



Financial Services User Group (FSUG)

03/06/2014

DRAFT OF THE EFFECTIVE APPROACHES TO SUPPORT THE IMPLEMENTATION OF THE REMAINING G20 HIGH-LEVEL PRINCIPLES OF FINANCIAL CONSUMER PROTECTION

INFORMAL CONSULTATION

RESPONSE BY THE FINANCIAL SERVICES USER GROUP (FSUG)

ABOUT THE FSUG

The role of the FSUG is to:

- advise the European Commission in the preparation of legislation or policy initiatives which affect the users of financial services
- provide insight, opinion and advice concerning the practical implementation of such policies
- proactively seek to identify key financial services issues which affect users of financial services
- liaise with and provide information to financial services user representatives and representative bodies at the European Union and national level.

FSUG has 20 members, who are individuals appointed to represent the interests of consumers, retail investors or micro-enterprises, and individual experts with expertise in financial services from the perspective of the financial services user.

INTRODUCTION

The FSUG is pleased to respond to this informal consultation. We support the principles set out in the consultation document. However, we have some general and specific suggestions to make which we believe would strengthen further the principles.

GENERAL COMMENTS

We have a number of general comments to make on the issues of:

- Transparency, information and education
- Responsible conduct, responsible lending
- Complaint mechanisms and collective redress
- Proposals to implement the Principles
- Competition

Transparency, information and education

In addition to the monitoring of financial promotions, advertising and marketing, any promotions, advertising, or marketing must ensure that a product name corresponds to the true nature of the

product to prevent confusion marketing and ensure consumers are not misled. For example, use of terms such as 'guaranteed funds' must be closely controlled and restricted to those funds which are truly guaranteed.

Given the degree of complexity of financial products, OECD should make it clear that the information and transparency, while necessary is not sufficient to ensure consumers are treated fairly and prevented from fraudulent activity.

Independent financial education programmes for consumers should be designed and included in curriculums via teaching.

Moreover, given the widespread failure of competition and market forces, more direct interventions are needed to ensure that financial services work for consumers. We recommend that national authorities develop a set of simple, fair and transparent benchmark financial products to help consumers identify good value and make more effective decisions. Suitable products might include deposits and savings accounts and insurance products. Similarly the development of minimum standards of security and transparency for private pension systems should be a priority.

It is also critical that transparency and fairness relating to charges and terms apply at each stage of the relationship between consumer, intermediary, and provider – pre-sale, point of sale, post sale and ongoing relationship (where relevant).

Responsible conduct, responsible lending

Lenders should have a duty to act in the best interests of borrowers. This means in practice that credit should only be advanced following a realistic assessment of the borrower's ability to meet obligations.

Criteria for responsible lending must be set independently, be transparent and exclude unfair terms. For mortgage loans there should be a proper assessment of the value of security held as collateral.

Contractual terms, marketing and promotions must also be clear, fair and not misleading. It is preferable if these are developed in conjunction with consumer associations.

The principle of responsible credit should apply not only to pre-contractual information and assessment of affordability but to situations where borrowers get into financial difficulty. This must include: minimum standards of protection for consumers against foreclosures, allow the option of renegotiating debt and halting enforcement procedures where appropriate to allow for assessment of the abusiveness of contractual clauses. Details of FSUG recommendations on the fair treatment this can be found in our study: "Study on means to protect consumers in financial difficulty: personal bankruptcy, datio in solutum of mortgages, and restrictions on debt collection abusive practices"^{1, 2}.

¹http://ec.europa.eu/internal_market/finservicesretail/docs/fsug/papers/debt_solutions_research_study_positioneen.pdf

² http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/papers/debt_solutions_report_en.pdf

Self-regulation is not very effective at controlling lender behaviour. Therefore, these criteria and guidelines should be overseen and enforced by regulators.

Complaint mechanisms and collective redress

Managing complaints effectively and the existence of effective redress mechanisms are critical for financial consumer protection. These can be faster and less expensive than judicial alternatives. Alternative Dispute Resolution mechanisms should be independent and well-resourced – this independence must be guaranteed by regulators and governments. In addition to responding to individual complaints, collective redress mechanisms that provide additional opportunities to seek compensation for losses suffered as a result of actions, services or products of financial providers and / or their authorized agents should be established.

While ADR mechanisms can be a faster, more responsive and cost effective alternative, these should not preclude or restrict the ability of consumers to use judicial alternatives particularly group claims.

