

Mr Brendan Burgess
Chairman
Consultative Consumer Panel

10 March 2005

Dear Brendan

I refer to the letter of 6 February 2005 from Mr Sean O'Sullivan, Chair of the Suggestions Sub-Group, which raises a number of issues. My response to these issues is set out below. The Panel may wish to consider this response at its next meeting.

Lack of consumer confidence

The Panel considers that the "biggest single issue that needs to be addressed is the lack of consumer confidence in IFSRA". It is not clear on what basis the Panel has formed this view and it is not consistent with our understanding on what the biggest issues for consumers are. Perhaps you could elaborate on what information this view is based.

We accept that confidence in the financial services sector, including in the Financial Regulator, is a very important matter for consumers. Without it consumers may be making financial decisions, or perhaps postponing them, which may not be in their best interests. We believe that there a number of important factors for consumers in order for them to have confidence in the sector including:

- A source of independent information which is accessible to consumers and which informs them of the costs, risks and benefits of financial products and services. This empowers them to make informed decisions.
- A competitive industry which operates to high standards and which is well regulated in their interests.
- A consumer friendly effective complaints handling system which works when things go wrong for the individual consumer.

In addition to informing consumers on financial products our consumer information campaign increases awareness among consumers of who we are and what we do. This is essential and a prerequisite to achieving confidence among consumers in our work. Our campaign, which includes our lo-call helpline, our

itsyourmoney website, our Information Centre and a broad range of publications, has made significant progress to date.

We have published two significant consultation papers in respect of the proposed sanctions regime and the codes of conduct. These papers are laying the foundation for an effective consumer protection regulatory environment. They are seeking to achieve greater transparency in terms of how financial services firms conduct their business and also in how we regulate their activities. The sanctions regime in particular should lead to greater awareness among consumers of our enforcement activity which will contribute to greater confidence in our work. The initial reaction from consumers and consumer groups to the proposals set out in the draft code of conduct has been very positive.

We also believe that openness and transparency are important to build consumer confidence. We consult widely on all major initiatives and all consultation papers (and submissions) are published on our website. We have published a very comprehensive three year strategic plan and also published a progress report on our activities in June 2004. We also have an Information Centre which is open and free to all consumers.

Identifying specific marketplace irregularities, “sharp practice” and misleading advertising

Our Consumer Protection Code (which includes advertising requirements), sets standards for how financial service providers should deal with consumers. The first responsibility for ensuring compliance with this Code rests with individual financial service providers. In addition, the Financial Regulator, in its contacts with representative bodies and through its onsite inspection programme, mystery shopping, consultation papers, surveys on specific issues and market intelligence, seeks to raise standards of compliance.

Investigations and complaints

You raise the question of how the Financial Regulator deals with investigations and complaints. Firstly, with regard to investigations, you will want to note the position set out in our consultation paper on Administrative Sanctions. Publicity for the outcome of investigations where a breach of a regulatory requirement is found is an important part of the process. In addition, the Financial Regulator is giving positive consideration as to how best to use publicity to push home the message from those investigations where no breach was found or where a

settlement is agreed. We will be examining this issue particularly carefully, where our investigations raise matters of broad public concern.

With regard to complaints, we want to ensure that complaints are dealt with in a way that will be most effective at protecting consumers. As you are aware, from 1 April, complaints against financial services providers will be dealt with by the new statutory ombudsman. We already have had a number of meetings with the Ombudsman council with a view to ensuring that there is an effective process in place and also to ensure that there is close cooperation to allow both parties carry out their respective responsibilities. We have been helping consumers with their complaints in the interim and in all cases keep consumers advised of the outcome of their case.

Let me confirm for you that, as you suggest, whenever we receive a complaint from any source we investigate the matter. This is subject only to the standard, common sense constraint that we don't investigate complaints that are self-evidently misconceived, frivolous or vexatious. This is just a matter of the efficient use of our resources, but I am glad to be able to say that such complaints are rare.

Secondly, if we draw the conclusion that one of our regulatory requirements appears to have been breached, our first step is to seek to put a stop to the practice. This is, I think, also very much in accord with your preferred approach.

Thirdly, you raise the question of what we do if an institution disputes that they are breaching one of our requirements and refuses to cooperate with us to resolve the matter. We now have various courses of action open to us. Our preferred course of action, as discussed in the administrative sanctions consultation document, is going to be to initiate an administrative sanctions inquiry to establish, on the basis of an independent assessment, whether our investigators are correct in suspecting that the rules have been broken and to establish an appropriate sanction. Where we are successful at such an Inquiry, part of the process will be publicity for the outcome. If we are unsuccessful, that will mean that it has not been shown that the institution broke the rules and in such cases we can't take action against the institution. Quite simply, if our case is found to be unproven, we have no grounds to mount a public campaign or issue advice to the public about the firm's practices.

Consumer publications to be formatted on “WHICH” methodology

Section 33C of the CBFSAI Act states that “the Regulatory Authority shall.....increase awareness among members of the public of available financial services and the costs, risks and benefits associated with the provision of those services...”. In order to meet this statutory obligation we have produced a range of publications and have developed a consumer website. Our guides are designed

to cover in broad terms the main financial product categories. Our booklets examine particular financial products in more detail while our fact sheets cover specific issues of interest to consumers.

Our cost surveys, as the name suggests, focus on the costs of financial products and are designed to highlight the importance of shopping around and to help consumers do this. They generally include consumer profiles which help to highlight the potential savings to be made. However because they focus on costs of financial products they are not a league table of the best buys. By informing consumers we are empowering them to make better decisions. However the priorities for each consumer vary and therefore it would be wrong for the Financial Regulator to make recommendations regarding individual products. Our aim is that consumers will be better placed to take greater responsibility for their decisions through our own information campaign and also through implementation of the new code of conduct. If the Financial Regulator began to issue best buys recommendations the result would be that consumers would rely on this information and would not shop around for a product at a price that best suits them. In this way they may not be making the best decisions to suit their particular circumstances. We require financial services firms to complete fact-finds and only after that is done can a recommendation be made to the consumer. Our cost-survey profiles are not representative of all consumers and often, in a survey with several profiles, the same company is not the best value for each profile. By being informed the consumer can ask the right questions and be more aware of what is suitable for their needs. The key aim of the cost survey is to encourage 'demand' and for consumers to act more efficiently by shopping around for best price and best product. Naming a particular institution as 'best' would not only be misleading, but would discourage people from shopping around with others.

We would hope that we can work closely with the Information and Education Sub-Group as we continue to develop our information campaign.

Yours sincerely,