

09/21***

Financial Services Authority

Transparency as a
Regulatory Tool and
Publication of
Complaints Data

including Feedback to DP08/3

July 2009



Contents

1	Overview	3
2	Feedback on responses to DP08/03 Transparency as a Regulatory Tool	8
3	Consultation on publishing complaints data	30
4	Cost benefit analysis	39

Annex 1: List of non-confidential responses to DP08/3

Annex 2: CBA background research

Annex 3: Compatibility statement

Annex 4: FSA Code of Practice on Regulatory Transparency

Annex 5: List of Questions

Appendix 1: Proposed Handbook text.

This paper consults on the proposed publication of complaints data and reports on the main issues arising from Discussion Paper 08/3 – *Transparency as a Regulatory Tool*.

Please address any comments on publication of complaints data to:

James Sergeant (Ref: CP09/21)
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 7304
Fax: 020 7066 7305
E-mail: cp09_21@fsa.gov.uk

Comments should be received by 30 October 2009.

Please address any other comments or enquiries to:

Amit Khanna (Ref: CP09/21)
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 8612
Fax: 020 7066 8613
E-mail: cp09_21@fsa.gov.uk

It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

1 Executive summary

Who should read this CP?

- 1.1 This Consultation Paper will be of interest to the widest possible range of stakeholders – from consumers of financial services and the bodies that represent them, to firms, other regulators who may have addressed similar issues, academics and others.

Introduction

- 1.2 This paper sets out feedback on the responses we received to DP08/3 – *Transparency as a Regulatory Tool*; it outlines our current policy position and describes our next steps. It also incorporates a Consultation Paper on the proposed publishing of complaints data.
- 1.3 In May 2008 we published a Discussion Paper (DP), DP08/3 – *Transparency as a Regulatory Tool*. The paper looked at what we currently do and don't disclose. Its aim was to stimulate an informed and energetic debate which recognised the powerful advantages that transparency can offer while at the same time carefully considering the disadvantages and limitations (including statutory barriers) of some forms of disclosure. Importantly, the paper reflected a clear distinction between simply making information available – which could in some cases cause confusion and have a negative impact – and publishing information in a way that improves how markets function by providing useful clarification.
- 1.4 In the DP, we set out a Code of Practice (Code) which provides a transparent mechanism for guiding FSA decisions about what additional information we might disclose (see Annex 4). We believe that it is sensible to have in place a framework which will allow us to effectively and consistently determine the extent to which transparency is an appropriate tool to use in a particular instance. The Code states that there is a presumption in favour of using transparency as a regulatory tool to help us achieve our objectives where each of the following principles are met:

- we do not publicly disclose information that we believe would infringe any statutory restrictions on us, including those set by the Financial Services and Markets Act (FSMA);
- we will proactively disclose information that we believe on balance serves, rather than harms, the public interest; and
- the disclosure meets our standards of economy, efficiency and effectiveness.

- 1.5 While respondents raised some concerns on the detail and application of the Code, most agreed it was necessary to have in place a framework to clarify our position. So we intend to proceed with the Code of Practice. While we will not commit to a formal consultation process every time we apply it, we intend to give firms notice of when we intend to disclose information about them in line with the Code, to analyse the costs and benefits of such disclosure and, where appropriate, to engage with the industry to establish how best transparency may be achieved and presented.
- 1.6 Applying the Code, the paper also provided examples of the types of information we may and may not consider publishing. The examples focused on complaints; retail themes; financial promotions; Treating Customers Fairly (TCF); sector analysis and benchmarking, and capital requirements. We invited comments and views from stakeholders on our proposals, in particular seeking their views on the principle of using transparency as a regulatory tool and in relation to the above mentioned examples.

Summary of responses to our proposals

- 1.7 We received 68 responses to the DP. The responses were generally detailed, well informed and thought-provoking. There was also good representation from most parts of industry. Most respondents were firms and trade associations but there were several others from charities and consumer representatives.
- 1.8 In principle, respondents felt that greater transparency was desirable. However, responses to several of our individual proposals, specifically those which result in the naming of individual firms, were strongly polarised between firm and consumer representatives.
- 1.9 We believe that transparency is a legitimate regulatory tool and will lead to better outcomes for both consumers and firms when implemented appropriately. We have reviewed our legal position in respect of our ability to disclose ‘confidential information’ provided by firms in the light of restrictions placed on disclosure by European law.
- 1.10 We intend to progress with some of our proposals but not with others. Below, we summarise our policy approach. A more detailed response can be found in Chapter 2.

Complaints

- 1.11 In the DP, we proposed publishing information on complaints from the returns that firms provide to us. As expected, the responses to these proposals were polarised. There was strong support from consumer groups but firms and trade associations expressed serious concerns about the risks of publication and its ability to achieve the intended outcomes. We have taken careful account of the responses received: in particular the argument that European Directives could limit the amount of information provided by firms that we could publish; the requests for further consultation before we implemented the proposals; and the suggestions about what data to publish and how to contextualise it.
- 1.12 We are therefore consulting in Chapter 3 of this paper on a revised proposal to require certain firms to publish their own complaints figures, along with the data necessary to put their complaints numbers into context. We intend to consolidate this information and produce comparative tables every six months. In line with the original proposals, this requirement would be limited to the firms accounting for the largest numbers of complaints, although we would also publish figures on an aggregate basis showing the comparable data for the remaining firms. These arrangements would enable the firms involved to control the presentation of their own data in the first instance, giving additional explanation or messages at the same time, but would also provide for regular publication of tables making it easier for interested parties to draw comparisons between different firms.

Retail themes

- 1.13 We made a number of suggestions about the benefits of greater transparency following thematic work. In addition to providing more detailed anonymous benchmarked results, we proposed to ‘name and fame’ firms who performed well in certain areas and publish an aggregated total of the consumer redress firms have paid as a result of thematic work.
- 1.14 Our proposals to ‘name and fame’ firms received strong opposition from industry respondents. Although we will keep this proposal open as an option in specific cases, we have decided not to proceed with it systematically, but instead to rely on anonymous, benchmarked results and existing good practice case studies to help raise standards.
- 1.15 We already publish information on redress where we consider it appropriate (for example on mortgage endowments). We recognise that it also is desirable to publish redress information which has resulted from our enforcement and supervisory action, of which thematic work is an important part. We have not implemented a framework for the frequent and systematic disclosure of the aggregate redress resulting from supervisory and thematic work, or from enforcement action, but we will keep this issue under review.

Financial promotions

- 1.16 The DP outlined several proposals for ways in which increased transparency might help reduce the risk of consumers making poor purchasing decisions based on unfair, misleading and unclear financial promotions. We are proceeding with our proposals to clarify our expectations of firms by improving our dedicated web pages; offering further bespoke training, giving presentations at conferences and publishing anonymous examples of ‘real life cases’ that we have taken up with firms.
- 1.17 We requested views on the feasibility of creating a financial promotions register. We maintain our view that the benefits of this proposal are not sufficient to justify the significant downsides and most agreed. Consumer groups, on the other hand, continue to consider that a register would be an effective tool for deterring firms from publishing misleading promotions and would also help to inform consumers. Nevertheless, we believe that the alternative tools already available to us would achieve the desired outcome in a more proportionate way. These include the use and publication of FSA imposed variation of permissions and us publishing ten new anonymous examples of ‘real life cases’ to demonstrate situations in which we have taken action against firms’ non-compliant financial promotions.
- 1.18 We intend to monitor the effectiveness of these tools before re-considering the introduction of a register at a later date. We are also still considering whether to develop a fast-track enforcement procedure for cases where the likely outcome of having produced non-compliant financial promotions is public censure rather than a fine.

Treating Customers Fairly (TCF)

- 1.19 We intend to proceed with our proposals to make greater use of ‘non-fundamental own (FSA) initiative variation of permissions’ (NF-OIVoPs), an outcome of which would be greater transparency through the publication of supervision notices. We intend to make greater use of this tool under our financial promotions and retail thematic work.
- 1.20 We agree with respondents that self-certification of TCF, without some form of oversight from the FSA, has the potential to confuse customers by creating incentives for firms to over-state their results or set lower performance targets. So we do not intend to proceed with public reporting of TCF self-certification. However, we still expect firms to measure their performance against all customer fairness standards materially relevant to their business and to demonstrate with relevant Management Information that they are delivering fair outcomes for their customers.

Enforcement

- 1.21 In the DP, we stated that our strategic priority is to achieve credible deterrence and that where we do not see improved standards despite clear messages to industry, we will consider increased penalties in order to improve consistency and transparency.

Sector analysis and benchmarking

- 1.22 Respondents thought the DP proposals to provide more detailed aggregated sector analysis and benchmarking were useful. We will continue to make use of peer-group and sectoral information in our risk-assessment work. We are still considering publishing firms' depolarisation status in the future and intend to undertake further discussions with trade associations to see whether there are other areas where we can be more transparent under Integrated Regulatory Reporting (IRR).

Capital requirements

- 1.23 Responses to our suggestion on the appropriateness of disclosure of capital requirements were generally cautious. Respondents noted that to understand the detail of firm-specific capital requirements requires a detailed understanding of the process of setting individual capital guidance. They also noted that further disclosure may have the unintended consequence of undermining market confidence if individual capital requirements were misunderstood or if inappropriate comparisons were made across firms.
- 1.24 We are not intending, for the time being, to amend our approach to transparency of individual firms' capital guidance. However, we may consider in the future whether greater disclosure about our assessment of a firm's risk profile is appropriate.

Freedom of Information disclosure log

- 1.25 We proposed in the DP to improve the accessibility and content of our disclosure log on freedom of information requests and most respondents agreed that this would be useful.
- 1.26 We currently publish requests that are in the public interest. However, we do not plan, as a matter of course, to publish all responses to requests received under the Freedom of Information Act (FOIA) because some requests are individual in nature. Disclosure in such cases would not be a practical use of our resources (as we would spend time redacting the requestor's details to make sure that we comply with the Data Protection Act).

2 Feedback on responses to DP08/03

This chapter sets out the feedback on responses to DP08/03 – *Transparency as a Regulatory Tool*.

Q1 Do you agree that transparency is a legitimate regulatory tool?

- 2.1 Most respondents said that transparency is a legitimate regulatory tool which is desirable in theory and may lead to better regulatory outcomes if implemented with appropriate safeguards.
- 2.2 Respondents acknowledged that significant transparency already exists and commented positively on how the FSA already uses transparency (or disclosure), for example, to publicise our enforcement actions. However, some respondents raised the risk of unintended consequences and the potential detriment to cooperation between firms and the FSA.
- 2.3 Several firms raised legal questions over whether our proposals, such as the publishing of firm-specific information, are permitted by the relevant European Directives. They did not agree with our view that Article 54 of the Markets in Financial Instrument Directive (MiFID) would allow such publication.
- 2.4 Several respondents raised concerns over potential consumer benefit by arguing that additional data could confuse or distract consumers with excessive information and lead the public to rely on the media for interpretation. Firms noted that this could create the risk that the media would be able to manipulate the information disclosed and that this could potentially result in negative outcomes for consumers.
- 2.5 Some firms expressed their view that further transparency should only supplement, but not substitute for, the FSA's supervisory, policymaking and enforcement activities.

Our response

We are pleased that firms recognise that regulatory transparency is, in theory, a legitimate regulatory tool. We believe it appropriate for us to publish specific information if we have been given statutory powers to do so and if we can better achieve our objectives by publishing that information.

We firmly believe that such disclosure will be helpful where it promotes firms' understanding of our regulatory requirements and where it reduces the potential for consumer detriment by encouraging better informed decisions. The FSA Code of Practice provides a transparent mechanism for guiding our decisions about what additional information it might disclose and determining the degree of transparency appropriate to specific areas.

We have revised our proposals to address the limitations that MiFID places on our ability to publish confidential information firms give us. We now propose that firms will instead be required to publish their own complaints data.

Q2: Do you agree that the high-level cost benefit analysis (CBA) captures the main potential impacts of regulatory transparency, both positive and negative?