Proposals to implement the Principles

First, given the importance of consumer protection, we advocate the permanent establishment of an international agency to represent consumer in financial services. This body would identify and assess specific problems common to consumers in each country and develop joint proposals for reform and improvement. This agency would be made up from permanent representatives of legitimate consumer associations, members of Consumers International and consumer finance specialists who are members of different consultative bodies. Representatives of the agency would attend meetings of the G20 and other international events on behalf of consumers .

The great changes that the financial sector has experienced in recent years also make it essential that the OECD organize an International Forum of Representatives and Experts on Consumer Financial Protection. Representatives and experts from this forum would be elected to come to the next meeting of the G-20, with concrete proposals to support effective financial consumer protection across the world.

Competition

It is very important that the OECD and other agencies revise their general approach to competition and innovation in financial markets. In theory, competition should lead to the market innovating and operating more efficiently. However, that is a theoretical position. In reality, we see that competition can actually result in major inefficiencies in the financial supply chain and destroy value for consumers – for example, if competition is for distribution or results in additional unnecessary layers being introduced into the supply chain. Similarly, much of the innovation seen in financial markets has been of little value to consumers or indeed downright toxic.

Therefore, we argue that the OECD should adopt a more pragmatic, sensible view of competition and innovation. It should not always be assumed that more competition and choice ultimately results in better functioning markets for consumers. What matters is that markets produce the right outcomes for consumers. Competition, if harnessed properly, has a role to play in producing the right outcomes. But, equally, good regulatory interventions can produce the right outcomes where market dynamics fail to do so. The key is understanding the limits of competition and when

regulatory interventions are needed to create the necessary deterrents and incentives to make markets work.

Making financial markets work for consumers requires a different regulatory philosophy, culture and approach. We must move away from an approach based on creating the conditions for competition in the assumption that this will result in the right consumer outcomes. This approach does not have a good track record in financial services. Complex markets such as financial services have to be made to work in the consumer interest. FSUG has produced a paper called New Model Financial Regulation which describes a more proactive, interventionist approach to regulation³.

RESPONSES TO SPECIFIC POINTS

As a general comment, there are many points in the proposed draft where the words “can” or “may” are used instead of “should”. This is particularly important as most of these points are referring to principles which directly refer to consumer rights.

The key examples are: points 136-139, 146-148, 150, 151, 158, 163-167, 169-171, 173-175, 244, 258, 259, 296, 305.

Point 20

Comment: there is of course a third and much more effective way, which is to create a “twin peaks” supervisory structure clearly separating prudential supervision from conduct of business supervision. In our view, this approach is much more effective at ensuring financial consumer protection, and should be promoted by OECD as the most effective- approach.

Point 24

Comment: Add “And consulting consumer organisations”

Point 31

Comment: Add: “Are applied consistently ...”

Point 47

Comment: The ability for regulators and supervisors to intervene on products should certainly not be limited to “complex” products, but to all products that are likely to be detrimental, harmful or toxic for consumers. Complexity is not in our view the only relevant key criterion for supervisors’ product intervention.

Complexity has to be much more clearly and precisely defined: is it the internal structuring of the products, or is it the service to be rendered that is complex? For example aspirin as a very complex chemical formula that almost no consumer knows and understands. However, the effects and services rendered by aspirin are quite clear for most consumers. What applies to physical health applies as well to financial health: the latter approach should be expressly chosen.

³http://ec.europa.eu/internal_market/finservices-retail/docs/fsug/papers/new_model_fin_regulation_2012_09_en.pdf

Complexity is not the only important issue. It is also important to consider 'toxicity'. This must also be clearly defined for retail financial services. For example, Better Finance defines the toxicity of long term retail investment products as the high probability of returning negative real value (net of inflation) to the customer.

Point 47 should be split into two separate points – to extend the ability of supervisors and regulators to temporarily limit or suspend advertising campaigns, marketing and selling of all detrimental products and services for consumers, not just complex ones:

47.1 Regulators and supervisors should have the ability to temporarily limit or suspend advertising campaigns, marketing and selling of potential detrimental products and services for consumers;

47.2 For complex retail financial products, regulators and supervisors should have the necessary product governance tools to control or mitigate significant consumer risks.”

Point 50

Comment: Consumer and investor organisations are much too often excluded from impact assessments performed by regulators: they must be included along with the providers in our view.

