (FCA) Transparency Discussion Paper – Scope Response

About Scope

We all want to live in a world of opportunity – to be able to live our own life, play our part and be valued for the person we are. At Scope we're passionate about possibility. It inspires us every day and means we never set limits on people's potential.

We work with disabled people and their families at every stage of their lives. From offering day to day support and information, to challenging assumptions about disability and influencing decision makers – everything we do is about creating real and lasting change.

We believe that a world where all disabled people have the same opportunities as everyone else would be a pretty incredible place for all of us. Together we can make it happen.

Introduction

Forthcoming research conducted for Scope by Ipsos MORI uses primary survey data from over 1000 disabled people as well as secondary analysis of national data. It looks at the barriers to financial inclusion that disabled people face. Scope therefore feels well placed to contribute to this discussion on the transparency of the FCA and the firms it regulates.

Scope believes that greater transparency can help tackle two related problems:

1. Disabled people are often refused access to affordable (good value) mainstream financial products
    - More than one in ten (13per cent) disabled people have been turned down for credit in the last five years.[1]
    - Disabled people are over-represented among high cost credit users (18 per cent compared with 5 per cent).[2]
    - One in ten (8per cent) of people say they have been turned down for insurance and six in ten (61per cent) of those who have been turned down felt it was for a reason related to their impairment or health condition.
    - One in ten (13per cent) of disabled people in recent research commissioned by Scope felt they paid more for their insurance premium because of their impairment or health condition.
2. Providers have no reason to make financial products available to disabled people and appropriate to their needs
    - The UK parliament created the FCA to promote effective competition in the interests of consumers – there is a clear need to regulate firms' behaviour so that vulnerable groups gain access to financial services.

Scope believes that real transparency about the genuine value or otherwise of products would help disabled consumers make improved decisions, and create an atmosphere wherein firms are unable to deny disabled people access to good value products.

Q8. Publication of claims data for insurance products

Publishing the claims data of insurance products would help disabled consumers recognise good value insurance products, and would force insurance providers to increase disabled peoples access to these products.

[1] Source: Wealth and Assets Survey
[2] Personal Finance Research Centre (2013) The impact on business and consumers of a cap on the total cost of credit, http://www.bristol.ac.uk/geography/research/pfrc/themes/credit-debt/pfrc1306.pdf

Insurance pay-outs are acutely important to disabled people since they usually face great, often unexpected extra costs relating to their disability.[3] Being disabled may have an impact on a disabled person's finances through increased living expenses, the need for expensive items and increased travel costs.

Disabled people also have a limited capacity to cope with these financial shocks. Over a third (37per cent) disabled people said they could not afford an unexpected but necessary expense of £500 compared to a quarter (26per cent) non-disabled people.[4] The majority of disabled people (85per cent) say they have not saved money during the last 12 months because they cannot afford to - a significantly higher number than nondisabled people (79per cent).[5]

Insurance is an important financial product for disabled people; it is key to enabling disabled people to fund short-term or emergency expenses.

One in ten (13per cent) of disabled people in recent research commissioned by Scope felt they paid more for their insurance premium because of their impairment or health condition.

Scope welcomes three of the FCA's proposals in particular:

- To require firms to publish data on the percentage of successful claims following an initial contact
- To require firms to publish data on the ratio of premiums to pay-outs
- To require firms to publish data on the reduction or refusal of claims due to non-disclosure

All three proposals will first of all indicate to disabled consumers which firms would provide them with an affordable premium that would properly meet their needs in times of emergency. Secondly the proposals will expose providers who are, through high premiums and low frequency pay-outs, providing unjustifiably high cost insurance products. Firms, not wanting to lose prospective customers to their competitors, will be given a reason to provide insurance suitable for disabled consumers.

Q9. Mandating contextualisation of complaints data

Scope welcomes the proposal to mandate providing contextualisation of published complaints data. At the moment firms with over five hundred 'recordable complaints' are required to publish their complaints figures twice a year. However this does not provide disabled people with more nuanced information pertinent to their needs. In addition to the aspects of the elements of the matrix suggested by the FSA[6], Scope urges the FCA to seriously consider mandating firms to record the content of complaints in a more detailed, systematic way, and subsequently publish this data.

This would address the first problem; disabled people would be guided by complaints data towards providers who do not behave in ways detrimental to their needs. It would also address the second problem; providers would be given a reason to make available products that meet disabled consumers' needs.

Example
Disabled people are more likely to be unable to meet debt repayments; six per cent are two or more consecutive repayments behind, compared with four per cent of non-disabled people[7]. Loans with low interest rates, weekly repayments at levels that suit the borrower, and that can be paid flexibly without the risk of incurring penalty charges have been shown to low income consumers,[8] a cohort disabled

[3] Joseph Rowntree Foundation (2004) Disabled people's costs of living, http://www.jrf.org.uk/publications/disabled-peoples-costs-living
[4] Ipsos MORI (forthcoming, 2013) Disabled People and Financial Wellbeing A report for Scope by Ipsos MORI
[5] Ipsos MORI (forthcoming, 2013) Disabled People and Financial Wellbeing A report for Scope by Ipsos MORI
[6] FCA Voluntary contextualisation matrix for firms within its complaints handbook DISP.29, http://fshandbook.info/FS/html/handbook/DISP/1/Annex1A
[7] Source: Wealth and Assets Survey
[8] Kempson, E & Collard, S, Developing a vision for financial inclusion (Surrey: Friends Provident, 2012)

people are disproportionately likely to be in.[9] Contextualised complaints data may help highlight which firms unexpectedly and inflexibly apply penalty charges.

Q12. Please tell us your ideas about information you think the FCA could require firms to release

The discussion paper (DP13/1) states that the FCA will be able to disclose information that relates to the business or affairs of any person when the FCA has the consent of the person who provided the information or to whom it relates or if the information is published in such a way that it is not attributable to a particular person (for example, if it is anonymised or aggregated).

Assuming these two conditions are met, Scope feels there are two bodies of information which would be hugely informative for disabled people trying to access the right financial products and that the FCA should consider requiring firms to release.

Credit

Firstly, disabled people are more likely to be refused access to mainstream credit products. More than one in ten (13per cent) disabled people have been turned down for credit in the last five years.[10] Research by Social Finance found that over 40per cent of families with disabled children applied for and were refused bank credit in the last three years.[11]

Many high street banks are unwilling to lend against benefit income because they perceive that many non-disability-related benefits like job seekers allowance can be awarded and removed at short notice.[12] Some banks may unjustifiably refuse to lend against steady disability related benefits.