- 2.6 We included a high-level cost benefit analysis in our DP and asked whether it had captured the main potential positive and negative impacts of transparency. Most respondents believed it did, but found it to be too high-level. In particular, it was suggested that more detailed analysis of the costs was required in relation to each transparency initiative. Several respondents believed there should be further consultation and an individual CBA with stakeholders for initiatives such as firm-specific complaints data and the Code of Practice.
- 2.7 Several respondents focused on the impact on competition by stating that non-UK firms would be exempt from most of the proposed transparency measures and therefore not be subject to the same levels of disclosure as UK firms. Respondents argued that such a distorted playing field may prejudice consumers' purchasing decisions by creating an information asymmetry between UK and non-UK firms.
- 2.8 Furthermore, respondents suggested that any misinterpretation of newly disclosed information could result in cost implications for both the FSA and firms, and that these costs would ultimately be passed onto consumers. Respondents emphasised the risk that further regulatory transparency and the increased availability of firm-specific information could have a detrimental impact on the decision-making processes of consumers and may not necessarily lead to more informed purchasing decisions.

Our response

The Code of Practice states that we will ensure the proposed disclosure regime meets our standards of economy, efficiency and effectiveness; and that it will include an assessment of the costs and benefits.

In response to the DP we have continued to liaise extensively with industry and consumer representatives throughout the policy-making process. We have listened to the various views and compromised accordingly. We are now consulting on the publication of firm-specific complaints data (in Chapter 3 of this paper) and have included a detailed CBA on our proposals.

We do not believe further cost benefit analysis is currently required to progress with the other proposals suggested in the paper since they have costs of minimal significance.

Q3: Do you agree a Code of Practice on Regulatory Transparency is the right approach to enable the FSA to achieve consistency of decision-making?

- 2.9 Most respondents agreed with us that a code of practice was the right approach in principle and a sensible way to achieve consistency in decision making. However, many respondents believed that the Code does not provide the required level of detail, particularly in respect of the criteria used to decide whether to disclose and publish particular pieces of firm-specific data. Firms and their representatives suggested that the Code should explicitly state that any intended use of transparency as a regulatory tool should be formally consulted upon and subject to cost benefit analysis (CBA).
- 2.10 Several respondents suggested that, even with the Code in place, there is a risk that firms would generally be more cautious about what they voluntarily shared with the FSA. They suggested that it needed to be clearer on what was to be considered confidential material. Some respondents believed that the Code should contain more detail on how the decision-making process for determining whether disclosure was appropriate would work in practice. Firms noted that the code was too high-level, and that it should take more account of the risk of inappropriate disclosure. Some suggested that consulting each time we determined that greater transparency was appropriate, detailing the nature of the information to be disclosed and the justification for publication under the Code (including a CBA), would go some way to mitigating this risk.
- 2.11 Several respondents suggested that there should be further information available on how the FSA intends to maintain the Code, including whether it would be subject to regular review and, if so, by what mechanism. Firms suggested a periodic independent review of the Code to help monitor our compliance with its principles.

Our response

We intend to progress with our Code of Practice as we believe it will allow us to effectively and consistently determine whether transparency is, or is not, an appropriate tool to use in a particular instance.

The Code states that there is a presumption in favour of using transparency as a regulatory tool to help us achieve our objectives where each of the following principles are met:

- we do not disclose information that we believe would infringe any statutory restrictions on us, including those set by FSMA;
- we will proactively disclose information that we believe on balance serves, rather than harms, the public interest; and
- the disclosure meets our standards of economy, efficiency and effectiveness.

Given, the strongly differing views of consumer and industry bodies we believe, on balance, the Code of Practice as described above is the most suitable way for us to demonstrate our commitment to applying the principle of transparency proactively but in a considered and proportionate way.

While we acknowledge some of the concerns mooted by firms regarding the impact this may have on the relationship between firms and us, we would see this behaviour as undesirable.

We believe an open and frank relationship with firms to be mutually beneficial and note that firms must, in any event, adhere to the standards in Principle 11 (A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice).

We do not intend to consult formally on every occasion that we believe transparency to be appropriate. Furthermore, consultation of this kind in each instance could prevent us from using transparency in a timely way, with the result that we delay or even fail to achieve the intended benefits. However, where we have an obligation under FSMA to consult we will do so. We will also give firms notice of when we intend to disclose information about them and, where appropriate, engage with industry to establish how transparency may be best achieved and presented. Any potential amendments to the Code in future will involve further consultation with industry.

Q4: Do you agree with the three principles?

We will not publicly disclose information that we believe would infringe any statutory restrictions on us, including those set by FSMA.

We will proactively disclose information that we believe on balance serves, rather than harms, the public interest.

Disclosure should meet our standards of economy, efficiency and effectiveness.

2.12 Respondents acknowledged that we would not disclose information which infringes any statutory restrictions. However several respondents asked us to be clearer on how the gateway concept and application of Section 348 & Section 349 of FSMA will be used to publicly disclose confidential information that we receive from firms. Respondents indicated that firms voluntarily provide commercially sensitive

information as part of their close and continuous relationship with the FSA and emphasised their concerns if such information could subsequently be disclosed.

- 2.13 Consumer representatives agreed with us that there should be a presumption of disclosure and that we should only withhold information where its disclosure would damage the public interest. In contrast, some firms expressed concern regarding the reference to the public interest, observing that decisions will be inherently subjective and could result in information being published unless it can be demonstrated that doing so will conclusively be against the public interest. One respondent went further, suggesting that the commercial interests of firms should be taken into consideration when making decisions on of what information may be published and the potential negative impacts of publishing firm-specific information on market confidence.
- 2.14 Another respondent suggested that reference to our statutory objectives would help to explain public interest and provide consumers and stakeholders with a clearer understanding of the criteria for disclosure. Several respondents stressed the need for there to be demonstrable benefits from disclosure that clearly outweigh the associated costs; and raised questions over how transparency would fit in with our existing enforcement powers and process.

Our response

We intend to progress with the Code as outlined on our response to Question 3 above.

Given the strong opposing views reflected by consumer groups wishing to loosen the Code in order to allow for greater flexibility; and firms wanting to tighten the Code to provide for greater certainty, we believe the Code provides the correct balance as currently drafted.

Q5 Do you have comments on the detailed wording contained in the Code of Practice on Regulatory Transparency?

- 2.15 Rather than comments on the wording of the Code, some respondents wished to see more detail and supporting guidance on the Code itself, believing that this would lead to better regulatory outcomes. Several firms suggested that the Code should refer to ‘statutory objectives’ rather than just ‘objectives’.
- 2.16 Other areas where firms commented they would require further guidance were:
- the process for notifying firms before disclosure;
 - the decision making process within the FSA;
 - how adherence to the Code will be evidenced;
 - the definition of confidential information; and
 - the definition of ‘publicly available’.

- 2.17 Consumer representatives suggested the Code was not flexible enough. They suggested that we should make a commitment to remove any potential statutory impediments to our transparency objectives that may arise.

Our response

We are considering the notification process in respect of firms. This may include a transparency website or more direct communication with firms depending on the nature of the proposed disclosure.

We intend to develop a decision making process which may result in sign-off by one of our senior managers in order to address any industry fears over consistency in decisions in relation to disclosure under the Code.

As stated in the Discussion Paper, s348 of FSMA restricts our ability to publicly disclose 'confidential information'. In summary this is information which:

- is not already lawfully publicly available;
- relates to the business or affairs of any person; and
- is received by the FSA for the purposes of its functions under FSMA.

Whether any particular information is already publicly available is a question that must be determined on a case-by-case basis. There are various situations where information will be regarded as being publicly available, for example where the information has been published in an annual report or in an announcement to the market. However, it will not be sufficient that the matter has merely been the subject of speculation in the press.

Complaints

Q6 Would publication of complaints data help achieve the FSA's regulatory objectives?

- 2.18 Most respondents supported the principle of transparency. Consumer groups thought that the proposals would give vulnerable consumers greater confidence in complaining and remind them of the target times for handling complaints.
- 2.19 However, most industry respondents were not convinced that publishing complaints data would help to achieve the FSA's regulatory objectives. The main arguments were that complaints data would be unlikely to help customers make good purchasing decisions, and may even be a distraction because of the difficulty of making meaningful comparisons and the lack of whole-of-market coverage. Many respondents believed that the case in favour of publication having a positive effect on firms' behaviour was unproven. They were concerned that some firms might concentrate on improving their performance data instead of making genuine improvements to their complaints handling.

- 2.20 Respondents said that the FSA should use its existing powers, including thematic reviews and enforcement processes, instead of transparency as a tool to improve the quality of complaints handling.

Our response

We believe that publishing complaints data will achieve the objectives set out in the DP. We emphasise that our transparency objectives complement, rather than replace, our existing regulatory tools. We have identified complaints handling as a priority conduct risk and emphasised in our *Financial Risk Outlook* for 2009 that firms should not reduce the resource devoted to complaints handling in a bid to retain capital, since in the long run this could reduce the likelihood that they will take appropriate corrective action. We will continue to use our supervisory powers to ensure that standards of complaints handling are improved, but improved transparency will exert additional pressure in this direction. Under our revised proposals, the data will come from the new complaints return, which will make it easier to compare outcomes for similar products and services provided by different firms. This will also be supported by our proposals on how to contextualise complaints data.

Q7. Are there any reasons specific to the financial services sector which would make it inappropriate to publish firm-specific data?

- 2.21 A small number of respondents thought there were no reasons specific to the financial services sector which would make it inappropriate to publish firm-specific data. However, most respondents disagreed.
- 2.22 Many respondents pointed out that European legislation, particularly MiFID, would limit the extent to which we could publish confidential information provided by firms. Respondents also felt that publication might damage confidence in the financial services industry generally, with negative consequences on savings and the purchase of insurance products. They also noted that the financial services sector was more complex than other sectors, because of the range of products available; the different channels through which they could be sold; the fact that some firms might have merged with others or taken on their historic business, and the fact that some products generated different volumes of complaints than others. Many respondents said that there would need to be more common standards for the presentation and comparison of data.

Our response

We believe that many of these concerns, including the legal issues, have been addressed by our revised proposals.

Q8. What comments do you have on the specific data that is proposed for publication?

- 2.23 The main point made by most respondents was that the figures about the total number of complaints received by a firm were problematic in their raw state and would have to be weighted to reflect the size of the firm before they would be meaningful.
- 2.24 Respondents noted that firms had different approaches to recording and reporting complaints and that data from different firms might not be directly comparable. Many respondents also objected to the proposal to publish data related to the number of complaints resolved within four weeks, because that interval was no longer significant to the FSA's complaint-handling rules. Many respondents also had concerns about publishing data on the amount of consumer redress paid by specific firms, which they thought would not be useful to consumers and could be misleading.
- 2.25 Some respondents were also concerned that the proposals would not cover the whole of the market. They felt that consumers might interpret the omission of a particular firm from the list as implying either that it had not received any complaints or, conversely that it was not even authorised and regulated by the FSA.
- 2.26 Finally, respondents noted that the figures which firms provided on the number of cases upheld would not be as reliable as those produced by the Financial Ombudsman Service (FOS).

Our response

In response to the consultation, we have amended our proposals to exclude the publication of the number of complaints resolved within four weeks and between four and eight weeks. We also do not propose to publish data on the total value of consumer redress paid by firms.

Q9. What comments do you have about the provision of contextual data alongside the complaints data?

- 2.27 Respondents felt strongly that it would be very important to be able to put complaints statistics into context, both on a firm-specific basis and also in order to explain why certain sectors might naturally attract a higher volume of complaints than others. Some respondents said that the figures should not be published without contextualisation, or that percentages or ratios only should be published rather than raw figures, given the risk that the media would ignore the contextualisation and just publish league tables based on the raw figures.
- 2.28 Respondents noted that contextualisation could be achieved in many different ways. Examples included taking into account the number of eligible customers; the stock of policies or contracts in force at a particular time, and the different life cycles of different types of product. Respondents also noted that there was an inherent conflict between providing sufficient information and overloading the user with too much. It was suggested that presenting the underlying data in the form of graphs might be useful to consumers.

