

# Citizens Advice Scotland

Scottish Association of Citizens Advice Bureaux  
www.cas.org.uk



## Financial Conduct Authority

### The FCA's approach to advancing its objectives

Feedback from Citizens Advice Scotland  
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- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with over 500,000 new issues in 2011/12 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.

Scottish Association of Citizens Advice Bureaux – Citizens Advice Scotland

(Scottish Charity SC016637)

## Introduction

Citizens Advice Scotland (CAS) welcomes the publication of how the Financial Conduct Authority (FCA) plans to further their strategic objectives and we are pleased to have the opportunity to provide feedback on those plans. Our feedback is mainly focussed on section 1: protecting consumers.

## Executive Summary

CAS welcomes the publication of this clear and concise approach to the FCA plan on how it will achieve its main objectives including protecting consumers using financial products and services. As part of the consultation we have made the following comments:

- We are looking to the FCA to take strong action on consumer credit companies who fail to meet expected standards when it takes over regulation of this sector in April 2014.
- The FCA should prioritise access to basic banking facilities and budgeting accounts for the most vulnerable in society as there is reluctance from those in the banking sector to provide these products despite the demand.
- The FCA should build a commitment to clear language in its expectations and standards from financial firms. Many financial products carry terminology that consumers find confusing or difficult to understand.
- In all cases where enforcement action is taken, the FCA should publically name individuals and firms when they have broken rules, this will act as a deterrent to others.
- Compensation schemes should have the consumer at the focus, with a strong emphasis on putting right the wrong, including reimbursing in full for all financial loss suffered.
- The FCA should use its powers to suspend firms from market activity for fixed periods of time as this could prove to be a much more effective method of enforcement than fines.
- CAS support the proposal that the proceeds of crime or abuse that is confiscated by the FCA be put into use to lessen the impacts of financial exclusion for those most vulnerable in society alongside providing better consumer education.
- When the FCA waives rules for a particular company or individual these should be published widely. The rules are in place to ensure an even playing field therefore if an exemption is needed both a fair and transparent explanation should be given.
- In addition to using consumer organisations the FCA could build a wide network of individual consumers focussed on financial services that they can use to consult and engage with.
- Firms from the EEA who have 'passported authority' to operate in the UK should face close supervision where the FCA has no prior knowledge of their business model and practice.

## **Protecting Consumers**

### Aims and Priorities

We acknowledge the FCA's approach to a clear set of aims for protecting consumers; we especially welcome the FCA's duty to ensure that consumers are treated in a way appropriate to their financial knowledge and commitment to engaging with consumers.

CAS are also pleased that the FCA has set out that it will intervene early to prevent potential risks to consumers. CAS are concerned that the regulatory framework on consumer credit up till now has often been slow to take action leaving consumers disadvantaged through lengthy investigation periods. With the move of consumer credit to the FCA in April 2014 we are hopeful of quicker more effective regulation in this sector. CAS alongside other partner organisations have championed immediate and necessary action in ensuring that the short-term high-cost lending (pay-day loans) market is fit for purpose for the consumer. While the Office of Fair Trading have and continue to take action around this we do not believe that the current framework has allowed for fast enough action to ensure adequate consumer protection. This has resulted in Citizens Advice Bureaux (CAB) across Scotland helping over 1,200 clients with complaints regarding pay-day loans in quarter one (April-June 2013) of this year.

We believe that two further areas the FCA should prioritise is access to basic banking products for the poorest and most vulnerable and managed accounts for those who have difficulty budgeting. We see that the FCA have a role in persuading the financial providers to roll out basic bank accounts further than the current provision. There appears to be reluctance in the banking sector to provide basic banking products due to limited opportunities for revenue. This will help to alleviate financial exclusion by increasing the numbers of people banked. As the Government moves towards the introduction of Universal Credit in welfare payments the FCA need to play a role in joining up Government who are keen to promote budgeting accounts (so called jam-jar accounts) and banking institutions who are not engaging in making them available or else are doing so at an unaffordable cost to the vulnerable customers who want to access them.