Recommendation 1: The FCA should require firms to release data about affordability checks and data about the characteristics of those refused credit – for example which state benefits they receive - would both increase the visibility of credit providers who allow disability related benefits to count among stable income streams, and allow the FCA as a regulator to address firms carrying out unreasonable affordability checks based on false perceptions.

Insurance

Currently providers try to ascertain whether a potential customer is an 'average' or 'higher than average' risk customer.[13] Under the Equality Act (2010), firms can justify charging a person more through higher premiums, or refuse to cover them altogether – as long as they are able to ground their decision in a 'reliable source' such as statistical data or a medical report.[14]

Providers are advised by the Association of British Insurers (ABI) that it is generally better to charge disabled people higher premiums than to refuse them cover altogether.[15] The majority (61per cent) of disabled people who have been turned down for insurance cover believe this was for a reason related to their impairment or health condition.[16] This is an instance of the first problem; disabled people being refused access to affordable mainstream financial products.

Recommendation 2: The FCA should require firms to release data about their refusals to insure disabled people, or charring them higher premiums. Again, such transparency would inform the decisions of disabled people, reduce search costs and guide them to insurance providers who will

[9] Disabled people are significantly more likely to live in poverty than non-disabled people. Office for Disability Issues 'Disability Facts and Figures', ODI, 28 Sep 2012, http://odi.dwp.gov.uk/disability-statistics-and-research/disability-facts-and-figures.php#ls (accessed January 2013)
[10] Source: Wealth and Assets Survey
[11] Social Finance (2013) Financial Inclusion: Families with Disabled Children Understanding their financial needs, http://www.socialfinance.org.uk/sites/default/files/dcff.pdf
[12] Social Finance (2013) Financial Inclusion: Families with Disabled Children Understanding their financial needs, http://www.socialfinance.org.uk/sites/default/files/dcff.pdf
[13] Mind, Insurance cover and mental health, http://www.mind.org.uk/mental_health_a-z/8022_insurance_cover_and_mental_health
[14] Mind, Insurance cover and mental health, http://www.mind.org.uk/mental_health_a-z/8022_insurance_cover_and_mental_health
[15] Mind, Insurance cover and mental health, http://www.mind.org.uk/mental_health_a-z/8022_insurance_cover_and_mental_health
[16] Ipsos MORI (forthcoming, 2013) Disabled People and Financial Wellbeing A report for Scope by Ipsos MORI

meet their needs and consequently incentivise less inclusive insurance providers to change their behaviour.

All of the published information should be clearly explained and in an accessible format in order that disabled people or intermediaries can make properly informed decisions. The information should be delivered in a simple and accessible format, perhaps an online and in-store gateway where disabled people can find all the relevant information about which firms are providing accessible and affordable products suitable to disabled people's needs.

ShareAction
the movement for Responsible Investment

Formerly FairPensions
Fairshare Educational Foundation
Trowbray House, 108 Weston Street,
London SE1 3QB | 020 7403 7800

CarolAnne MacDonald
Policy Risk & Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

By e-mail to transparencyDP@fca.org.uk

26 April 2013

Dear Ms. MacDonald,

We would like to respond to the FCA's DP13/1 on Transparency.

ShareAction (formerly FairPensions) is a registered charity established to promote responsible investment practices by pension funds and other institutional investors. In particular, we work to encourage active stewardship of listed companies through the informed exercise of shareholder rights. ShareAction also champions greater transparency and accountability to the millions of people whose long-term savings are entrusted to the capital markets. We are a member organisation and count amongst our members a growing number of globally recognised NGOs and trade unions, as well as over 8,000 individual supporters.

We assist our individual supporters to engage with their pension providers about investment policies and practices, including shareholder engagement and voting decisions. In our experience such interaction is hampered by a pervasive lack of transparency. We also conduct research and benchmarking exercises using publicly available information about institutional investors' policies and practices, in order to inform the market and to promote best practice.

Transparency in relation to pensions and investments

We are pleased that the FCA has chosen so early in its tenure to address the question of transparency in relation to those it regulates and itself. The FCA's work is of interest to us because it regulates key players in the pensions and institutional investor markets, including contract-based workplace or personal pension providers and asset managers. At paragraph 5.2, the Discussion Paper identifies two important principles which could be promoted by increased disclosure, being (1) adjusting disclosure rules to help make products or markets more transparent; and (2) mandating firms to release more or different data/information on other aspects of their performance that could be used to compare firms.

We would like to highlight the importance of transparency in the wholesale markets. Consumers have an interest in the effective functioning of wholesale markets not only because of the impact of market failures on the wider economy but also because within these markets large sums of consumer money are managed by pension funds and their agents/intermediaries. In addition, it would be a mistake to assume that pension funds themselves are always 'sophisticated' investors capable of eliciting the information they need from their asset managers; as the Myners report observed over a decade ago, this is far from universally the case.[1]

As the Walker Review[2] and the Kay Review[3] have recognised, this consumer interest extends far beyond the point of sale and encompasses the ongoing behaviour of institutional investors, including as stewards of large listed companies. For example, in the aftermath of the financial crisis it was widely acknowledged that institutional investors had failed to rein in risky lending in the major banks they owned, and in many cases had actively encouraged banks to take on more risk in order to boost short-term profits. This resulted in massive consumer detriment not only to individual pension savers (in the aftermath of the crisis, pension funds lost an average of 17% of their value)[4], but also via the impacts of the crisis on the wider economy. In our view, it is important that regulators concern themselves with the systemic impacts of stewardship of invested assets, and not simply with the appropriateness of individual investment products to individual consumers.