Our response

We recognise the importance of contextualisation, and the need to provide context in a way which does not make the final result unwieldy or difficult to comprehend. Our proposals set out how we think this might be done using the information which firms already collect. A key part of the revised proposals is the presentation of complaints information in the five new product/service groupings to help enable meaningful comparisons.

Q10. What comments do you have about providing information on a firm or group basis?

- 2.29 Respondents thought that providing information on a group basis would be of limited value. Most thought that the information should be provided on a firm basis. However, some respondents thought that information should be provided on the basis of brand names, since that was how consumers tended to think of the market.

Our response

The basic unit of analysis will be the firm (or authorised entity) although we will also provide information about the group to which each firm belongs. We will not, however, seek to make comparisons on a group basis. We will expect firms to provide information about which brands are covered in their published figures, but we do not propose to require firms to break down their complaints number by brand.

Q11. What comments do you have on the proposed form of publication, and what ideas do you have for making the data more accessible in the longer term?

- 2.30 Respondents generally opposed the idea of limiting publication to the larger firms, as this would not be representative of the whole market, although some respondents recognised that there were diminishing returns in including the smallest firms. Many respondents were concerned that publishing complaints data in a table or spreadsheet would encourage the development of league tables. Some respondents said that the table format would in any case be difficult to interpret and that a more searchable system would be preferable, perhaps through the FSA Register.

Our response

Our revised proposals for firms to publish their own complaints data will ensure that individual firms have primary responsibility for presenting their own data. We will continue with our plans to publish comparative figures in tables, but propose to make them easier to use by developing separate tables for each of the five product/service groupings. We will keep options for publishing the information in different formats under review while we gain practical experience of our proposed publication regime.

Q12. What comments do you have on the proposed timescale?

- 2.31 Respondents suggested that the timetable set out in the DP was too ambitious and that we should undertake further consultation before proceeding with our plans. Some respondents suggested that we should wait for:
- the final decision of the Information Tribunal on some outstanding requests for information under the Freedom of Information Act;
 - the forthcoming European Commission consultation on the classification and reporting of consumer complaints;
 - the forthcoming proposals of the Financial Ombudsman Service on transparency; and
 - the introduction of the revised complaints data reporting return.
- 2.32 Some respondents said that we should publish aggregated complaints information before moving to firm-specific publication, so that firms would have the chance to benchmark themselves.
- 2.33 A few respondents thought that the timetable was achievable and wanted us to make progress as rapidly as possible.

Our response

We noted the calls for us to postpone our plans for publication, and to undertake further consultation. With reference to the forthcoming Information Tribunal, we are satisfied that the outstanding appeal does not make it undesirable to proceed with the proposals in the Discussion Paper.

We will shortly be publishing a report showing aggregated complaints data between 2006 and 2008, which will enable consumers and firms to get a general picture of complaints and complaints handling trends. We will update this information every six months.

Our revised proposals will allow most firms to prepare and submit two sets of data on the new complaints return before they have to publish anything.

Retail themes

Q13. Do you agree with our proposals concerning:

- anonymous, benchmarked results; and
- non-fundamental OIVoPs (Own Initiative Variations of Permission)?

- 2.34 Most respondents agreed in principle that more detailed anonymous benchmarked results would be useful to firms in helping them raise standards as well as clarifying what is expected of them. Some respondents indicated that before we published any results, we should consult with firms to ensure information is accurate, balanced and that the benchmarking is set against an appropriate sector.

2.35 In contrast, most respondents objected to our proposals in relation to non-fundamental OIVoPs. Opposition focussed on three main fronts: questions over the legal power to act as proposed; that the process was insufficiently clear and could give rise to unfairness; and that the proposals would not achieve the desired outcomes or would have unintended consequences.

Our response

We will proceed with our proposals to provide more detailed anonymous benchmarked results to firms, in particular about their conduct of business in areas where we consider this is likely to help them raise standards. We don't intend to consult formally each time we publish benchmarked results, but we note respondents' concerns that such results are externally 'sanity checked' for their application to, or representativeness of, a particular sector or market. We will consider doing this where we deem it necessary.

We will also disclose to the general public, in an entirely anonymous form, extracts of any results relating to particular conduct of business issues that we consider will help the public gain a better sense of the scale and details of problems we have identified.

In respect of 'non-fundamental own (FSA) initiative variation of permissions' (NF-OIVoPs), we recognise that many of the points made and concerns expressed by respondents are genuine and legitimate and we have modified the thinking underlying our proposals accordingly. We further clarified our proposals in relation to NF-OIVoPs in Consultation paper CP08/10 – *Decision Procedure and Penalties manual and Enforcement Guide Review 2008* which contained detailed proposals outlining our intent to improve our regulatory oversight by making greater use of our statutory power to vary firms' permissions; and to be able to make consumers and other firms aware when and why we have imposed variations. We referred to this in our DP because one outcome of the proposed change would be greater transparency through the publishing of Supervision notices. The issues raised in response to our DP were also raised in response to our CP08/10. We discussed these issues in a Policy Statement: PS08/13 – *Decision Procedure and Penalties manual and Enforcement Guide Review 2008*.

In that PS, we recognise that the fact that we might publish details of an NF-OIVoP should not form part of our consideration about whether we should impose one.

There are two separate and distinct questions we must ask ourselves:

- have we met the statutory criteria for imposing a NF-OIVoP (for example, is an NF-OIVoP desirable to protect consumers)?; and
- if we have and we go on to impose an NF-OIVoP, what information about the related supervisory notice is it appropriate to publish?

We therefore deleted the proposed text of Enforcement Guide (EG) 8.3(4), which stated that we might impose an NF-OIVoP where we wished to communicate more widely the nature of our concerns about the firm or conduct involved. We also amended EG 6 to reflect more closely the restrictions imposed by FSMA on

publication: namely that we will publish NF-OIVoP supervisory notices, whether fundamental or non-fundamental, unless to do so would be unfair to the subject of the notice or would prejudice the interests of consumers.

We also stated in that PS that we do not accept that greater use of NF-OIVoPs would be inherently unfair or a distortion of the FSMA procedures for public censure. Parliament intended that we should be able to define the scope of a firm's activities. This is subject to clear procedural safeguards in FSMA itself, including, for example, the ability of a firm to make representations after we have decided that action must be taken immediately. We understand industry's concerns about consistency and the potential impact of NF-OIVoP action and will ensure that these concerns are taken into account when applying the statutory and Decision Procedure and Penalties manual (DEPP) procedures for imposing NF-OIVoPs.

Q14 Do you agree with our comments and proposals on:

- naming and 'faming'; and
- Risk mitigation and redress?

- 2.36 Most respondents disagreed with our proposals to 'name and fame' firms. Opposition focused on the unintended consequences of consumers or the media misinterpreting the scope of the 'faming' as a recommendation that the firm had been praised in all aspects of its business. Furthermore, respondents were concerned about the implications for competition as the conduct of firms who had not been included in a thematic review would be omitted unfairly. Several respondents also commented on the risks to the FSA's reputation in the event of a 'famed' firm subsequently failing or being subject to enforcement action at a later date in respect of other issues.
- 2.37 Respondents were ambivalent about our proposals on risk mitigation and redress which focused mainly on our suggestion to publish anonymous, aggregated data in our Annual Report on the amount of redress paid as a result of thematic work undertaken (including those firms who take mitigating action without admitting liability). Several respondents could not see the value in producing such a report. They thought that it could potentially confuse consumers because the amount of redress paid is, at best, an ambiguous measure of success or failure and would not serve as a clear indicator of the FSA's effectiveness.

Our response

We recognise there are genuine concerns about 'faming' firms to the general public. Therefore, we will not proceed with our proposals for now, but instead rely on the anonymous, benchmarked result and existing good practice case studies to help raise standards. However, we consider that there may, from time to time, be specific scenarios where 'faming' could be usefully done because these concerns weigh less heavily or are exceeded by the likely benefits. This may include the kind of 'balanced message' scenario suggested by one respondent, where a firm has made specific improvements after previously being found to be poorly performing in a particular respect.

More broadly, there did not seem to be any significant objections to our facilitating the spread of good industry practice by approaching firms we consider ‘good’ in the relevant sphere and asking them to share their knowledge with others although, as we noted in the DP, this would rely entirely on the cooperation of firms. Again, we do not anticipate doing this as a matter of course, but it might be usefully done from time to time in specific scenarios.

Concerning risk mitigation and redress, it is clear that the emergence of significant failures of behaviour by firms, or other crystallised conduct risks, is not a good sign for the financial services industry, nor a positive for us as regulator, and it is something we continue to seek to prevent. But the subsequent correction of such a failure, and its redressing by firms, either voluntarily, or at our instigation, is more of a positive aspect in comparison.

While we agree that the implication a ‘redress for the year’ total may be ambiguous about the precise performance of the industry or the FSA, we remain of the view that it is broadly informative about the scale of issues encountered. In particular, it should serve to strengthen consumer confidence in the sector and is preferable to the present unbalanced situation where firm failures are published but details of remedial measures and redress are not. So we intend to proceed on this basis.

Q15. Are there other measures that you believe could be useful in improving the effectiveness of our thematic work with firms?

- 2.38 Several respondents suggested that the effectiveness of thematic review could be improved by a more, standardised approach to providing feedback and sharing key messages. Respondents commented that not all thematic reviews resulted in reports. Several respondents were in favour of the FSA publishing ‘Dear CEO’ letters, stating that doing so would enable firms that have not been reviewed in the thematic work, to address any identified risks.
- 2.39 A number of respondents commented that thematic results were provided to the industry at an aggregated level, or at a level that fits FSA organisational structure rather than one which conforms to standard industry practice. They suggested that it would be helpful to industry if the results of thematic work could be presented differently, such as benchmarking results being provided in industry blocks which allow for direct comparison.

Our response

The diverse nature of thematic work, in terms of substance, coverage and purpose, tends to mitigate against a standardised approach to communicating results. We are always conscious of the need to be proportionate in both our own use of resources and the information burdens we place on firms. However, we recognise the logic and spirit of the points and suggestions made by respondents in this regard and will adopt them in our future communications of conduct risk work, to the extent that doing so is practicable and proportionate in light of the specific results at hand.

Financial promotions

Q16 Do you agree we should take further action, over and above our existing actions, to reduce the risk of consumers making poor buying decisions because of financial promotions that are unfair, unclear or misleading?

- 2.40 Most respondents agreed that our existing approach was effective in reducing the risk of consumers' poor buying decisions. Examples of situations where we had acted in response to firms' non-compliant financial promotions and the publication of anonymised 'real life cases' were both regarded as valuable tools.
- 2.41 Several respondents commented that we should focus on continuing to enhance existing material rather than trying to find different routes to achieve our educational objectives. Some respondents mentioned the need for an open, ongoing, and customer-focused dialogue with the FSA as the best route to achieving clarity and fairness in a more principles-based and outcome-focussed regulatory environment.

Our response

We note that respondents were supportive of our existing approach to reduce the risk of consumers making poor buying decisions and our use of tools such as dedicated websites, practical educational material, anonymised 'real life cases', bespoke training, presentations at conferences and metrics about our monitoring and casework activities.

We also reduce the risk of consumers making poor buying decisions by contributing to the FSA's consumer education website, *MoneyMadedclear*. We suggest amendments when our hotline, routine monitoring or thematic work points to evidence of widespread consumer misunderstanding of regulated activities.

Furthermore, we have taken steps to enhance the material on our firm-facing website. Ten new examples of anonymised 'real life cases' have been published on our website at <http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/actions/case/index.shtml>. We have also updated their format to preserve an accurate account of our actions and to clarify our expectations as much as possible without identifying individual firms. We have drawn examples from both our routine monitoring and our thematic work and we are committed to updating them regularly. We also continue to communicate to firms extensively through industry workshops, speeches, seminars, and press articles and view these opportunities for direct contact with practitioners as being vital to our work. Wherever appropriate, we aim to have this information published on our website.

