



Association of British Insurers 51 Gresham Street, London EC2V 7HQ Tel: 020 7600 3333 Fax: 020 7696 8999

Consumer Protection Department  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

Direct Tel. 020 7216 7465  
E-mail kate.flavell@abi.org.uk  
Direct Fax. 020 7696 8998

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Dear Sirs

**Discussion Paper 7: Treating Customers Fairly After the Point of Sale**

The ABI has been involved in discussions with the FSA on this subject during the period leading up to the publication of the above paper and subsequently. These discussions have been constructive and useful for all parties, we believe, and we look forward to further consideration of the issues raised in this paper. Such consideration is likely to take place in the context of any of the other related reviews currently in train, such as Sandler, with-profits, polarisation, disclosure.

As you will know, the ABI's Raising Standards initiative was expressly developed to address many of the difficulties so clearly set out in your discussion paper. Our Raising Standards team are in regular contact with a wide range of individuals at FSA and we know that there is a high level of understanding and appreciation across your organisation of both the purpose underlying Raising Standards and the current status of progress. As a summary we attach a copy of a presentation made on the subject at FSA in July.

DP7 makes reference to some of the other relevant reviews currently in train by the FSA and others. ABI is actively involved in many of these which will carry forward work identified in DP7. We will be making detailed submissions as appropriate and believe that our contributions will be best directed to these more focused reviews. Those we specifically have in mind are:

- Sandler – Response also due end September.
- Use of Past Performance in advertising – FSA report just published.
- Product Disclosure – Discussion paper awaited early 2002.
- With-Profits Review – Ongoing.

- FSA Review of Pensions illustrations together with Department of Work & Pensions Review of Pensions Act disclosure requirement (to include annual benefit statements, increments and quotes).
- Polarisation – Consultation paper awaited later this year.
- CAT-marked products generally, and regulation of long-term care insurance and CAT-marks in particular, - response to Treasury consultation awaited.
- Unfair contract terms and FSA Powers – Consultation paper awaited later this year.
- Annuities Open Market Option – Current FSA consultation that follows ABI work to improve clarity and delivery of pension maturity information, including specific disclosure of the open market option.
- Pickering Review of Private Pension provision, just announced.

However, there is one issue we would like to highlight in connection with this particular consultation. It concerns Chapter 3 (What ‘treating customers fairly means’ and Annex A, which discusses fairness at greater depth). In particular we would draw attention to paragraph 3.3:

“We conclude that ‘fairness’ is not a definitive concept. Instead it represents a series of values, which help us to decide how to behave and treat others. For a regulator, such as the FSA, it helps to illuminate the kinds of behaviour and outcomes which should be or might be of concern for the FSA but *it does not deliver answers to policy issues.*” (Our emphasis)

Annex A is a 5 page exploration entitled “The Meaning of Fairness”. It includes the following:

A7 “ ‘Fairness’ has not been exhaustively defined by the courts and continues to be a flexible concept.”

A9 “ ‘Fairness’ is also time sensitive. What is deemed to be ‘fair’ can change over time, as circumstances, knowledge and expectations change.”

The Annex goes on to list 17 bullet points, being some components of fairness.

In view of the difficult-to-define and somewhat ethereal and transient nature of this concept we endorse the conclusion of Annex A that “Given its flexible and open ended quality, ‘fairness’ does not necessarily point to or produce clear policy decisions or outcomes but it does provide a useful overall framework in which to set the analysis of possible options”. The insurance industry is committed to treating its customers fairly and looks forward to future work with FSA and others, as outlined above, to develop a regulatory structure that complements and enhances the industry initiatives both current and future.

Yours faithfully

Kate Flavell  
Life Insurance Team

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