

# newsletter

Financial Services Authority

# Treating customers fairly after the point of sale

June 2001

## About this newsletter

This Newsletter provides a summary of FSA Discussion Paper – Treating customers fairly after the point of sale

This paper is particularly relevant for consumers of financial services products and financial service providers

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[treatingcustomersfairlyteam@fsa.gov.uk](mailto:treatingcustomersfairlyteam@fsa.gov.uk)

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# Executive Summary

## Introduction

The existing regime for financial products aimed at retail consumers is more developed in some areas than others. It focuses principally on the circumstances leading up to the purchase of a product but the consumer protection objective which the FSMA will place on us does not make a distinction between events before and after the point of sale in delivering consumer protection. **Therefore, we have been examining what a fair deal for retail customers after the point of sale means and in that context:**

- what we interpret the basic principles of ‘fairness’ to be;
- where and how ‘unfairnesses’ after the point of sale may arise and why;
- what work is already going on to deal with these unfairnesses; and
- what powers we have to take any necessary further action.

We have taken into account that there are a number of important regulatory, industry and consumer initiatives already in hand in this area. Examples are outlined in Annex C. In the light of these, the project’s objective has been to establish priorities for further, more detailed work. We have looked at issues arising across the retail financial services industry but have not aimed to investigate individual products or propose definitive solutions. Any further work, which proposes formal rules or guidance, will involve appropriate consultative processes.

This work is one of the industry wide thematic projects announced as part of the New Regulator for the New Millennium initiative. The work undertaken has been based on assessing what issues pose a significant risk to our statutory objectives and how we can allocate our resources most effectively to mitigate on the risks which matter most.

This project has looked at general issues and trends arising across the financial services industry, and the work has included talking to a variety of industry experts and commentators, practitioners, consumer bodies, financial journalists, the Financial Ombudsman Service and other regulators, including non-financial services regulators.

We began by identifying examples of alleged unfairness to consumers through structured brainstorming, review of research findings and consultative meetings. We then classified the 200 or so examples by type, and evaluated them in terms of the risk posed to our consumer protection and public awareness objectives. Our conclusions are set out below, **and we welcome comment on them.**

## Our conclusions

Fair treatment of customers should maintain and raise customer confidence. This has to be good for customers and for firms.

However fairness is not a concrete or finite test. It is an established legal concept which gives us and firms a set of values to work with in making business and regulatory decisions, taking into account the relevant circumstances. In the course of our work we have examined concepts such as policyholders’ reasonable expectations and legal interpretations of what

'fair' means. We have identified what we believe 'treating retail customers fairly' should include and explain what we think this means in this paper.

We see part of our role as helping consumers to get a fair deal. We believe that this part of our role includes trying to ensure that financial products and services deliver what they are supposed to, that firms deliver what they say they will, and that firms do not take unfair advantage of any asymmetry of power and information that exists between them and their retail customers. But we cannot guarantee fair deals for consumers.

We recognise that some 'unfairness' problems, which emerge after the point of sale, may be caused by events before the point of sale. Therefore what happens before the point of sale is very important in setting up and defining how the longer-term relationship between a customer and a firm will run.

We have wide powers under the FSMA in relation to the fair treatment of consumers. These include formal rules and guidance, consumer education, raising standards, and raising public and industry awareness. We also gained important powers to take action on across the retail financial services sector under the Unfair Contract Terms Regulations.<sup>1</sup>

We have identified significant areas where unfairness to retail customers can arise. These are:

- **Some products and information are difficult for consumers to understand.**

*Some products lack transparency, are virtually impossible for most consumers to understand and are structured in a way that is liable to give rise to consumer detriment (including high up front charges, hidden penalties, and taking unfair advantage of one-sided discretion).*

- **Customers are not kept appropriately informed after the point of sale.**

*Customers are not always kept informed of how a product or service is performing or of other products/services now available that might be more suitable for them.*

- **Products and firms don't always deliver what consumers are led to expect.**

*Financial promotion and the sales process can create expectations among consumers which are unlikely to be met, often with unpleasant surprises further down the track.*

- **Customers are discouraged from changing products and product providers.**

*In some areas there are financial penalties unrelated to the costs of changing product or provider and in others the 'hassle factor' can deter people from changing to better value services and products.*

- **Customers cannot always get their complaints dealt with fairly.**

*Practice varies but many firms don't give adequate priority to the effective handling of their customers' queries and complaints and this is reflected in systems, resources, cultures and outcomes.*

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<sup>1</sup> Statutory Instrument 1999 No. 2083

The FSA, industry, consumer organisations and Government are already tackling many of these problems through existing work or work already planned. *For example:*

- We have started work on a Review of With-Profits products which will include examining how products which have relied on the exercise of a very wide discretion can be made more transparent to consumers.
- On mortgage endowments, the industry will in future provide policyholders with re-projections every two years in addition to any contractual reviews, and major firms have taken steps to improve the charging structure of endowment products.
- The Association of British Insurers has established the Raising Standards quality mark scheme, enabling brands which meet specified standards to use a mark granted by an independent Accreditation Board.
- The Government has introduced CAT standards (charges, access and terms) and encouraged the industry to adopt those voluntary benchmark standards for ISAs and mortgages. The Government is consulting on the possible extension of such an approach.

#### Further work

*We intend to carry out more work on the areas discussed in this paper. This will start tackling the gaps we have identified so far.*

The FSA would welcome comments on this discussion paper. Comments should reach us by 28th September 2001.

Please send comments by electronic submission using the e-mail address: [treatingcustomersfairlyteam@fsa.gov.uk](mailto:treatingcustomersfairlyteam@fsa.gov.uk)

Alternatively, comments may be sent in writing to:

Consumer Protection Department  
The Financial Services Authority  
25 The North Colonnade  
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