We already publish regular metrics on the number of cases we deal with and the number of complaints received. We present these details of the action we have taken with firms, broken down by investment, mortgage and insurance sectors.

Q17. Do you think that the package of measures described in paragraphs 6.56 to 6.68 of the DP will be effective in reducing the risk of consumer detriment?

- 2.42 The majority of respondents approved of our approach to reducing the risk of consumer detriment using the variety of tools described in our response to Question 16 above, with the exception of our approach to the use of NF-OIVoPs (discussed in response to Question 3).
- 2.43 Several respondents commented on the difficulty of locating useful material on the main FSA website. Some stated that it was not easily identifiable and suggested improving the functioning of the website by including all publications and updates of the site into the 'Publications by Date' lists.
- 2.44 With regard to fast-track enforcement, there was a general consensus among respondents that there should be more information about how it would work in practice and an opportunity to respond to a full consultation. Several respondents were concerned that a limited, streamlined and quicker investigation process may increase the risk of unfair outcomes for firms. Respondents further expressed their view that due process should not be sacrificed to expediency and that any 'limited' investigations should not lead to decisions being taken at a junior level which was able to bypass the scrutiny of senior FSA staff.

Our response

We note that respondents were broadly supportive of the tools that we currently use to reduce the risk of consumer detriment. We introduced anonymised 'real life cases' as a consequence of our informal consultation with consumer and industry representatives in the summer of 2007. We have also now altered the way that we present these case studies to provide more information about our assessment criteria and regulatory approach. We will continue to update our educational resources in the light of ongoing feedback received from our industry training and the other practitioner forums that we regularly attend.

We are still considering whether to develop a fast-track enforcement procedure for cases where public censure, rather than a fine, is the most likely outcome. It may be noted that as outlined in the DP, we are not contemplating a change in policy or procedure, but rather making a statement of our intention to speed up investigations in certain cases.

Subject to the changes outlined in Question 13, we are proceeding with the proposals to increase the use of NF-OIVoPs and further details are in PS08/13 – *Decision Procedure and Penalties manual and Enforcement Guide Review 2008*.

Q18 Do you think that the benefit of creating a financial promotions register, as described in the DP, would outweigh the drawbacks? If so, why?

- 2.45 Most respondents agreed with our view, as stated in the DP, that the drawbacks of introducing a financial promotions register outweighed the potential benefits. Respondents concurred with our primary concern that a register might be misinterpreted by consumers and result in unfair and disproportionate reputational damage for firms. Respondents were also concerned that introducing a register would curtail innovative advertising as firms became more cautious in their approach.
- 2.46 Consumer groups strongly disagreed with our proposals. They believed that a financial promotions register would be an effective tool to deter firms from publishing misleading advertisements and would also help to inform consumers.

Our response

We do not consider the additional benefits of creating a financial promotions register are currently sufficient to justify the significant downsides. We still think that the alternative tools available to us, such as the use of NF-OIVoPs or publication of anonymised ‘real life cases’, would achieve the desired outcome in a more proportionate way.

We therefore intend to implement and monitor the effectiveness of the alternative tools before revisiting and re-considering the delivery of a register if the alternatives fail to achieve their stated objectives.

Treating Customers Fairly (TCF)

Q19. Do you agree with our analysis of the obstacles that are impeding better progress on the TCF initiative?

- 2.47 The DP identified two obstacles as potential barriers to the successful delivery of the TCF initiative, that:
- some firms have expressed confusion about what the FSA wants; and
 - senior management in firms have found it hard to turn commitment for change into coalface improvements.
- 2.48 Respondents tended to agree that these obstacles did exist. In the main, feedback focused on the first obstacle where respondents acknowledged that there was still confusion in the industry about the TCF initiative and what the FSA expected of firms. In particular, respondents felt there was contradiction between more principles-based regulation and the ‘tick-box’ approach that they thought was applied by supervisors. There was specific concern over how supervisors were thought to interpret good practice examples as regulatory requirements.
- 2.49 Commentary on the second obstacle noted that the difficulty firms face in translating senior management commitment into change at the ‘coalface’ does not result from a lack of commitment, but rather from difficulty in ensuring consistent

change across the organisation from senior management through to the ‘frontline’. Respondents also voiced concerns over the difficulties they face in collecting MI that positively demonstrated the outcomes.

Our response

The six TCF Outcomes explain to firms what we expect them to deliver in terms of Treating Customers Fairly and build upon our existing Principles for Business (in particular Principle 6, as well as 2,3,7 and 9)

In June 2008 we published a TCF update paper that reiterated our expectation that firms should be appropriately and accurately measuring performance against all relevant customer fairness issues and be able to demonstrate that they are delivering fair outcomes for customers. The paper contained feedback on progress against the March 2008 TCF deadline, further guidance on meeting the December deadline, case studies for small firms and examples of good and poor practice in relation to TCF MI. In addition, our thematic work often provides examples of good and poor practice in relation to products or services that affect the treatment of customers.

In November 2008, we issued an update to firms explaining that from January 2009 we would integrate our supervision of firms’ fair treatment of customers into our core supervisory work using ARROW, our risk-responsive operating framework, in order to realise the benefits of the TCF initiative more quickly.

This statement also set how firms can expect to be assessed where, in line with our outcomes-focused regulatory approach, supervisors will have to form a view on the risk of the firm delivering unfair outcomes to its customers. This view is based on the quality of the TCF outcomes the firm is currently delivering (by reviewing results demonstrated through the MI, where appropriate undertake direct testing of the consumer outcomes, and taking into account any other firm intelligence the supervisor has) together with a review of the firm’s culture. The review of culture enables supervisors to determine whether senior management are taking responsibility for ensuring that the firm and staff at all levels deliver the TCF outcomes and also to understand the reasons for any poor performance or areas where satisfactory performance might not be maintained. The review of culture uses the Culture Framework as a basis, a tool which many firms have found useful in understanding how to turn senior management intentions into actual delivery of fair outcomes.

To support the integration of TCF assessments into core supervision, TCF training is now part of FSA supervisors’ Training and Competence scheme and specialist help is also available to assist with outcomes testing and the review of firms’ TCF culture, including understanding the relevant MI.

To help ensure a consistent approach the findings of the supervisory assessment of TCF are, in common with other aspects of a firm’s risk assessment, challenged and validated by independent FSA staff through the ARROW Validation panels.

Q20. Is the mix of measures outlined in paragraphs 6.79 to 6.87 (of the DP) appropriate for helping to achieve better progress?

- 2.50 Respondents were asked to comment on the range of measures presented in the DP to support the delivery of TCF. Overall, respondents were keen for the introduction of further guidance, especially in relation to the December 2008 TCF deadline. Guidance specifically requested included further anonymised examples of real life cases and good and poor practice, which were believed to have assisted firms in the past. There was also concern over how publication of individual firm results in relation to TCF could be misinterpreted, for example the concern was expressed that missing the March 2008 deadline did not in itself mean that a firm was treating customers unfairly.
- 2.51 Some respondents expressed concern over the proposal for firm self-certification of TCF compliance, which was not felt to be appropriate and could lead to the risk that some firms may make exaggerated claims. There was also a lack of support for publicising NF-OIVoP decisions because it was felt this would amount to public censure and blur the lines between supervision and enforcement.

Our response

We agree that anonymised ‘real life cases’ and examples of good and poor practice are useful. We supplied further examples for the industry in the June 2008 TCF publication on the subject of TCF MI. The case study approach is used frequently by our Small Firms and Contact Division (SF&CD) and they have also undertaken TCF road-shows to share TCF messages with the industry.

We do not intend to adopt public reporting of TCF self-certification. We agree with respondent comments that public self certification of TCF has the potential to confuse customers and create perverse incentives for firms to over-state their results, or to set lower performance targets. We would therefore need to address these risks with some form of oversight from us in any case. However, we still expect firms to be appropriately and accurately measuring performance against all customer fairness issues materially relevant to their business and to be acting on the results. We expect firms to be able to demonstrate through those measures that they are delivering fair outcomes for their customers.

We committed in our June publication to continue to take tough action on the worst firms by focusing on a targeted group of those firms who are failing to deliver fair treatment of customers in a more visible and forceful way. We want to be as transparent as possible in reporting our enforcement actions in these cases. However, we will neither circumvent normal enforcement processes nor deny firms their right to due process. For further details, see: PS08/13 – *Decision Procedure and Penalties manual and Enforcement Guide Review 2008*.

Q21. Are there other measures that you would like us to take?

- 2.52 The DP asked for feedback on additional measures that respondents would like the FSA to adopt. Respondents noted that it would be important that TCF be seen to be a key part of our retail strategy and for the central policy team and supervisory teams to be consistent with their messages and actions.
- 2.53 Respondents felt that the FSA's emphasis should be on helping as many firms as possible to meet the December TCF deadline. They reported that ongoing constructive dialogue would be an important tool, as open dialogue was viewed as having already been of benefit for firms in developing aspects of their approach to TCF.

Our response

TCF remains central to our retail strategy and as such upon the closure of the TCF project, a small specialist TCF team remained to provide support to supervisors on all aspects of ongoing work relating to TCF.

As we set out in the DP, the emphasis of our work on TCF has shifted away from educational activity and we have no plans to make any substantial expansion to the material already readily available on our website. The assessment of how firms treat their customers will continue to build upon work we have undertaken over the last few years and is now part of routine supervision within the ARROW framework and complemented by the small firms enhanced strategy and regular thematic work. It is through this dialogue that firms can expect to be challenged on their delivery of TCF.

The results of our ongoing work with firms will, where appropriate, be published on our external website. These include thematic findings, outcomes of Enforcement action, Dear CEO letters. Where appropriate we have set out for firms examples of good and poor practice, problems that we have identified in relation to treating customers fairly and any actions that firms should take.

As mentioned in our response to Question 20, we have committed to continue taking tough action on the worst firms by focusing on and dealing more visible and decisively with those firms failing to deliver fair outcomes to consumers.

Sectoral analysis / benchmarking

Q22 Is there data we collect in our returns whose firm specific and/or aggregate disclosure is neither precluded by directives, nor duplicative of disclosures required by directives, and which would be useful in support of our regulatory functions and objectives?

- 2.54 There were few specific comments relating directly to data collection and sectoral analysis; several respondents commented instead on confidentiality and the potential contravention of European Directives (addressed earlier in relation to Question 5).

Our response

We will continue to make use of peer-group and sectoral information in our risk-assessment work and remain committed to the idea that additional disclosure from the FSA of risk analysis at a sectoral level would be useful. We re-affirmed the value of sectoral analysis in The Turner Review and re-stated our commitment to make improvements to our approach. We also acknowledged that this work would be dependent on the outcome of our ongoing discussions with the other Tripartite Authorities on the future of macro-prudential regulation. We do not currently anticipate effecting any additional disclosure before 2011.

We are still considering publishing firms' depolarisation status in the future. However, this will be subject to a full cost benefit analysis. We remain open to suggestions on how to maximise the potential benefits for consumers and we explore this issue with respondents in more detail at a later date.

Capital requirements

Q23 Do you have comments on the various proposals set out above?

Q24 Do you have suggestions for areas of regulatory transparency not mentioned in this Discussion Paper?

- 2.55 Respondents commented on firm-specific capital transparency in the general questions 23 and 24. The responses to our suggestion on the appropriateness of disclosure of individual capital requirements were generally cautious about further transparency. While there were a number of general concerns raised around the issue of firm-specific information, there was very clear support for the view that further disclosure of firm-specific capital requirements was not appropriate.
- 2.56 Respondents noted in particular that to understand the detail of firm-specific capital requirements required a detailed understanding of the process of setting individual capital guidance that was not, at present, widespread. They also noted that further disclosure may have the unintended consequence of undermining market confidence if misunderstood or inappropriate comparisons were made across firms. Respondents also suggested that disclosure across firms may, if misunderstood by investors, create pressure on firms to contest capital outcomes on the basis of maintaining good public relations rather than accurate risk control.
- 2.57 Some respondents did note that they felt that more private information sharing between the FSA and firms in relation to our assessment of their individual risk profile would be helpful.