We also note that pension products have features distinguishing them from other financial products. As Martin Wheatley noted in his recent speech at the London School of Economics[5], financial decisions often do not follow efficient market theories about consumer behaviour. Long-term investment products such as pensions are subject to a number of factors which exacerbate this tendency: they are highly complex; consumers often do not have a real role in their selection (for example, workplace pension providers are chosen by the employer, although the contract is between provider and employee); there is no repeat business; and poor performance may not become apparent until it is too late for consumers to act. These factors influence the competitiveness of the market for these products. As a 2008 paper by the OECD concluded, "*Given the complexity of investment matters and the long horizon of pension matters, expectations [that market forces will lead to efficient outcomes] may seem unwarranted.*"[6]

Disclosure, properly used, is a way to help counteract some of this complexity. However, regulators should not assume an efficient market model whereby disclosure will automatically lead to good outcomes for consumers. First, it should be recognised that disclosure has a role to play not only in enabling consumers to make better choices, but also in enabling better scrutiny of agents' behaviour as a mechanism for protecting consumer interests precisely where individuals do *not* have a choice about who manages their money (for example, where individuals are auto-enrolled into workplace pensions). Secondly, disclosure must be complemented by robust standard-setting; we fully endorse the Kay Review's recommendations regarding the promotion by regulators of fiduciary standards of care. The FCA's position on the need to go beyond 'caveat emptor' is

[1] Lord Myners, 2001, 'A review of institutional investment in the UK'
[2] Sir David Walker, 2009, 'A review of corporate governance in banks and other financial industry entities'
[3] John Kay, 2012, 'The Kay Review of UK Equjty Markets and Long-termism: Final Report'
[4] OECD: http://www.oecd.org/dataoecd/52/52/42204972.pdf
[5] 'The human face of regulation'. Published on the FCA's website on 10 April 2013.
[6] Stewart, F. and J. Yermo (2008), 'Pension Fund Governance: Challenges and Potential Solutions', OECD Working Papers on Insurance and Private Pensions, No. 18, OECD publishing

encouraging in this regard. For the reasons outlined above, it is vital that this approach be carried over to wholesale as well as retail markets.

The FSA's recent work on conflicts of interest recognised that there are significant failings within the asset management market, with senior management often failing to demonstrate that they understood and communicated a sense of duty to customers. Such a failing is deeply concerning given individual savers' heavy reliance on the diligence and good faith of those who manage their investments.[7] Savers also have an interest in a financial services industry which is characterised by relationships of trust, good governance and accountability. We believe that disclosure can be a mechanism for the promotion of such a culture. And, in addition to reputational benefits, increased transparency across the market can improve consumer engagement thus enabling firms to better meet consumer needs and to position themselves as attractive options for consumers.

As explained further below (see **Concerns about excess of information**), greater transparency in this area need not "overload" consumers with information and would empower those working on behalf of consumers to monitor the financial services industry and to use the disclosed information for the benefit of consumers. We also believe that it would help promote the FCA's strategic and operational objectives.

Transparency of regulated entities

Information to be disclosed

We are currently undertaking a research project to explore how the institutional investment system could be made more transparent and accountable to underlying savers. This project will report, with policy recommendations, in Autumn 2013. We have invited the FCA to participate in discussions to help us develop these recommendations. In the meantime, we would tentatively propose that the following areas of disclosure could be mandated by FCA rules:

Conflicts of interest

There are systemic conflicts of interest in the asset management industry. For example, conflicts may arise where investee companies are actual or potential clients, either of the asset management firm itself or of the parent company's investment banking arm. We are aware of considerable anecdotal evidence that these conflicts result in investment and/or engagement decisions that are suboptimal for beneficiaries.[8] In addition, conflicts arise where asset managers own shares in their own parent companies on behalf of clients and beneficiaries. Many asset managers do not disclose, possibly because they do not have, a clear policy on how these conflicts are managed, including for example how they take voting decisions with respect to their parent companies.

Asset management firms should have, and should be required to disclose, conflicts of interest policies which set out key areas where conflicts may arise and detail the procedures in place to ensure these conflicts are resolved in the interests of clients. The Stewardship Code currently requires signatories to disclose a policy on conflicts of interest related to stewardship, but our research has found that these policies are often inadequate.[9]

---

[7] Traditionally people do not move their pension, even personal pension products. However, a more transparent market may lead to greater mobility of money and, therefore, competition.

[8] See for example, Wong, S., 'How conflicts of interest thwart institutional investor stewardship', Butterworths Journal of International Banking and Financial Law, Sept 2011

[9] FairPensions/ShareAction, 2010, 'Stewardship in the Spotlight', available at

Disclosure of investment policies

Pension savers have only minimal rights to information about how their money is invested. We believe that this lack of accountability is damaging for the industry as a whole as savers feel alienated from their money, thus adding to the severe lack of trust in the industry and reducing the likelihood that people will save.[10] We propose that those responsible for investing money on another's behalf should be required to disclose, and to keep up-dated, clear details of the following policies – and, crucially, to report annually on how these policies have been implemented:

- Investment policies, including how money is being invested.
- Policies relating to how the parties ensure responsible stewardship of investee companies, including those arising from the application of the Stewardship Code.[11]
- Policies relating to environmental, social and governance issues.

If there is, as we believe, value in institutional investors being accountable to the ultimate owners of those assets, those owners must be able to access, and to understand, the policies governing how their money is managed. We have also responded to this effect to the DWP's recent consultation on pensions disclosure requirements, and are engaging with DWP officials on this issue.[12]

Disclosure of stewardship and voting activities

Asset managers vote as shareholders on key issues relating to companies' strategies. As the Kay Report observed, the beneficiaries whose money is managed have an interest in how these votes are exercised, given their dependence on the success of these companies for a long-term sustainable pension income. As demonstrated in our 2012 report 'The Missing Link',[13] disclosure of voting activity is often limited, incomplete, difficult to find and/or lacking any clear explanation. However, full disclosure of voting decisions would provide a way for beneficiaries to hold to account asset managers (and the asset owners who appoint them, including insurance companies and pension funds). We believe that disclosure of voting activities by institutional investors should be mandatory[14] and that the FCA should require those it regulates to produce this information in a uniform and clear manner. Disclosure of voting leads to greater accountability by opening managers' decisions up to scrutiny and, in particular, highlighting inconsistencies in their voting policies. The possibility of such scrutiny will inform managers' behaviour by forcing them to consider the justification for their decisions.

Disclosure of other information relating to investors' holdings

Regardless of the point in the investment chain at which a pension provider, asset manager or other intermediary sits, they should be required by FCA rules to respond to questions from those whose money they hold/manage. Too often those who contact their pension providers with questions are told that the relevant decision has been passed to another party and that no information is therefore available. This damages the trust between

---

http://www.shareaction.org/research/surveys

[10] The NAPF's Spring 2012 survey found that lack of trust was the number one reason given by people planning to opt out of auto-enrolment.