### Treating customers fairly model

The six outcomes from the Treating Customers Fairly (TCF) model provides a good basis for firms to follow in their approach to consumer relations, and more generally their business model. We do however note that any TCF model is voluntary and therefore will have limited effectiveness with firms who are not willing to engage in this process. CAS would suggest the following additions to any TCF model:

- In outcome two alongside appropriate targeting, a commitment to clear terminology including the use of no ambiguous or uncertain language by businesses would be generally welcomed by consumers.
- In outcome three, as well as ensuring consumers are informed we would welcome a commitment to highlighting any potential risks such as to capital in investment products. This is already seen as best practice in the financial services market but having it clearly at the forefront of FCA guidance would strengthen the need for risk awareness from a consumer perspective. In outcome four regarding advice we would support the inclusion that any limitations of advice should be made clear to consumers at the point of access.

### Policy and publications

CAS welcome the commitment to consult with consumers and the sector when devising policy but the FCA will need to ensure that any consultation models will meet their need to act quickly. There may therefore be merit in considering a consumer network approach to allow for quick but knowledgeable consultation of a group of informed consumers (we have provided more detail on this in the 'protecting and engaging with consumers' section).

CAS does not believe that the FCA should delay action to align with European or International directives where action is already planned and is likely to be stronger than the proposed directive and would be allowed under that directive. While we understand that the FCA will be keen to inform planned reviews of European Directives, delaying policy that protects UK consumers could have unintended consequences that lead to consumer loss. For consumers, waiting extensive periods for action to be taken by the FCA due to European constraints may be seen as a failure to act in the best interests of consumers. CAS do however recognise that in some circumstances it may not be possible to go ahead with legislation or a policy change if an EU directive will prevent action by individual country's regulators.

We appreciate that the FCA has made a high-level commitment to using plain language in their publications. One of the barriers to consumers using financial services is the confusing terminology and complex language that can put off consumers engaging in the market. Given the FCA's strong commitment to plain language in its publications, rules and advice we would hope that as a regulator it would encourage firms to follow their lead. While improving consumer financial literacy is important, financial firms can also make it easy for consumers to understand their products and services.

### Rules and Handbook

We strongly welcome the FCA's handbook and the way in which it sets out clear guidance to firms. This should ensure that there is no avoidance of doubt with regard to firm's responsibilities, how they interact with consumers and the rules that they are expected to keep to by the FCA.

While CAS recognises that there may be occasions where the FCA will have to waive their rules we would support clear details of waivers being made public. The rules should ensure an even playing field therefore if an exemption is needed, fair and transparent explanations should be given. The approach document refers to not publishing waivers if it considers, 'publication would cause unreasonable prejudice'. We would welcome more detail on what the FCA consider 'unreasonable prejudice' as we are concerned this could have a very broad definition that may see consumers left in the dark as a result of waiving the rules in private.

### Protecting and engaging with consumers

We agree that consumers do have a responsibility for the decisions that they make however we would note that firms have to be responsible in taking account of a consumer's knowledge base when determining their ability to make financial decisions. It is imperative that the most vulnerable consumers in society are kept at the forefront of any decision that is made as these are often the most likely to lose out through inadequate protection.

We are encouraged by the FCA's continuation of engaging with third party consumer organisations to share knowledge of the financial markets from a consumer perspective. This, if approached effectively, should allow for early warning of problem products or services that the FCA may wish to investigate more closely or indeed highlight scams or criminal actions for enforcement. Making use of these organisations as well as the work the Financial Services Consumer Panel does with the FCA will be important to ensuring protection for consumers.

Wider engagement of individual consumers may also play an important role in ensuring a diverse network of knowledge. It may be possible to build up this network through contacts in consumer organisations. This network of consumers would allow for the FCA to seek fast feedback from a large number of consumers rather than having to rely on individual research projects which can take time to establish. This would help the FCA progress its objective of early engagement. CAS would however caution that some of the most vulnerable of consumers may not, for a variety of reasons, engage in such a network and we would encourage the FCA to keep the most vulnerable or excluded in society in mind when making decisions.