Our response

We understand respondents' concerns about the trade-off between the costs and benefits of further disclosure of individual capital requirements. Transparency in relation to the capital guidance process would pose potential risks to our market confidence objective if selective information is misunderstood or used inappropriately. However, we are also aware of the keen interest in banks' capital

guidance that has been created by the recent financial crisis. We have recently issued a general clarification of our approach to capital guidance which is available at www.fsa.gov.uk/pubs/other/letter_to_bba.pdf.

Individual capital guidance represents our long-term view of adequate financial resources, but in exceptional circumstances we may tolerate some volatility of capital resources against individual capital guidance if firms notify us in advance and have a credible plan to restore capital buffers. We therefore believe that the combination of market pressure and the additional clarification we have already provided on the meaning of capital guidance may facilitate greater transparency of individual capital guidance in due course. However, for now we agree that the balance of costs and benefits suggests that we maintain our current approach to the transparency of individual firms' capital guidance. We will keep this decision under review and will reassess the costs and benefits of firm-specific disclosure in the future.

The request for enhanced firm-specific risk discussion between the FSA and firms is noted and will be considered outside of the scope of this paper. However, as part of such consideration we will be mindful of the importance of an improved general understanding of firms' risk profiles. We may consider in the future whether some greater disclosure about our assessment of a firm's risk profile is appropriate.

Q25 Do you agree with our proposals to improve the accessibility and content of our disclosure log?

- 2.58 We are pleased that respondents widely agreed with our proposals in the DP to improve the accessibility and content of our disclosure log on requests made under the Freedom of Information Act and to make information more accessible on our website.
- 2.59 One respondent suggested that we should submit data on our response rates to the Ministry of Justice and believed that it would be useful to benchmark the FSA's response rates against those of other regulators.
- 2.60 Several respondents commented that it would be useful if the log included results of any referrals that had been made to the Information Commissioner's Office, including the outcome of any such referrals. Furthermore, they believed that we should consult on the accessibility and content of the disclosure log.

Our response

We propose to improve the accessibility of our disclosure log on freedom of information (FOIA) requests. This follows recent work undertaken to comply with new requirements for Publications Schemes set out by the Information Commissioner.

We do publish information which is of 'wider public interest', but do not plan, to publish all responses to FOIA requests received (satisfied in part or in full). Some requests are individual in nature and would not be of wider interest (for example,

when an individual makes a request for copies of all correspondence sent to and received from the FSA in relation to their complaint). Making this disclosure would not be a practical use of our resources (we would need to spend time redacting requestor's details to make sure that we comply with the Data Protection Act).

Q26 What criteria do you think we should use in deciding whether to publish or publicise information ourselves, or rely on a third party?

- 2.61 Most respondents believed it to be important for the FSA to retain responsibility for publishing and publicising ourselves, rather than relying on third-parties. Respondents noted that reliance on third-parties for publishing and publicising could exacerbate the existing risk that information could be misinterpreted. Furthermore, some respondents commented on the possible risk of loss of confidential or sensitive data, either when the information is being transferred or while it is held by the third-party.
- 2.62 Some respondents offered the view that trade associations may be able to add value to information produced by the FSA – for example, by analysing data which the FSA is unwilling or not sufficiently resourced to analyse itself.
- 2.63 However, one respondent suggested that we should respond to market forces when considering publicising and publishing data. They noted that involving third parties would place a natural constraint on the publication of less relevant and effective information since market forces would not encourage third-parties to become involved in the publication of unhelpful data.
- 2.64 Some respondents expressed concerns that there would be inherent risk in relying on the media to deliver desired regulatory outcomes. It was noted that the media would retain control over how disclosed data is presented and that this could result in unintended consequences including consumer detriment.

Our response

We believe that, in most situations, we should be the publisher rather than firms or third-parties. This would allow us to ensure control over the information presented and facilitate a level of consistency in respect of the information released.

Nevertheless, we do recognise there may be situations where it is more appropriate for a third party to aggregate and publish the information voluntarily. This would, however, require the third-party to be sufficiently knowledgeable in respect of the published information. Furthermore, there may be existing rules that require a firm to publish and publicise information, examples being the rules requiring (relevant) firms to publicise their membership of the Financial Ombudsman Service and Financial Services Compensation Scheme.

Our proposals on complaints data would require firms to publish the information in the first instance, in a format specified by our rules, with us subsequently aggregating the data on a regular basis. It would of course be open to other organisations to bring this information together in alternative presentations.

3 Consultation on publishing complaints data

- 3.1 This chapter sets out our proposals for requiring firms to publish their complaints data.

Background

- 3.2 Our original proposal set out in the Discussion Paper, DP08/3 (DP), was to publish the data provided to us by firms in their regular six-monthly complaints returns. We recognise the legal constraints provided by European Directives, particularly from the Markets in Financial Instruments Directive (MiFID) but also from similar provisions in other Directives. These Directives limit our ability to publish information provided in confidence by firms.
- 3.3 Nevertheless, we still believe that it would be beneficial for this information to be more widely available. If firms publish information themselves, it can no longer be considered as confidential information, even if they have also provided it to the FSA. This consultation is therefore on a proposal to require firms to publish their own complaints information, shortly after they have provided it to us.
- 3.4 We believe that there are advantages to this proposal, in that firms will have greater control over how their information is presented and when exactly it will first appear in the public domain. But we will also have a moderating role in bringing the information together in a way which will enable users to draw comparisons between different firms. This will not preclude other organisations from undertaking a similar exercise and it may be that in due course outside providers may be able to add value to the information in different ways.

Information to be published

- 3.5 Our proposals for the information to be published are based on the original proposals set out in the DP, but we have adapted them in light of the responses received. We are also basing our proposals on the information that will be available through the use of the new complaints return, which comes into force on 1 August 2009.

3.6 Draft rules for consultation are at Appendix 1. This example shows what a firm will be required to publish:

Firm name:

Other firms included in this return (if any):

Period covered in this return: [e.g. 1 January – 30 June 2010]

Brands covered:

	Number of complaints opened	Number of complaints closed	Complaints closed within eight weeks (%)	Complaints upheld by firm (%)
Banking				
Home finance				
General insurance and pure protection				
Decumulation, life and pensions				
Investments				

3.7 In light of the consultation responses, and further discussions, we propose not to include the detailed timeliness data originally proposed (complaints closed within four weeks, complaints closed between four and eight weeks and complaints closed in more than eight weeks). We accept that this would have over-emphasised the timeliness of complaint handling as compared with the outcomes received by customers. Furthermore, it is the measure of complaints closed within eight weeks that is most significant since, under the rules, a customer can choose to go straight to the Financial Ombudsman Service (FOS) if a response has not been received within that time.

3.8 We have also decided to exclude the figures on ‘total redress paid’ from the requirement to publish complaints data. This is useful information for supervisory purposes, since it enables us to determine whether firms are facing particular strains. But it is not a useful metric more generally since there are so many variables in determining the amounts for individual claims. Consumers and their agents would be misled if they used the information to try to judge what they might expect to receive in response to their own particular complaint.

3.9 There is one additional piece of information that we propose to include – this is the total number of complaints closed in each period. This figure is necessary to put the percentages in context for the speed of complaints handling and the uphold rate, and it is also useful to indicate broadly whether a firm is keeping on top of the number of complaints it is receiving.

Q1: Are you content with the information to be published by firms under the proposed complaints data publication rules?

Application

- 3.10 This requirement would apply to firms, but not to credit unions or to EEA branches in the UK. Credit unions are generally volunteer-based, co-operative institutions with a low level of complaints. They have their own separate complaints handling rules.
- 3.11 In the DP, we proposed to publish complaints data for only a limited number of firms, which together accounted for the largest number of complaints. We recognise the point made in the responses to paper that smaller firms with smaller numbers of complaints may also have issues with their complaint handling, and we did therefore consider whether the requirement to publish complaints data should be extended to all firms. But, having surveyed firms to assess the likely costs of publication, we concluded that imposing these costs on all firms regardless of size would be disproportionate, and so we propose to limit the application of this rule to those firms who account for the vast majority of complaints. The requirement to publish will therefore apply only to firms that have reported receiving 500 or more complaints in the relevant six-monthly period. Based on previous years' complaints returns, we estimate that this cut-off point will mean that just under 200 firms will need to publish their complaints figures each half-year, and that together the firms that have to report their complaints numbers will account for 95% of all complaints reported by firms.
- 3.12 For branches of EEA firms operating in the UK, in view of the relatively small number of firms concerned, and recognising that there are some constraints in the sectoral Directives on what we can require these firms to do, we do not propose to impose the requirement to publish complaints data on these branches, though we will keep the situation under review. We hope, nonetheless, that EEA branches operating in the UK will consider publishing the key details provided in their complaints return on a voluntary basis.

Q2: Do you agree with the proposed application of the complaints data publication rules to firms that receive 500 or more complaints in the relevant reporting period?

Joint reporting

- 3.13 Firms that are part of a group may submit a joint report of their complaints numbers to us, where it is logical for them to do so.¹ We do not propose to change these arrangements, but it is important to be transparent about which firms are included in joint reports. We propose therefore to require any firm that submits a joint report to publish it on the same basis, listing all the other firms that are covered by the report. The other firms covered by the joint report do not need to publish the joint report as well, but should at least indicate where it can be obtained.

1 DISP 1.10.1 C R

- 3.14 As part of the additional research we undertook to examine the likely costs of a requirement on firms to publish their own complaints data, we asked respondents to indicate what alternative methods of publication they would prefer. About a quarter of respondents favoured publication through their trade association. It is obviously for trade associations themselves, and their members, to consider whether they wish to publish complaints data in this way, but we have drafted the rules to make this option available if required.

Group reporting

- 3.15 We do not propose to provide figures on a group basis, since responses to the consultation indicated that more detailed information on the basis of individual firms would be more useful. However, when we aggregate the data, we will provide information about which group any individual firm is in.

Brand reporting

- 3.16 We do not require firms to collect or report their complaints data on a brand name basis, and we do not propose to add that requirement now. It would often not be meaningful in any case, as different brands may share the same complaints handling arrangements behind the scenes. But respondents to the DP pointed out that consumers in particular might wish to know about the brands they were familiar with. So we will require firms to publish a list of the brands covered by their complaints return, and we will publish this information with our overall report.

Q3: Do you agree with the proposals on joint reporting, and the proposals on how groups and brands should be shown?

Definitions

- 3.17 Some of the responses to the DP commented that there was uncertainty about the definition of a complaint, or the definition of the various categories.
- 3.18 The definition of a complaint is set out in the Handbook glossary, and emphasises that a complainant has to allege that they have suffered (or may suffer) financial loss, material distress or material inconvenience; and the complaint has to relate to an activity of the firm which comes under the jurisdiction of the FOS. This definition should mean that some types of complaints will not be reportable, since they do not meet these criteria, although firms will of course still be interested in knowing their customers' views and dealing with issues that they raise. Complaints can be oral or written, but they do not have to be reported if they have been resolved to the satisfaction of the customer by the close of the next business day. Expressions of dissatisfaction collected in the responses to customer surveys are also unlikely to count as reportable complaints. If respondents have further requests for clarification about what types of complaint should be included in the complaints returns, we would be happy to consider them.

- 3.19 As for the categories of product and the categories of cause of complaint, the new categories being used in the new complaints return – which comes into effect from 1 August 2009 – are fewer and simpler than those being used currently. This should make it easier for firms to determine how to report their complaints.
- 3.20 Some respondents also said that there was a concern that the prospect of publication would make firms under-report the number of complaints they received in order to improve how they looked in the published figures. This is a genuine risk, but there are two safeguards against it. First, we will be able to compare a firm's returns with its returns from previous years – as we do now – and ask questions if the numbers seem markedly out of line. Secondly, it will not be possible for firms to manipulate the data published by the FOS, and this will give an independent indicator of a firm's performance.
- 3.21 We do recognise that some firms have deliberately chosen to make it as easy as possible for their customers to complain, in order to maximise the feedback that they receive from customers. We would encourage firms to continue to do this, and would not wish them to change their approach as a result of the new requirement to publish their complaints data, but it will of course be open to firms to explain this alongside their numbers.