[11] On the limitations of the FSA's existing disclosure requirement in relation to the Stewardship Code, please see our previous consultation response at http://www.shareaction.org/sites/default/files/uploaded_files/FSAStewardshipCodeResponse.pdf

[12] See http://shareaction.org/sites/default/files/uploaded_files/policy/DWPdisclosureconsultation2013.pdf

[13] FairPensions/ShareAction, 2012, 'The Missing Link: Lessons from the 'Shareholder Spring', available online at http://www.shareaction.org/research/reports

[14] The Government has reserve powers to make voting disclosure mandatory (Companies Act 2006, s.1277)

beneficiaries and their pension providers and alienates those beneficiaries seeking to engage. We believe that this contributes to the disconnection of ordinary savers from the financial services system, ultimately damaging the system and its ability to meet consumer needs.

In addition to being required to answer beneficiaries' questions, pension providers, their asset managers and/or other intermediaries should be required to disclose details of assets held on customers' behalf and the 'churn' or turnover of those assets.

Disclosure of costs

We welcome the FCA's intention to consider whether there are markets where firms could be more transparent about the underlying value or performance of their products, in order to allow consumers (retail or wholesale) to better judge, either directly or via intermediaries, which product is appropriate for their needs. We believe that full disclosure of costs in wholesale markets would help pension funds and other investors secure best value. The approach developed in the Retail Distribution Review, whereby charges have to be agreed with clients, should be applied to wholesale markets, with a prohibition on authorised firms from generating income non-transparently based on knowledge of clients' business. Full disclosure of charges will promote effective competition, market integrity and will help achieve better outcomes for consumers whose monies are transacted in wholesale markets.

Concerns about excess of information

We note the comments made in the Discussion Paper and its associated literature review about the possible limitations on users' ability to process disclosed information and the problems associated with disclosing too much, or too complex, information. However, we do not believe that the disclosures proposed above would be subject to these problems.

The aim of our proposed disclosures is to help the industry create a culture of openness and trust in which savers can, if they wish, connect with the managers of their money. We propose that the majority of information should be made available on websites, preferably in a section dedicated to beneficiaries' information. The information will therefore be easily accessible for those who wish to search for it, without being part of the "noise" of information which consumers may experience at the point of sale. It should also be available on request, but again this will mean that individuals' are controlling their own consumption of the information.

We note the FCA's recognition of the conclusion from the FSA's DP08/3 that even if information is not used by many consumers, disclosure "*could still deliver benefits to consumers through better firm behaviour if the information was used by a minority of active consumers or other market participants*"[15]. It is important not to overlook the use to which information can be put by commentators, experts and consumer groups. For example, we ourselves use public disclosures to make comparative information available to the market in an accessible manner, through our benchmarking surveys and research reports. Thus, whilst a consumer may not choose to access the raw information, those working on their behalf can use it to alert consumers or regulators to good or bad practice in a way which is understandable and relevant.

[15] paragraph 2.16

Transparency of FCA regulation

Thematic reviews

In response to the questions raised after paragraph 4.18 in relation to the FCA developing a consistent approach for publishing the results of its thematic work, we think that the disclosure of such information would be helpful. In addition to the potential benefits identified in paragraph 4.18, we believe that the information would be useful for those working to monitor the financial services industry in the interests of consumers as it could allow them to see emerging trends in behaviour which may be of concern for consumers. For example, data reported by the Competition Commission revealed that the twelve largest distributors of payment protection insurance made profits that yielded a Return on Equity of 490%, clear evidence of market failure, ineffective competition, failure of consumer protection, and a source of excessive remuneration. The well-established approach adopted by the Competition Commission and the OFT to disclosure of economic and financial information in aggregated form should be adopted by the FCA.

How the FCA could be more transparent

We note the FCA's suggestions as to how it could be more transparent and we welcome the FCA's commitment to this area. As a civil society group operating outside the regulatory framework, we at times found it difficult to engage with the FSA. In particular, we propose the following areas for improvement:

- The FSA's consultation processes were often inaccessible and opaque. For example, Quarterly Consultations covered a wide variety of topics and were not actively publicised to relevant consumer groups. Small organisations like ourselves do not always have the time and resources to monitor and analyse papers to see whether relevant consultations are taking place, and their input may therefore be lost on topics where it would be relevant and valuable. It would be better if consultations are clearly distinguished by topic/theme on the FCA's website and pro-actively disseminated to external interested parties.
- More could be done to reach out to smaller and specialist consumer groups (for example the UK Shareholders Association, the Association of Member Nominated Trustees, and others representing the beneficiaries of particular types of financial services), for example by establishing working groups representing consumers in particular sectors, and by better publicising relevant consultations among consumer groups with a potential interest. The FCA should also reach out to a wider range of civil society organisations that may not be consumer groups in the traditional sense, but may have expertise on financial services issues with implications for consumers. Any such processes should be fully transparent and publicised through the FCA's website, rather than relying on organisations having personal contact with the FCA.
- The transparency of the teams within the FCA's organisational structure could be improved. It is very difficult for external parties to know which teams deal with which areas of work and to whom within those teams we should seek to engage. The FCA could improve this by publishing a clear and accessible organisational diagram with details of what each team does and the contact details of a person within each team who can deal with queries.

We welcome the suggestion by the FCA that it publish all responses to consultations (paragraph 3.12). There is a clear public interest in transparency regarding the representations made to the FCA by regulated entities and consumer groups. Publishing such information is already established practice for government departments.

We would welcome the opportunity to meet with you to discuss the above proposals.

Yours sincerely

[redacted]

Policy Officer, ShareAction

Standard Life response to DP 13/1: Transparency

Thank you for the opportunity to comment on the Transparency Discussion Paper DP13/1.

We support the FCA's objectives in increasing transparency but any new transparency measures must be of benefit to customers. In the Risk Outlook for 2013/14, the FCA has indicated that even where there are clear disclosures customers still often choose to ignore them. The quality of the information and how easy it is for customers to access and understand should be the key objective in relation to increased transparency, rather than simply publishing more information in the hope that customers will refer to it.

We look forward to engaging in further discussions and consultations regarding transparency.

We have provided further views and comments below on each of the three areas of focus in DP13/1.

1. How the FCA could be more transparent

The FCA could be more transparent regarding responses it has made to questions submitted by individual firms. On an anonymous basis and where there are no commercial sensitivities, the FCA could publish via their website a summary of Q&As they have responded to.

At present, one firm may receive a response confirming an interpretation of a particular rule, but this information is not shared with others. This can result in perpetuation of non-compliant activity from some firms and an uneven playing field for the compliant firms to operate in.

If Q&As were to be published it would help spread good practice outside of supervision activities and formal guidance papers. Under RDR, Q&As from adviser firms were published and were considered to be useful in guiding firms on their compliance requirements. We would propose that this practice continues on an on-going basis and is extended to Q&As from other firms including product providers and platforms firms.