Point 52

Comment: The following text should be added for more clarity and transparency:

“Following the completion of a public consultation, the regulator or supervisor publishes on its website all responses received from stakeholders. After no more than one month after the deadline for receiving public comments, the regulator or supervisor publishes a feedback report which details the main differences between the consultation document and the final proposals and the reasons of changes implemented.”

Point 59

Comment: Legislation should also expressly and clearly give oversight bodies the mandate to protect consumers. See point 70.

Point 63

Comment: The governance structure and oversight/ governing bodies of supervisors should either be neutral or balanced vis-à-vis financial industry and/or financial consumers.

Point 69

Comment: To ensure that the management of oversight bodies will be governed by the same principle of high professional standards applicable for the staff, the following should be added:

“Oversight bodies and their staff abide by high professional standards.”

Point 70

Comment: The mandate for financial consumer protection must also be general, not only linked to trade practices.

Point 73

Comment: As the nomination process is sometimes adversely affected by political reasons and the candidates are not always selected according to their relevant experience, knowledge and qualifications the following should be added:

“The nomination process takes into account the independence and skills of the individual, their relevant experience, knowledge and qualifications. The law/regulation should include minimum requirements regarding the necessary experience, knowledge and qualifications.”

Point 137

Comment: “should” instead of “can”

Point 141

Comment : add: “and remedies to abused consumers”

Point 147

Comment: “should” instead of “can”

Point 148

Comment: to ensure the involvement of consumer organisations in the process of endorsement of a Code of Practice by the regulator/supervisor, the following should be added:

“Treating consumers fairly should be enhanced through compliance with recommended practices within a Code of Practice which may be issued by the relevant regulator/supervisor or issued by the industry associations and which may be statutory or endorsed by the relevant regulator/supervisor after the consultation with consumer organisations.”

Point 155

Comment : the following should be added:

- Multi-stakeholder consultation forums made up of industry, professional bodies ‘and consumer organisations’
- Hosting roundtables with industry senior management ‘and representatives of consumer organisations’ to discuss topics including fair treatment of consumer
- Raising consumer awareness through education programs (...) ‘and through public awareness campaigns into mass media’.

Point 177

Comment: to be completely erased.

“A distinction can be drawn between categories/segments of consumers (for instance between retail consumers and professional consumers) in order to establish different degrees of protection. As a general rule, professional consumers can be subject to a lower degree of protection than retail consumers.”

In our view, it is not necessary to define different categories of consumers, other than vulnerable ones. We do not recognise the term “professional consumer” and don’t agree with the suggestion of lowering the degree of protection for some categories of consumers. This will be very confusing and will generate in practice a lot of abuses.

Point 178

Comment: to be completed as follows:

Specific measures should be applied to protect minors, elderly people, persons with disabilities, or adults (...)”

Point 195

Comment: Add to detect and to sanction

Point 201

Comment: should be changed to be consistent with the provisions of the PSD (Payment Services Directive):

“Unauthorised payments are reimbursed by the financial services provider immediately unless it could demonstrate that they are due to the consumer’s gross negligence. Further financial compensation may be determined in accordance with the law applicable to the contract concluded between the payer and his payment service provider.”

Point 226

Comment: Excellent proposal, and in that case financial services providers must investigate and respond to the request within a reasonable time limit.

Point 237

Comment: Excellent proposal. Add “Including mutual companies”

Point 244

Comment: “should” instead of “can”

Point 254

Comment: to be completed as follows:

“(…) Without prejudice (…) in case of no or unsatisfactory answer provided in due time, (...)”.

Point 256

Comment: to be completed and modified as follows:

“(…) Financial services providers promptly inform consumers (…)

or any other supervisory authority (ies).” – which means that **the end of the phrase will be eliminate** – “*if it is provided for by the law and in accordance with the instructions given by the supervisory authority.*”

Point 269

Comment: to be completed as follows:

- to access, (...) without limits of time. At least once per year, the access to data held in CRSs should be offered free of charge.
- to have the right to receive a financial compensation in case of data inaccuracies or unlawful data collection.

Point 272

Comment: to be completed as follows:

- the data usage for marketing purposes (...) is allowed only if it is permitted by the law/regulations and only if it is expressly accepted by consumers.

Point 277

Comment: to be completed as follows:

“CRSs ensure that consumers have the right to be informed, with at least 15 days in advance, when participants provide to CRSs negative data on consumer financial behaviour”.

This marks the end of the FSUG response

If you have any questions, please do not hesitate to contact us.

FSUG

2014