Q4: Do you have any requests for further guidance that the FSA could offer about which complaints should be included in firms' complaints returns?

Reporting period

- 3.22 Firms are required to report their complaints data every six months, to a timetable based on their accounting reference date.² Most firms have six-monthly reporting periods ending in March/September, April/October or June/December. Other firms have different dates. Previously firms reported on a standard six-monthly cycle. The change to firm-specific dates was consulted on in CP198 (September 2003), confirmed in PS04/8 (March 2004) and came into force on 1 April 2005.
- 3.23 Some respondents argued that these arrangements for different reporting periods will make it harder to compare the results for different firms whose complaints returns would always cover different periods. Our proposal is to group together under each six-month period, all complaints returns which end within that period. So, for example the period from 1 July to 31 December 2010 could cover for one firm the complaints received in that six-month period, but for another firm could cover complaints received in the six months ending on 30 September 2010. Clearly, this means that in the collected report, there will be different six-month periods for different firms, but we believe that making comparisons between firms with different accounting dates will still be valid.

2 See DISP 1.10.4R

Q5: Do you agree that the rules linking the complaints reporting period to each firm's accounting reference date should remain unchanged?

Timing/next steps

- 3.24 Many respondents to the DP agreed that the new complaints return would have advantages in terms of the information it will cover, and we should therefore make use of it as the basis for publication. The new return comes into effect on 1 August 2009 for returns covering periods ending on or after 1 August, and under our proposals all published firm-specific figures will be based on the new return.
- 3.25 We do not, however, propose to require firms to start publishing their returns straight away, since this would not allow sufficient time for consultation and analysis of the responses. We therefore propose that the requirement should come into force on 6 February 2010 and cover all complaints returns relating to periods ending on or after 1 January 2010.
- 3.26 In order to give firms additional time to prepare for publication, we also propose to implement transitional arrangements so that no firm has to publish before 1 July 2010. This will give all firms at least six months to prepare for their first publication. For example, a firm whose reporting period ends on 1 January 2010 would normally have to submit their return by the middle of February and publish by the end of February 2010, but under the transitional arrangements they will have an extra four months to prepare for publication. All firms covered by the new rules should have published their figures by the end of August 2010 and we therefore aim to bring all the published figures together in a combined document by the end of September 2010.

Q6: Do you agree with the proposed timetable for implementation?

Financial Ombudsman Service

- 3.27 The Financial Ombudsman Service (FOS) has been working on its own proposals for publishing data about the complaints it handles. This is very much a separate exercise, and we have always been clear that the decisions taken by the FOS should not be dependent on our decisions. However, we have worked closely together over recent months, in order to ensure that the data published by the FOS and the data to be published by firms and collated by the FSA is as comparable as possible. For example, the FOS is using the same five product/service groupings for its data as we will be using in the complaints return from 1 August. In due course, we will consider with the FOS how best we can cooperate to enable the data from both sources to be made available in a single location.

Contextualisation

- 3.28 A major issue raised by industry respondents to the DP, and in subsequent discussions with industry and consumer groups, has been how raw figures for the number of complaints received can best be put into context, given the relative sizes of firms and their different lines of business. The FOS has received similar feedback in respect of its plans.
- 3.29 The idea of contextualisation divides into two broad strands:
- providing commentary to explain what conclusions can be drawn from the data and giving background about regulatory changes, for example the waiver on bank charge complaints; and
 - providing metrics to normalise complaint numbers, so that firms of different sizes can be compared, on the same basis, for example looking at the number of complaints per thousand customers, or according to the amount of business written.
- 3.30 The first type of contextualisation should be relatively easy to provide, both through the publication of overview data about complaints numbers and trends generally, and more specifically by providing informed commentary about complaints patterns, and why they might vary for different types of firm. We will be publishing the first complaints data overview report shortly.
- 3.31 The second type of contextualisation is more complex. There is no single measure that would be appropriate for all types of business, or all types of firm, particularly as different firms have different mixes of business. Responses to the DP have also noted that if contextualisation is too fine-grained, it can be more difficult for users to grasp. However, the breakdown of complaints reporting into five product/service groupings under the new complaints return should make it easier to compare similar types of business, and this may provide a good starting point for contextualisation. Finally, many respondents to the DP noted that even if contextualisation were successfully achieved, the media may still ignore it and concentrate on the unadjusted numbers.
- 3.32 We believe that firms will be keen to put their own complaints data into context, for example giving additional information about their own mix of products or the nature of their customer base. But we also think it will be important to set some standard measures which all firms will be required to publish alongside their complaints numbers, in order to help people make comparisons.
- 3.33 We and the FOS have been working with industry and consumer bodies to identify possible ways in which complaints data could be contextualised against other metrics. This has not been a simple task, and it has not yet been possible to reach a consensus view. So these are our proposals, rather than those of the group.
- 3.34 An easy way of contextualising complaints data might be to compare the number of complaints against the number of customers for that firm. Banks and building societies are currently required to provide these figures annually but equivalent numbers are not available for other sectors.

- 3.35 We believe that it would be best to identify measures that are based on information which firms already collate and provide to the FSA. This will minimise the additional cost to firms of publishing this information and build on the experience that firms already have of calculating and reporting the figures. The metrics can be broken down into the five main product/service groupings which are coming into use with the new complaints return from 1 August. The proposed metrics are as follows:
- banking and loans complaints per 1,000 relevant accounts;
 - general insurance and pure protection complaints per £1m premium;
 - home finance complaints per 1,000 relevant accounts;
 - investment complaints per approved person; and
 - decumulation, life and pensions complaints per £1m premium
- 3.36 These proposed contextualisation metrics are all based on figures firms already give us regularly. They do have some drawbacks and further work would be required to clarify some anomalies which the figures appear to produce for some firms. But in principle, we think that using these metrics would provide a fairer basis for comparison between different firms, adjusting for their different sizes and the different nature of their business, while avoiding excessive levels of detail.
- 3.37 Some of this data is already in the public domain, since the number of approved persons and information from the insurance returns is already published. But, as with firms' complaints data, part of the information we currently hold that might be used for contextualisation is subject to professional secrecy obligations. In publishing contextualisation data, we could therefore face the same issues of breaching professional secrecy that had to be considered when thinking about publishing complaints data. One solution might be to make contextualisation voluntary – that is we could decide only to contextualise complaints data for a firm where the firm was prepared to allow us to use the data. Firms would be free not to release their data, but then they would not have their complaints data published in context.
- 3.38 However, our preference is to propose a Handbook rule requiring firms to publish data for contextualisation along with their complaints data. We could then include this data in its consolidated report as, having been published in accordance with the rule, the data would no longer be confidential. We prefer this option on the basis that – as with the complaints data itself – it will give firms the opportunity to decide how the information is first presented to the public, while maintaining consistency and comparability between different firms.

Q7: Do you agree with the proposed requirements on firms to provide contextualisation data alongside their complaints reports? If not, what alternative data would you suggest?

Cost Benefit Analysis

3.39 The full cost benefit analysis is set out in Chapter 4. Given the targeted nature of the proposed new requirement, the cost to the industry should be limited, although the precise number of firms affected in each half-year reporting period will vary according to the number of complaints received. We have estimated an initial cost to the industry of £600,000 and a further £300,000 in ongoing annual costs. Benefits arise from the fact that publication of complaints data could improve consumer outcomes. Although there is little evidence to suggest that the majority of consumers will use this information directly, a study we commissioned from the University of Bath found some evidence that publication of the complaints data could create incentives for firms to raise their standards, hence improving consumer outcomes. This report is reproduced at Annex 2. Although there is no proportionate way of quantifying these benefits in advance, we believe that it is a reasonable assumption that they will follow publication of complaints data as proposed in this consultation.

Q8: Do you have any comments on the cost benefit analysis?

4 Cost benefit analysis

Introduction

- 4.1 Section 155 of FSMA requires us to perform a cost benefit analysis (CBA) of our proposed rules and to publish the results. The purpose of a CBA is to assess, in quantitative terms where possible and in qualitative terms where not, the economic costs and benefits of a proposed policy. Specifically, we are required to publish with the draft rules ‘an estimate of the costs together with an analysis of the benefits.’
- 4.2 In this CBA, we assess the likely impacts of the proposed introduction of rules requiring firms to publish complaints data, and us to collate it for public comparison. These proposals will cover the firms that report the largest number of complaints to us. In 2008, the proposals to cover firms reporting more than 500 complaints per six-month period would have affected 195 firms and accounted for over 95% of complaints.
- 4.3 This CBA looks to estimate the combined costs these firms and the FSA will face, and to analyse the benefits the market as a whole is likely to experience. The CBA compares the costs of applying the rule in this targeted way with the costs of applying it to all firms who submit a complaints return, nearly 19,000 in total.
- 4.4 To determine the benefit mechanisms of publication, we have reviewed the available academic literature on the subject and commissioned our own academic study. To ascertain the costs of the proposals, we sent a survey to nearly 4,000 firms who had reported one or more complaints in 2008 asking what the likely costs of complaints data publication would be. It is these responses, combined with FSA complaints data for 2008, that form the base of our cost estimates.

Benefits

- 4.5 Information on complaints handled by firms is not currently in the public domain. By publishing data on a firm's complaint history there are two hypothetical mechanisms through which benefits could be realised:
- consumers make more informed purchasing decisions; and
 - firms have increased incentives to improve their products and customer service, thereby reducing the volume of valid complaints, and to improve the quality of complaints handling.

Informed consumer decisions

- 4.6 Once the data has been published, consumers can compare firms' complaints histories and make judgements about the quality of firms' complaint handling. Although complaints are an imperfect indicator of customer dissatisfaction with the firm, product, or the quality of service provided, consumers can infer a level of product quality and service provided. This information should form part of the decision-making process when choosing products and product providers. A more informed decision is therefore possible, reducing the likelihood of future consumer detriment.
- 4.7 A growing body of work has looked at the effectiveness of point-of-sale disclosure in changing consumers' behaviour. This work suggests that we should be sceptical about the likelihood that retail consumers will use the information, even where that information clearly tells something about the price or quality of the services they are purchasing.¹ The bulk of the evidence suggests that most consumers do not use extra information, however material, in a manner that is beneficial to their decision. But consumer groups such as Which? – as well as journalists, financial advisers or other intermediaries – are likely to produce their own analyses of the data, and these might also have an effect on consumer behaviour, at least among the active minority who are likely to shop around.

Quality of firm products and service

- 4.8 If firms change their behaviour in light of complaint publication, the benefits to the consumer may be realised independently of consumers' use of the available information. To change firms' behaviour it is not necessary that the information is important to a large proportion of consumers; it may be enough either that a sizeable minority of active consumers use the information, or that firms feel that the publication of unfavourable complaint numbers will damage their reputation.
- 4.9 Numerous studies have looked directly at the role of corporate reputation on consumers, and on financial performance, in retail banking. This includes a paper by Martensen et al (2000)² which finds that the image of banks is directly related to

1 For example Burkart, O (2002); *Estimating price elasticities of financial services: the case of UK personal pensions*. The Geneva papers on Risk and Insurance, July, 2002; Andrews, P (2009), *Did life and pensions 'disclosure' work as expected?* Occasional Papers. The Financial Services Authority.

2 Martensen, A., Gronholdt, L. & Kristensen, K. (2000), *The drivers of customer satisfaction and loyalty: cross-industry findings from Denmark*, Total Quality Management & Business Excellence, Volume 11, Issue 4 - 6 July 2000, pages 544 – 553.

both customer satisfaction and loyalty. A review by Sabate & Puente (2003)³ finds a consistent and positive link from corporate reputation to financial performance.⁴ Therefore it does appear that there is a strong link between corporate reputation and financial performance, which confirms the common view that firms may be concerned to protect their reputations in the face of the disclosure of information by the regulator. So it is in firms' interest to decrease the number of complaints that they generate, and to increase customer satisfaction with how complaints are handled.