2. Information that we could require firms to release

We welcome any activity that results in improved customer outcomes and satisfaction generally and specifically in the annuity market. This goal can certainly be achieved through enhanced transparency. Our view is that developments should focus on ensuring that:

- Customers are well educated in terms of the rights and options they have across the whole retirement market, including getting the correct type of annuity, as well ensuring that annuitisation is the correct solution in the first place.
- Customers understand the importance and consequences of the decisions they make.
- Customers have access to appropriate guidance and assistance throughout the process.

The role of the FCA, in conjunction with the ABI and the wider industry, should be on ensuring that any distortions that arise due to information asymmetries are removed and that the annuity market is free to operate competitively for the benefit of customers and also providers. The appropriate means to achieve this is through high quality disclosure and encouragement of meaningful engagement with the customer.

3. Information the FCA could release about firms, individuals and markets

We support the FCA in this proposal, but would repeat our initial comment that increased transparency and disclosure must be of benefit to customers and not merely a 'box-ticking' exercise carried out by firms that most customers pay little heed to.

While we believe using disclosure as a regulatory tool will act as a deterrent to prevent poor behaviours by firms, it could be detrimental to entire industry sectors, rather than the specific firms responsible for the poor behaviours. It could also further undermine customer confidence in certain industry sectors, or the financial services industry as a whole, and act as a deterrent to customers taking appropriate measures to help secure their financial future.

Which?, 2 Marylebone Road, London, NW1 4DF
Date: 26 April, 2013 Response by: Louise Vergara

Consultation Response

Policy, Risk and Research Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Attn: CarolAnne Macdonald

Transparency (DP13/1)

Executive Summary

- Which? welcomes the FCA's discussion paper on transparency as a regulatory tool to help achieve its objectives of consumer protection, effective competition and market confidence, as well as the opportunity to provide our views on this area once again.

- It is very important that all of the proposals to improve transparency in the discussion paper along with our additional suggestions are implemented. In the past, proposals for improved transparency put forward in discussion papers have been watered down in response to opposition from the financial services industry.

- While we broadly welcome the FCA's guiding principle that presumption should be towards transparency, this can be further enhanced by adopting the broad principles recommended by Which?, including that information should only be withheld where it would damage the public interest.

- Furthermore, to ensure a genuine and consistent culture of transparency within FCA, we recommend that the board commission an independent review of the FCA's approach to regulatory transparency, and report progress in the annual report.

- Transparency continues to be hampered by the broad definition of "confidential information" under section 348 of the Financial Services and Markets Act (FSMA). The definition should be modified to exclude:
    - firm specific results of mystery-shopping exercises and thematic work
    - price data for certain markets (such as annuities)
    - complaints data for individual firms
    - instances where information is available already to a large number of members of the public (for example, the text of letters it has required firms to send customers who have been mis-sold PPI)
    - instructions that the FCA has given to firms, and their performance against these instructions

- In the interests of greater public disclosure and enhancing consumer protection, we encourage the FCA to seek further legal advice to determine whether the restrictive approach applied by the regulator is necessarily warranted under section 348 of FSMA. Furthermore, the FCA should seek to challenge the boundaries of this legislation more effectively.

- To enhance the accountability of the FCA, it should publish a list of meetings held by senior FCA staff and FCA board members with individual executives from firms and trade associations.

Whistleblowing:

- Subject to ensuring confidentiality is maintained, we agree that communication between FCA and whistleblowers should be improved, and that the incidence of whistleblowing (types of cases reported, products and practises involved) should be disclosed.

- The FCA can enhance its approach to whistleblowing through ensuring that:
  - analysis of the prevalence of whistleblowing policies within the finance sector is undertaken, starting with the largest five banks, and that guidance is provided to ensure consistency in policy and enforcement
  - large firms are required to report on the extent of internal whistleblowing, including the products and processes covered by these cases, in their annual report

Enforcement Activities:

- Which? acknowledges the recommendations put forward by the FCA. However, in order to significantly improve the level of disclosure of enforcement activity data, the FCA should publish:
  - the number of cases referred to enforcement, broken down by subject (including the product or practice involved) and industry sector
  - the outcomes of the cases, including how many resulted in a fine, public censure or dealt with informally
  - publishing the names of the firms and individuals involved in cases

Supervisory Activities:

- Which? broadly agrees with the recommendations put forward by the FCA in expanding the level of detail provided on supervisory activities and outcomes. In order to enhance this approach, the FCA should also make public instances when section 166 reports have been commissioned, the name of the firm involved and the broad subject of the report.

- Furthermore, the FCA should ensure that it strengthens its requests for public disclosure of firms through the OIVOP and Voluntary Variation of Permission (VVOP) processes.

Authorisation process:

- Which? agrees with the recommendation to disclose greater information on the average length of time taken to authorise firms, and reasons as to why authorisation applications are refused.

Thematic Work:

- While the FCA's recommendations are a step in the right direction, the regulator should look to release this information with greater transparency as it is against the public interest to continue to obscure the identities of poorly performing firms.

Pensions:

- Which? agrees with the FCA's recommendation to ensure that all providers are required to publish annuity rates.

- To further enhance this approach, the FCA should also require the publication of:
  - Annuity rates offered by insurance companies in a table which has a link to the insurance company systems so that they are regularly updated
  - A statement from insurance companies as to whether they offer lower rates to their current customers than to external customers exercising the Open Market Option
  - Data on the proportion of the company's customers who purchase an annuity from that company (the retention rate) and the percentage who switch to a different provider
  - Data on the proportion of enhanced/impaired annuities sold by that company

Claims data:

- We agree that the FCA should publish claims data, particularly with regard to add-on and non-core insurance. These should include figures for all providers, together with reasons for declined claims. This would allow consumers and advisers to compare between providers.

- The FCA would need to prescribe the definition and conditions for reporting, as well as the format (for example, the percentage of claims paid out and/or the average payout amount compared with premiums paid, as well as average length of pay-out).

- For general insurance, the payout rate may be affected by the risk profile of the insurer's insurance book. It is therefore important for providers to publish broad categorisations of reasons for decline.

Contextualisation of complaints data:

- Which? does not object to the provision of contextual data alongside complaints data provided that it does not result in the removal of any data or obscure it by being of excessive length, and that it is fair, clear and not misleading.