CAS strongly support the close working relationship that the FCA has with the Money Advice Service (MAS). This relationship is key to ensuring that consumers get adequate education on financial products while also acting as a barometer for the FCA on any trends or issues that MAS are aware of.

### Authorisation & Supervision

CAS doesn't have the specific knowledge to comment on the regulatory processes for authorisation or supervision of members of financial markets but welcomes the setting of strict thresholds and minimum standards expected. We would encourage any new entrant into a market is made well aware of their responsibilities towards consumers by the FCA. We would also encourage a strong engagement of firms by

the FCA at the point of authorisation to the *Treating Customers Fairly* agenda. Making sure that their business is firmly built around a sound and proper approach to ensuring consumer satisfaction could help avoid problems at a later date that might require enforcement action.

As firms approved within another country of the European Economic Area (EEA) can passport that approval over to work they do in the UK we would encourage that the FCA continues its work with other European regulators to ensure that minimum standards and thresholds are being set at appropriate levels in partner EEA countries. We would also expect that in their early activity in the UK, the FCA keep close supervision of such passported firms where the FCA has had no prior dealings with them such as they would have had authorising a firm in the UK.

We welcome that the FCA will engage in thematic supervision work where it has been highlighted to them that there are specific risks to consumers related to certain products or services. CAS will continue to raise concerns both with the FCA and publically to products and services that we feel fall short of protecting consumers' best interests. With the FCA expanding to take on a role of regulating consumer credit firms in April 2014 we will be engaging to highlight extensive concerns we have with certain products in this field.

### Enforcement

CAS believe that prevention of consumer detriment is better than punishment after a breach of the rules however we are realistic that despite the best efforts of regulators and consumer organisations there will be times when enforcement action is required. As a consumer organisation we are always disappointed that a case has had to come to the point of enforcement due to a firm's lack of due diligence or care. Therefore it is only right that strong enforcement by the FCA is taken against those who are well aware of their responsibilities towards consumers but openly flaunt the rules.

We would encourage the FCA to make public details of all enforcement action, once wrongdoing has been found. Publically naming firms who have engaged in activity that has required enforcement action will serve to not only inform consumers of products or services they may need to take care about or seek compensation over but also act as a deterrent to wrongdoing.

Compensation schemes should be based on the basic premise of covering any loss suffered by consumers as well as putting them into the position they would have been had they not been affected. The case involving Card Protection Plan Limited (CCP) which has set compensation of all payments plus 8% has set a welcome precedent for consumers in the kind of compensation level they may expect. While 8% may, in today's interest rate market, seem inflated we believe that it is right to punish wrongdoing by a strong compensation package again acting as a deterrent to other firms. Alongside compensation, any penalties on firms should seek to redress any benefit that a firm made from poor conduct. While this may be challenging to

ascertain, setting the bar at this level should have the aim that breaching the rules will never benefit a firm.

CAS would encourage the FCA to make more use of the suspension and restriction powers that it already has under the Financial Services and Markets Act 2000. We believe that suspending a firm's ability to take on new customers or similar restrictions for a period of time may act as a better push for change in firms' practices than a fine.

## **Market Integrity & Competition**

CAS is not in a position to comment on how market infrastructures work but we do welcome the FCA's commitment to ending market abuse and stabilising financial markets. We have seen from our frontline services how market crashes can affect some of the poorest and most vulnerable in society harder than others but through no fault of their own. We would encourage the FCA to establish a sense of responsibility on wholesale conduct carried out between businesses and traders, as poor practices can still have large knock on effects and unintended consequences to others in society. Additionally we welcome the confiscation of proceeds of crime or abuse but would welcome detail on where this is to be used. CAS would promote any proceeds should be used helping improve financial literacy and reduce financial exclusion.

CAS does not have a position on how and when the FCA promotes competition. We do welcome how the FCA ensures information is available to consumers to make informed decisions regarding products and services as well as promoting switching if in the interest of the consumer. While CAS hope that the FCA are effective in regulation and it may not need get to the stage of a super-complaint, we also welcome that the FCA have set out their detailed commitment to strong investigation of any super-complaints made.