- 4.10 To further explore the relationship between complaint numbers, firm reputation and profitability, we commissioned an independent academic at the University of Bath⁵ to conduct an empirical analysis of the available data. FSA complaints data for 2008 and firm reputation, as measured by the Which? customer branding index, was used to analyse the former, while the FSA complaints data was matched to 2008 RMAR returns to analyse the latter. The study is included at Annex 2 of this CP.
- 4.11 The limited number of firms covered by the Which? customer branding index curtailed the reliability of the link between firm reputation and complaint numbers. In spite of this the correlation was as expected: those firms with higher annual complaint numbers were associated with comparably worse reputations. It must be stressed that this was only a correlation and not a significant relationship.
- 4.12 However, the study did find a significant negative relationship between firm profitability and complaint numbers. Profitability, as determined by the ratio of retained profit to assets, decreased as complaint numbers increased. These results suggest that the fewer complaints a firm receives, the more profitable it is likely to be.
- 4.13 As only one year of data was used it was not possible to analyse the direction of this relationship, but the association between profitability and complaints numbers is evident. This supports the hypothesis that reducing the number of complaints a firm generates, even when controlling for size, can be consistent with increased profitability.
- 4.14 Although these studies did not specifically deal with the issue of publication of data, we can infer that the publication of complaints data would increase the strength of these effects. We would expect this to increase management focus on reducing complaints and consequently improve firms' behaviour in favour of customers and firm profitability.

Conclusion

- 4.15 Publishing complaints could help consumers make more informed retail decisions, although numerous pieces of research suggest that this effect will not be material for

3 Sabate, J. M. and Puente, E. (2003), *Empirical analysis of the relationship between corporate reputation and financial performance: A survey of the literature*, Corporate Reputation Review, 6:2, pp. 161-177.

4 The authors identify the possibility that the causation could be reversed, i.e. financial performance causes good reputation. The studies which lead to the conclusion above identify the direction of causation as being from reputation to performance.

5 Professor Anna Zalewska, School of Management, University of Bath

most consumers. Nonetheless we find it likely that the benefits of complaints publication will materialise through the reputation and financial performance incentives it creates for firms to improve their products and customer service. The publication of complaints data may increase firms' focus on complaints and subsequent incentives to improve behaviour in favour of customers, both through action to reduce the number of complaints received and through improved complaints handling.

Costs

Direct costs to the FSA

- 4.16 The direct cost to us of publishing complaints data is minimal.

Compliance costs

- 4.17 In March 2009 we sent a survey to nearly 4,000 firms asking what the likely costs of complaints data publication would be. Approximately 900 firms completed some or all of this survey. It is these responses, combined with FSA complaints data for 2008 that form the base of our cost estimates.
- 4.18 Table A shows the actual distribution of firms reporting complaints and the number of complaints reported in 2008.

Table A: Distribution of complaints 2008

Ranking by complaint numbers	Number of firms exceeding threshold since 2005	Number of firms exceeding threshold in 2008	% of all firms in 2008	Number of reported complaints in 2008	% of total number of reported complaints in 2008
500 or more complaints per reporting period	278	194	1%	2,766,888	95.2%
250 or more complaints per reporting period	390	285	2%	2,824,532	97.2%
Fewer than 500 complaints per reporting period	18,448 ⁶	18,532 ⁷	99%	140,170	4.8%

- 4.19 Table A shows there is significant concentration of complaints into a small number of firms. More than 95% of complaints in 2008 were accounted for by 1% of firms. The costs of applying the proposed policy only to those firms that generate 95% of the total number of complaints are presented below.

⁶ Assuming the 2008 population size.

⁷ This includes 13,944, or 74% of the population, that reported 0 complaints in 2008

- 4.20 We also considered whether it would be appropriate to set a lower threshold for reporting: at 250 complaints per six-month reporting period. As can be seen from Table A, this would increase the total number of firms subject to publication in 2008 from 194 to 285. While this would impose the requirement on 47% more firms, it would increase the proportion of complaints brought into the requirements by only 2%. The total number of firms reporting this number of complaints since 2005 would be 390, compared to 278 for the higher threshold.
- 4.21 However, we recognise that the composition of the firms affected by the publication requirement would change in each reporting period, with variations in the number of complaints received by individual firms. As such, we have prepared cost estimates for 400 firms on the assumption that those firms likely to be covered by the requirements at some point would need publication capabilities. The cost estimates in Table C below have been weighted to reflect this. This is a conservative approach as it shows the effect of a 250-complaint threshold and will in any case overstate the costs in any one year.
- 4.22 There are significant publication cost variations for those firms without a website. However these firms are in the minority: on average 12% of survey respondents. Table B shows the distribution of respondents that had a website by number of submitted complaints in 2008.

Table B: Distribution of website ownership from survey respondents

Ranking by complaint numbers	Top 400 (by complaint numbers)	Outside top 400 (by complaint numbers)
Respondents with a website %	121	661
	92%	87%
Respondents without a website %	11	100
	8%	13%

- 4.23 Not all respondents replied to this question but the sample sizes are large enough to be taken as indicative for the industry as a whole. These distributions are used to weight the costs in Table C appropriately between those with and without websites.
- 4.24 Table C uses the response data from the survey to estimate the costs of publication, based on the figures provided by respondents about the costs of publication using a website. Respondents' figures varied depending on whether or not they already operated a website. This information was combined with the 2008 complaint figures to scale the costs to industry-wide figures. Table C aggregates the costs of publication for those firms with and without websites.

Table C: Industry costs of publishing complaints data

	All firms		Top 400 firms only (by complaint numbers)	
	Initial	Yearly	Initial	Yearly
Website	£8,620,537	£4,294,155	£531,667	£265,833
No website	£3,251,115	£1,800,675	£33,333	£33,333
Total	£11,871,652	£6,094,830	£565,000	£299,166

- 4.25 It has been assumed the number of firms will remain at the same level as 2008 and that the 400 firms receiving the greatest number of complaints will have a consistent distribution of those firms with and without websites. Also we assumed when looking at firms outside the top 400 that those firms reporting zero complaints in 2008 would also need to have systems in place to publish in the event of receiving future complaints. For 2008 this group represented 74% of the population.
- 4.26 As Table C shows, we estimate that applying our complaint publication proposals to all firms will cost the industry approximately £12 million initially and a further £6 million a year.
- 4.27 Table C also shows that if the proposals covered only those 400 firms that report or may have to report the greatest number of complaints, this would reduce the overall costs to under £600k initially and a further £300k annually. This includes set up costs of less than £33k and a further £33k annually for those firms that do not currently have websites (around 8% of affected firms).
- 4.28 Our proposals also now include publishing contextualisation data alongside the complaints numbers. Given that firms already report this information to us, we believe that the cost of adding this material to the publication requirement will add only marginally to these estimated costs.

Indirect costs

- 4.29 It is important to consider whether there will be any unintended consequences as a result of our proposals. One such unintended consequence might be reputational damage to firms who do not ‘deserve’ a bad reputation, or to the industry as whole. If the proposals impact on the reputation of firms with a poor record in receiving and handling complaints then this is an intended consequence of the reform, so the question is whether good or satisfactory performers will nevertheless receive bad publicity. We believe that the data firms publish will be sufficiently transparent to avoid this unintended consequence, as raw numbers will be supplemented by contextual information that allows, for instance, firm size to be taken into account.
- 4.30 In terms of the reputation of the industry as whole, there is already widespread reporting of complaints-handling issues, based on individual cases or types of complaint, and the proposals in this CP do not affect this situation. We and the Financial Ombudsman Service have also reported on aggregate complaint numbers. Moreover, if the reforms stimulate action to improve customer service then the reputation of the industry will be enhanced.

- 4.31 Another potential unintended consequence that has been raised is the creation of additional work responding to, and on occasion correcting, press reports on published complaints data. We do not believe this is a material concern. To the extent that publishing complaints data results in additional press interest, which cannot be estimated in advance, this is unlikely to be very different from the press interest that already exists on other areas of firms' activity, or on particular customer service issues. Overall we do not believe that there will be significant costs to industry of dealing with queries about the complaint figures.
- 4.32 A final element of unintended consequence relates to the impact of the proposals on the volume of complaints, which in turn depends on how the proposals affect firm incentives to reduce the number of complaints, and handle them better, and consumer incentives to make complaints. These influences on the volume of complaints point in different directions, and given the nature of the reforms there is no data we can use to estimate effects. Instead we discuss below how incentives change under the proposals and how firm and consumer behaviour may alter in response, asking the industry for its views as part of this consultation.

Volume of complaints

- 4.33 The effect of the proposals in this CP on the overall volume of complaints depends on the relative strength of firms' and consumers' responses to the change in incentives that publication of complaints data may create. For firms who will be obliged to publish complaints data, the effect of the proposals is to increase the adverse impact of valid complaints, as the information will now be made public and (we assume) have a larger impact on their reputation. This in turn improves market incentives to provide better products and customer service to therefore avoid a valid complaint arising, reinforcing FSA supervision. The number of instances where a valid complaint could be made should therefore reduce, resulting in the volume of valid complaints falling.
- 4.34 In contrast, the incentive for consumers to make a complaint may be enhanced. Publication of complaints data may highlight the possibility of making a complaint and the likelihood of obtaining a positive result, improving the information available to customers. However, we do not believe that these proposals will unbalance the system by creating a strong mechanism for encouraging complaints which are not valid. The proposals do not amend the complaints-handling process nor increase the chances of any particular complaint succeeding. Although the incentive to make complaints may be enhanced, there is no data we can use to estimate the size of this effect.
- 4.35 It may, though, be possible to gather data on is the extent to which firms will alter their behaviour in response to the publication of complaints data. If the perceived penalty to incorrect advice is little affected then incentives for firms will similarly be little altered, and costs will be as shown in Table C. In this case the benefits of the policy will arise through consumers using the new information to shop around more efficiently, albeit that only a minority are likely to do so. Conversely, if publishing complaints data has a substantial effect on incentives for firms then the quality of products and consumer service could increase.

4.36 We are not in a position to estimate how firms will respond to the incentives created by publication of complaints data and are seeking their views in this CP. We expect that any action they take to improve products and customer service will have costs and we welcome their views on these costs.

Q9: Question for firms: Is publication of complaints data likely to stimulate efforts to reduce valid complaints from arising? If so, what extra costs would action to reduce valid complaints entail? What effect on the volume of valid complaints do you expect as a result of these actions?

Conclusion

4.37 In summary, we estimate that our publication proposals will lead to one-off compliance costs of approximately £600k, with a further £300k a year of ongoing costs. As previously mentioned, these are likely to be overestimates. By limiting the requirements to those firms reporting 500 complaints or more in each half-year reporting period, the costs to the industry will be less than one twentieth of what they might have been if the requirements applied to every firm, but the benefits will be only marginally reduced, as the firms covered account for over 95% of complaints.

List of non-confidential responses to DP08/3

Association of British Insurers

Association of Friendly Societies

Association of Independent Financial Advisers

Association of Private Client Investment Managers and Stockbrokers

AXA

Advertising Association

Age Concern

Allianz Insurance

Aviva plc

British Bankers' Association

British Insurance Brokers' Association

Baillie Gifford & Co

Bank of America

Banking Code Standards Board

Barclays

Britannia Building Society

Building Societies Association

City of London Law Society

Canada Life Ltd

Cattles plc

Co-operative Financial Services

Compos Mentis

Darryl Clark
Deloitte & Touche
Dr Sharon Gilad
Endsleigh Insurance Services Ltd
Exchange Data International
Finance and Leasing Association
Financial Services Consumer Panel
Friends Provident
HBOS
Hargreaves Lansdown
Hermes Fund Managers Ltd
Institute of Chartered Accountants in England and Wales
Investment and Life Assurance Group
Investment Management Association
Incorporated Society of British Advertisers
Knight Finance
London Investment Banking Association
Liverpool Victoria
Lloyds TSB
NFU Mutual
National Consumer Council
Nationwide Building Society
Paymentsshield
Prudential Group
Quoted Companies Alliance
Royal Institution of Chartered Surveyors
Royal & Sun Alliance Insurance plc
Royal London Group

St. James's Place Wealth Management

The Compliance Institute

Toynbee Hall

Trading Standards Institute

Travers Smith

UK Shareholders' Association

Which?