- However, the reporting of complaints data can be made more transparent by publishing all data on complaints received online, the percentage dealt within particular time frames, the percentage upheld by the firm and the amount of redress paid. Complaints data for individual firms could be broken down by product and type of complaint, including all of the information firms are required to submit to the FCA on their 'complaints return'.

Introduction

We welcome the FCA opening discussion on how to make better use of transparency as a regulatory tool to help achieve its objectives of consumer protection, competition and market confidence. Which? has engaged with the FSA, over the course of many years on transparency, and welcomes the opportunity to provide our views on this area once again.

Which? position on regulatory transparency:

We welcome that the FCA has adopted the approach that there should be a presumption towards transparency. However, Which? believes that this principle could be enhanced, particularly in relation to withholding information due to "compelling regulatory, legal or other reasons".[1]

Which? has had a consistent position on how the regulator can ensure greater transparency. In our response to the FSA's discussion paper on "Transparency as a Regulatory Tool", Which? outlined broad principles to be adopted in the FSA's Code of Practice on regulatory transparency. Which? argues that these principles are still relevant, and should be adopted into the FCA's approach:

- Consumers should be entitled to any information which would affect their decision to engage with a firm, purchase a product or make a complaint
- The FCA should adopt a presumption of disclosure, and that the regulator will only withhold information where its disclosure would damage the public interest, with particular focus on the interest of consumers.
- If the publication of information would infringe any statutory restrictions under the Financial Services and Markets Act (FSMA) then the FCA will actively promote, encourage and require disclosure of information by the industry.
- The FCA will be transparent about its reasons for withholding disclosure of information
- Information should be published so that it is useful and readily understandable by the intended audience
- Disclosure should meet the FCA's standards of economy, efficiency and effectiveness.

It is very important that all of the proposals to improve transparency in the discussion paper along with our additional suggestions are implemented. In the past, proposals for improved transparency put forward in discussion papers have been watered down in response to opposition from the financial services industry.

The FCA will also need to do more to prove that it has moved away from the FSA's culture of secrecy. We are already concerned about the level of transparency surrounding the FCA's power over naming and shaming misleading financial promotions. Upon submitting a complaint to the FCA, we were advised that the regulator has the option to take action against the financial promotion under a 'non-banning' approach. Which? is concerned about this approach

[1] Financial Services Authority, "Transparency Discussion Paper", DP 13/1, March 2013, pg.5

as, to date, there is no publicly available information about this process on the FCA website. Furthermore, we have yet to receive a response from the FCA after attempting to contact the regulator directly for clarification on this process.

To enhance the accountability of the FCA, it should publish a list of meetings held between senior FCA staff and FCA board members and individual executives from firms and trade associations.

To ensure that there is a genuine and consistent change of culture across the FCA, we recommend that the board commission an independent review of the FCA's approach to regulatory transparency and report progress in the annual report.

Constraints of section 348 of the Financial Services and Markets Act (FSMA):

We recognise that at present, the regulator is still prevented from sharing information it has received in the course of its regulatory activities. Section 348 of FSMA prevents the FCA from disclosing information it receives in the discharge of its regulatory duties. Which? has long been critical of the constraints of this legislation, in particular the broad interpretation of "confidential information" under the act. It appears as though the Government have 'gold-plated' the European Directives which do not contain a precise definition of confidential information.

We have consistently argued that the definition of "confidential information" should be modified to exclude:

- firm specific results of mystery-shopping exercises and thematic work
- price data for certain markets (such as annuities)
- complaints data for individual firms
- instances where information is available already to a large number of members of the public (for example, the prohibition of disclosure to Which? of the text of letters it has required firms to send customers who have been mis-sold PPI)
- instructions that the FCA has given to firms and their performance against these instructions

In the interests of greater public disclosure and enhancing consumer protection, we encourage the FCA to seek further legal advice to determine whether the restrictive approach applied by the regulator is necessarily warranted under section 348 of FSMA. Furthermore, the FCA should seek to challenge the boundaries of this legislation more effectively.

Which? is disappointed in this lost opportunity for much needed legislative reform to ensure wider transparency to protect and improve outcomes for consumers within the financial sector. However, Which? agrees with the FCA's position that while section 348 "limits the information that the FCA will be able to disclose, it does not prevent it from being a more transparent

regulator".[2] The FCA is in an opportune position to widen the scope of information that it discloses to consumers.

We are considering saying more about what we've been told and any action we may have taken as a result of whistleblowing. What information do you think would be helpful? What do you think would be the potential benefits? What do you think are the potential drawbacks?

Which? argues that firms and the regulator should adopt an approach which recognises that the long-term interests of their organisations and the public are best served if employees feel confident in voicing issues of concern. Which? welcomes strategies that attempt to counter the culture of low banking standards, and instead encourage staff to feel empowered to challenge unfair treatment or excessively risky behaviour within firms. We agree that further disclosure by the FCA could serve to assure whistleblowers and other stakeholders that information received in this manner is taken seriously.

Subject to ensuring confidentiality is not compromised, we agree with the approach to improve communication between the whistleblower and the FCA with regard to complaints received and next steps taken. Further, we agree with the FCA providing greater disclosure on the incidence of whistleblowing, the types of cases reported including where possible the products and practices and an overview of the action taken.

However, the regulator can do more to foster a culture of transparency within the finance sector. We agree with the approach encouraged by Public Concern at Work that the regulator should *"promote the role and protection of employees blowing the whistle internally, to them as regulators and beyond as means to encourage and help responsible employers to (i) establish effective internal compliance systems and (ii) adopt open and constructive relationships with them as regulators".*[3] Which? encourages the FCA to act to ensure that whistleblowing is promoted within financial services firms.

A study into the level of protection afforded to whistleblowers in the UK financial industry showed a lack of consistency in the comprehensiveness of five UK banks' (Royal Bank of Scotland, Lloyds Banking Group, Northern Rock, Barclays, and HSBC) whistleblowing policies between 2004 and 2011. Furthermore, analysis of the banks' Code of Conduct/Ethics and Annual Reports revealed that references to the firms whistleblowing policy were absent in three of the banks (Lloyds TBS, HBOS and HSBC).[4]

[2] Financial Services Authority, "Transparency Discussion Paper", DP 13/1, March 2013, App1:1

[3] Public Concern at Work, "Rewarding whistle-blowers as good citizens. Response to the Home Office Consultation, 30 November 2007, pg. 12

[4] Lui, A, "Protecting whistle-blowers in the UK finance industry, International Journal of Disclosure and Governance, advance online publication, doi:10.1057/jdg.2013.2, 7 March 2013, pp. 7-8

In attempting to lift barriers to whistleblowers coming forward, the FCA should analyse the prevalence of whistleblowing policies within the finance sector, starting with the largest five banks, and that guidance is provided to ensure consistency in policy and enforcement. This is particularly important as currently it is FCA policy to encourage employees to use the whistleblowing policies in their own workplace first before approaching the FCA's Whistleblowing Desk.[5] Ensuring consistency in whistleblowing procedures across firms will assist employees to feel safe when raising any concerns, and help ensure that these reports will be taken seriously. There should also be a requirement for large firms to report on the extent of internal whistleblowing, including the products and processes covered by these cases, in their annual report.

We could publish more about our enforcement activities in our annual performance account. To what extent do you think this would be helpful? What additional information about enforcement activities should be published? What do you think are the potential benefits? What do you think are the potential drawbacks?

Which? acknowledges the FCA's recommendations to expand the detail of information provided on its enforcement activities and outcomes. Disclosing information regarding the goals of enforcement activity, as well as challenges faced when carrying out investigations would be helpful. This would help ensure that consumers and other stakeholders are better informed about how the FCA's enforcement processes work, and better placed to understand what the FCA does and why.

However, Which? has argued consistently that the FCA could go further in the level of disclosure it provides. This additional information provided by the regulator will assist consumers in making informed decisions on financial product and service selection. The FSA in the past has only published numbers grouped by broad issues (for example, Systems and Controls, Treating Customers Fairly, Unauthorised Activities etc). To enhance the level of regulatory disclosure, we would like to see the FCA publish greater detail on its enforcement activities including:

- the number of cases referred to enforcement, broken down by subject (including the product or practice involved) and industry sector
- the outcomes of the cases, including how many resulted in a fine, public censure or were dealt with informally
- publishing the names of the firms and individuals involved in cases

Such information should be provided in a format that best enables consumers to make informed decisions about financial products. Further, information should be provided on a firm and

[5] http://www.fca.org.uk/site-info/contact/whistleblowing/guidelines

brand name basis, as well as by group.

While Which? recognises that in some cases if the release of enforcement information would cause a serious threat to financial stability and the solvency of a particular institution then the FCA may wish to delay publication. However, we would advise extreme caution with this approach in the context of a new regulatory environment which is attempting to facilitate the ability for banks to fail, while minimising consumer impact.

As we have mentioned previously to the FSA, within the current media climate information about a financial firm in difficulty inevitability finds its way into the public domain. By choosing to withhold this information, the regulator runs the risk of incurring a high level of dissatisfaction among consumers who have chosen to engage with the financial institution after the FCA began to have doubts about its solvency or conduct.

Broadly speaking, the potential benefits from greater information provided on the FCA's enforcement activities far outweigh prospective drawbacks. Providing this detail to the general public will result in an increase in the level of transparency and accountability of the firms involved, as well as of the regulator itself. It will also help consumers and consumer organisations engage with the FCA by highlighting areas, products and firms the regulator is investigating. Consumers and consumer organisations could then share their experience with the FCA regarding the area which was being investigated.

It will also assist in advancing the FCA's consumer protection remit by incentivising firms to improve their practises and comply with regulation. Lastly, such information will help consumers by providing them with additional information to make informed choices about their financial product and service selection.

We could publish more supervisory activities and outcomes.

- To what extent do you think this would be helpful?
- What additional information about supervisory activities should be published?
- What do you think are the potential benefits?
- What do you think are the potential drawbacks?

Which?'s preference is that firm specific information on supervisory activities and outcomes is released. We support, for example, greater use of non-fundamental Own Initiative Variation of Permission (OIVOP) and their publication to improve consumer awareness and act as an effective deterrent against poor behaviour.

Nonetheless, Which? broadly agrees with the recommendations put forward by the FCA in expanding the level of detail provided on supervisory activities and outcomes, and agree the potential benefits outweigh the potential unintended consequences.

To enhance the level of transparency in the FCA's supervisory activities and outcomes, we recommend that the FCA also should make public instances when section 166 reports have

been commissioned, including the name of the firm involved and the broad subject of the report. This would alert shareholders who should then press the company to release the details of the report in the interests of greater accountability.

Which? also recommends that the FCA ensures that it strengthens its requests for public disclosure of firms through the OIVOP and Voluntary Variation of Permission (VVOP) process. For example, it could include actions such as requiring firms to contact customers who have been affected by an activity which has lead to the variation in permission (for example, contacting customers who have replied to a misleading financial promotion), and requirements for firms to publicly report on its progress.

We are proposing to publish the average length of time it takes to authorise firms and the reasons why applications are refused.

• To what extent do you think this would be helpful?

• Is there any other information you would like us to publish in relation to the authorisations process? Why?

Which? agrees with the recommendation to disclose greater information on the average length of time taken to authorise firms, and reasons as to why authorisation applications are refused. We agree with the FCA's motivation that publishing this information publicly against timescales would assist in engaging external stakeholders to help uphold the FCA's accountability, as well as provide useful feedback to firms on their application process.

We are proposing to develop a consistent approach for publishing the results of thematic work on an anonymised/aggregated basis.

• Do you think this would be helpful?

• What sort of information would you expect to see?

• How would you like this information to be made available?

• What are the potential benefits?

• What are the potential drawbacks?

Which? welcomes the discussion on how thematic work can be published in a more transparent manner. Though the FCA's recommendations are a step in the right direction, Which? believes that this will not be enough to ensure greater transparency, and may lead to potentially damaging the accountability of the regulator and firms involved.

We have long argued for the FSA to release this information publicly, and that it is against the public interest to continue to obscure the identities of poorly performing firms. Once again, we believe that there is no reason why the FCA could not introduce due process into the publication of its results. If the research was methodologically sound and recorded properly

then there could be little dispute from the firms involved. Again, greater disclosure would encourage firms to improve their standards and treat their customers fairly. Given the limitation on the FCA's resources, the use of transparency in this regard would encourage firms to get it right in the first instance without the need for more robust supervisory or enforcement action.

We are proposing to publish, with the firm's consent, how much it has paid out in redress and disclose more details about the redress scheme in the public notice. Do you think this would be helpful?

- What sort of information would you expect to see?
- How would you like this information to be made available?
- What do you think are the benefits?
- What do you think are the drawbacks?

Which? broadly agrees with the proposal to publish the amount of redress firms pay, and the formula and criteria applied on an annual basis as a way to encourage greater firm discipline by influencing other firms to change their behaviour. We welcome the proposal to disclose more details about the redress scheme in public notices. In addition to this, we also recommend that the FCA publish details on the specific instructions that have been provided to firms in relation to the redress process. This should include any FCA instructions or views which have been given to the firm about how it should calculate the redress due to consumers. This will allow for firms to be better held accountable to enforcing the processes mandated by the regulator, and will also encourage greater FCA accountability and transparency. Such data should be made available of the FCA's website in a manner which is easily accessible, and in a format which makes it simple for consumers and firms alike to interpret.

While it is not our preferred method of increasing regulatory transparency, we welcome the FCA's active promotion and encouragement of voluntary disclosure of information by the industry. However, Which? expresses concern about the viability of relying on firm consent to publish data due to the constraints of section 348. This is another example of the necessity for legislative reform. Without the ability to mandate that firms provide data, the FCA will be heavily reliant upon the benevolence of firms and we question whether banks will be sufficiently motivated to disclose this data, particularly in the case where they have breached FCA regulations.

We think the annuity market could be more transparent and easier to understand.

- Do you believe the FCA has a role to play in increasing transparency in the annuity market?
- What is the best way the FCA can improve transparency in the annuity market?
- Are there any downsides or potential unintended consequences to greater transparency that the FCA should be mindful of?

It is important that consumers are able to make better choices about their options in the decumulation process, and part of this will involve understanding how their provider performs against others. We agree that it should be compulsory for all providers to publish annuity rates. The FCA should also require insurance companies to publish their 'retention rates' – the proportion of customers who purchase an annuity from their current company rather than exercising the Open Market Option.

The importance of shopping around for an annuity, and the potential for having an increased retirement income as a result of shopping around, should be highlighted before consumers are referred to the published rates.

Ideally, annuity rates would be published in a way that they are constantly up-to-date so consumers could see current rates. They should be presented in a table that allows clear comparison for the various different rates so there is a good idea of the differences between what different companies were offering. This level of transparency would also help encourage effective competition between providers to retain and gain customers.

It would also encourage effective competition as those providers who were unable or unwilling to maintain competitive annuity rates would have an improved incentive to make an arrangement with an alternative provider.

The FCA should also require insurance companies to publish their retention rates. These are a vital component of transparency in the annuity market. By publishing retention rates and comparing these against the level of annuity rates, this could expose where consumers may be at risk of buying into a poorly priced annuity. It may also indicate a need to look into what factors are making customers remain with that pension provider.

Further disclosure of information could also help the regulator to identify who is performing competitively in the market. It should be highlighted when there is a wide spread in pricing, indicating poor market competition, and providers are still retaining customers regardless of levels of competitive pricing, in order to improve the deal provided to the consumer.

As consumers are likely to only encounter annuities once in their lifetime, they will have little experience in engaging with buying decisions and recognising a good deal. Currently the switching journey can break down at any point. Consumers may be aware that they are not getting the best deal but find the information gathering exercise too complex.

Some of the concerns expressed by the Association of British Insurers (ABI) with regards to publishing retention rates could be overcome, for example retention rates could be published excluding those customers with Guaranteed Annuity Rates (GARs) if there is evidence to suggest a high number of consumers with these policies stay with their providers. Further details about the type of annuities sold by each individual company could also be published. This would highlight, for example, where an insurance company is particularly competitive in a certain type of annuity – such as RPI linked – and where a large proportion of consumers who remain with the company are taking up this type of annuity.

Publication of claims data for insurance products is one idea that we think could help improve the outcome for consumers and change firm behaviour.

- To what extent do you think this would be helpful?
- What information about claims data would be useful to publish?
- What do you consider are the benefits of this idea?
- What do you consider are the drawbacks?

Which? agrees that publication of claims data would be of particular use in add-on and non-core insurance, helping consumers to assess the value of these products. The protection insurance market is another key area for publication of claims data. This would help consumers, as public distrust of providers has followed the widespread mis-selling of payment protection insurance (PPI) and the poor value of card fraud policies. As a result of the mis-selling some consumers have been put off from buying protection insurance, even where an analysis of their needs suggests they need some form of cover. Publication of payout rates would enable consumers to make comparisons across related product areas such as whole-of-life cover and over-50s plans, particularly where lower price is reflected in a lower likelihood of paying out.

There has already been some positive movement in the protection market. An increasing number of income protection providers, for example, now publish their payout rates, many of which are over 90%. The publication of these figures shows consumers that the product is likely to pay out when they need it and could boost confidence in the market. Publication of these figures for all providers, together with reasons for declined claims, would allow consumers and advisers to compare between providers. The FCA would need to prescribe the definition and conditions for reporting, as well as the format (for example, the percentage of claims paid out and/or the average payout amount compared with premiums paid, as well as average length of pay-out).

For general insurance, the payout rate may be affected by the risk profile of the insurer's insurance book. It is therefore important for providers to publish broad categorisations of reasons for decline.

We think that mandating contextualisation of complaints data would improve understanding of the key messages.

- To what extent do you think this would be helpful?
- Do you have any suggestions about what matrix we should mandate?
- Do you have any other suggestions about where firms releasing information about their own behaviour may lead to beneficial outcomes?

Which? favours the publication of all complaints data that the FCA receives in its complaints

returns[6] through an online database. We would also like to see the disclosure of the percentage dealt within particular time frames, the percentage upheld by the firm and the amount of redress paid. Complaints data for individual firms could be broken down by product and type of complaint, including all of the information firms are required to submit to the FCA on their 'complaints return'. This information could be published alongside data from the Financial Ombudsman Service (FOS).

In addition, the FCA should require the largest firms to publish a 'complaints digest', which would outline the causes of the most common types of complaints and what action the bank was taking to address the issues raised by consumers. However as mentioned previously, this would require complaints data to be specifically excluded from the definition of "confidential information".

Which? does not object to the provision of contextual data alongside complaints data provided that:

1. It does not result in the removal of any data or obscure it by being of excessive length,

2. It is fair, clear and not misleading.

There are measurable benefits to releasing information regarding complaint handling that have been observed recently. When the FSA moved to publish complaints numbers for individual firms which receive more than 500 complaints every six months, firms took action in response including setting targets to reduce the number of complaints received, and the proportion of occasions where the FOS overrules the bank's original decision in favour of the consumer.

[6] http://fshandbook.info/FS/docs/disp/disp1_annex1R_20120701.pdf