Zurich Financial Services

Complaints research

Anna Zalewska**

School of Management, University of Bath

Introduction

This technical note describes the work undertaken for the FSA to inform the cost benefit analysis of the publication of complaints data. The objective of the analysis is to explore the link between complaints publication and firms' incentives to improve their service to clients. To investigate that link this work will:

- assess whether a firm's reputation, as measured by the Which? customer branding index is correlated with the number of customer complaints recorded by the FSA; and
- examine whether there is a statistically significant relationship between the financial performance and customer complaints numbers.

The first issue provides an important input in the discussion of the impact on firms' reputation of disclosure of the FSA complaints data to the public. Although, it is impossible given current data to assess the direct impact of the publication of the FSA complaints statistics, it is possible to address how much the public already knows via other forms of information. To assess this I compare the Which? index scores with the FSA complaints data.

The second issue, by addressing the statistical link between financial performance and the number of dissatisfied clients, provides useful insight into efficient methods of monitoring financial institutions. The related question of whether poor financial performance causes complaints or whether complaints lead to poor financial performance is interesting but unfortunately this further step cannot be undertaken with the available data.

Which? versus the FSA complaints data

To conduct this comparison I used data for 18,386 financial firms registered with the FSA and the Which? scores for 20 financial firms for 2008. In the FSA sample

** Corresponding address: School of Management, University of Bath, Bath BA2 7AY, UK, phone: +44 (0)1225 384354, fax: +44 (0)1225 38436473, email: a.zalewska@bath.ac.uk

only 4,860 firms, or 26% of the sample, have records of complaints for at least one of the seven categories of activities classified by the FSA. 3,562 of the 4,860 firms that have reported complaints, 73% of the sample, have reported that they received no more than 50 complaints during 2008.

There are strong differences between companies that report receiving more than 50 complaints and companies that report receiving no more than 50 complaints. Table 1 summarises the distribution of complaints for the two groups of firms across the seven categories of activities. The biggest differences are for banking and loans, life and pension, and GI and pure protection, and these differences can be explained, at least partly, by differences in the services offered. Firms with maximum 50 complaints typically do not offer banking and loan services. Instead, they tend to specialise in specialist investment advice. These firms are also much smaller. For instance, in 2008, the mean and median FOS levy paid by the firms with no more than 50 complaints were £390 and £130 respectively, the corresponding statistics for the firms that have reported more than 50 complaints in 2008 were £11,099 and £220. In contrast, firms that did not report any complaints in 2008 paid on average £154 in the FOS levy, and the median FOS levy for the group was £100.

Table 1. Distribution of complaints across seven types of financial services provided for the group of 3,562 companies that have reported no more than 50 complaints in 2008 and 1,298 companies that have reported over 50 complaints. Source: FSA statistics

Companies with	Life and pensions	GI and pure protection	Investments	Banking and loans	Home finance	Other	Unknown
No more than 50 complaints	11.0%	11.5%	2.6%	0.7%	3.4%	37.6%	33.2%
more than 50 complaints	1.8%	3.2%	0.4%	23.4%	2.4%	36.3%	32.5%

The Which? customer branding index is available for 20 of the biggest retailer banks. It summarises the opinions of 15,000 reviewers in 2008 for the services offered. The banks' scores are averages of individual marks given by members based on their experiences of customer services, how well they were kept informed about the availability of better deals, the accuracy of statements, and the quality of product offered to them. The assessment is conducted for two categories of activities: home finance (mortgages), and banking and loans. The latter are further divided into current accounts, saving accounts and credit cards.¹

1 It would be attractive to perform econometric analysis on the Which? index but the sample of 20 financial institutions included in the assessment is too small for any convincing statistical analysis. Even to address correlation coefficients there are some weaknesses in the data. First, out of these 20 firms assessed by the Which? index only 17 are included in the FSA complaints data and of those there some problems with matching the institutions. Second, the Which? index's components of assessment are not fully compatible with services provided by individual institutions and the FSA's records of complaints. The Which? index is based on selected services only (current accounts, credit cards, saving accounts and mortgages), but even these four types of service are not fully reflected in the Which? index for each financial institution assessed.

Overall for the 17 financial institutions in the Which? customer branding index only 28.74% of all these companies' complaints that are reported to the FSA are used to compile the index. Therefore, the low correlation of the Which? index with the numbers of complaints should not come as a surprise even when the numbers of complaints are limited to these services that the Which? index uses in their assessment.

Although the correlation coefficients are low, they are negative:

- the correlation of the Which? scores with the total numbers of complaints about all services provided is -29%; and
- the correlation of the Which? scores with the numbers of complaints about these four types of service that are included in the Which? index is -24%.

Neither of these correlation coefficients is statistically significant at the 5% level (the critical value for 17 degrees of freedom is 0.482) but the negative sign is consistent with our expectations – more complaints are associated with lower customer satisfaction.

The above calculations do not take into account the size of individual businesses. To account for size, I have used employment statistics and, in particular, statistics on the numbers of staff advising as a proxy for size.² Because the Which? scores at the firm level are cumulative for all the services assessed, and because the competence of staff is not specified according to the Which? separation, I use two ratios to control for the size:

- the ratio of the total number of complaints to the total number of staff; and
- the ratio of the total number of complaints to the total number of staff assessed as competent.

The correlations of these two ratios with the Which? scores are 9% and 17.5% respectively.³ Although still statistically insignificant, the correlation coefficients are positive, indicating that controlling for size may be important.

Explaining the relationship between complaints and financial performance

I tested whether financial performance can explain how customers were dissatisfied with services in 2008. Data for several years are required to address the question of whether it is the poor performance that leads to the lower quality of services and hence more complaints, or whether it is the inability to satisfy customers that results in a poor performance. Because I have data only for 2008 the analysis of causality cannot be performed. There is also no scope for simultaneous equations analysis because the 2008 troubles of the banking industry have not been caused by a long-

2 Data on performance for the 17 Which? firms was not available.

3 Sainsbury's Bank Plc has been excluded from these calculations because of the lack of data on employment characteristics.

term failure to attract customers. Therefore with the data in hand it makes more sense to test whether financial performance can explain how customers were dissatisfied with services in 2008 than the other way round.

I used the data set of complaints combined with data on financial performance and balance sheets provided by the FSA for a total of 3,551 financial institutions.⁴ The analysis is undertaken at two levels:

- for the whole industry, e.g., using data for as many financial institutions as possible; and
- for three groups of service providers, namely mortgages (M), non-investment insurance (GI) and retail investment (RI).

The separation for the three types of service was introduced to deal with possible differences in expectations and treatment between lenders and borrowers in the case of financial illiquidity of a financial institution.

The following variables⁵ have been used for the regressions:

- The FOS levy paid in 2008. The levy takes many elements of a financial institution into consideration but primarily aims to charge firms proportionately based on the size of their retail activities and ignores wholesale operations. Therefore, because complaints are exclusively from retail customer, the FOS levy will be used as a proxy for the size of businesses. It is expected that the bigger levy paid, the more complaints occur.
- The ratio of retained profits to net assets. This is a profitability measure and the expectation is that there will be a negative relationship between the variable and the number of complaints. This is because companies in distress (i.e., those with a low value of the ratio) may have to cut on the quality of customer services which then results in a high number of complaints.
- The ratio of the number of advising staff that have left to the number of advising staff currently in place. This is another measure of the professionalism (quality) of the services provided as well as a potential measure of financial distress. A high value of the ratio may be the result of staff reductions (which are more likely to occur in businesses that are in financial difficulties than in those that are doing well) but may also indicate a high proportion of less experienced staff. Therefore, it is anticipated that the higher value of the variable, the higher the number of complaints.
- The ratio of the number of competent staff to the number of advising staff. This measures the professionalism (quality) of the services provided and the expectation is of a positive relationship with the dependent variable.

4 The original sample of 4,860 financial institutions used in the previous section was reduced to 3,551 observations, i.e., those for which some kind of data on size and performance, as well as complaints, is available.

5 Table 1 and the correlation analysis presented above indicate that controlling for size is important. However, because there is no data on the size of the customer base, it is hard to scale complaints to bring them to the same base for small and big financial institutions. To deal with this issue the size of individual institutions must be proxied with the accounting and profitability statistics that are available. Given that the same statistics, or statistics that are highly correlated with them, will also be used to assess financial performance then the choice of variables to proxy for size must be carefully undertaken to ensure multicollinearity is not a problem.

- A multiple services dummy. This is equal to one if a financial institution offers at least two out of the three services (i.e., two or more of M, GI or RI), and zero otherwise. It is used to control for business focus, i.e., whether a business offers a wide range of services or whether it is narrowly focused.

In regressions for M, GI and RI the variables – the ratio of the number of competent staff to the number of advising staff, and the ratio of the number of advising staff that have left to the number of advising staff currently in place – are all restricted to the staff in the corresponding section of the relevant services. However, I also considered the number of advising staff in the whole institution (as an alternative to the number of staff advising within the relevant services) but since these results were similar they are not reported. An additional variable, revenue of individual services to total regulated business revenue, is introduced for the M, GI and RI regressions. Using the ratio controls for the size of these services within firms.

Table 2 presents the summary of the results when the total number of complaints is used as the dependent variable, and Table 3 shows the results when the ratio of complaints to the FOS levy paid is the dependent variable. Therefore, Table 2 results show how much the independent variables explain the numbers of complaints reported, whereas the results presented in Table 3 explain how the same independent variables (but the FOS levy) explain how many complaints per £ unit of business have occurred. It is important to note that adding FOS squared to the right-hand side of the equation of the level representation (Table 2) gives coefficients that were statistically insignificant (results of the regressions are not presented here). Therefore, the normalisation of the complaints numbers by the FOS levy (Table 3) should be sufficient to make the results presented in Table 3 independent of the size of business.

In both tables the first two columns show coefficients and t-stats estimated for all the financial institutions for which the data specified above exist. The following columns (paired) show results for M, GI and RI providers. In Table 2 all the coefficients estimated for the whole sample are significant, and have the expected sign. The high value of the coefficient estimated for the ratio of the number of advising staff that have left to the number of advising staff in place, as well as its high statistical significance, seems to support the hypothesis that more complaints are likely to arise in financial institutions in distress. Similarly, the size and high statistical significance of the multiple service dummy indicates that businesses with a narrow specialisation may be more likely to dissatisfy their customers. These results are confirmed by the first columns of Table 3.

The next four columns of Table 2 show the results for those financial institutions that offer mortgages (the two columns headed M) and non-investment insurance (the two columns headed GI). The results are consistent with those obtained for all financial institutions. It is interesting, however, that both for M and GI providers the multiple dummy is very significant (1% for M and 10% for GI) but is positive. In other words, the estimated positive sign suggests that, with other characteristics constant, customers are less likely to complain about specialisation businesses. It is also interesting that the size effect seems much stronger in the case of M providers than of the GI providers. Therefore, one may conclude that smaller and specialist

mortgage providers are better in satisfying their customers. Again, scaling for size confirms these conclusions.

RI includes three out of the four services assessed by Which?, so is of particular interest. Unfortunately, the position for RI services appears more complex and the specification that suited all services, M and GI does not work well for the RI providers, i.e., the sign of the coefficients remains consistent with our intuition, there is hardly any statistical significance. Size seems to be the only statistically significant factor in explaining the numbers of registered complaints (Table 2), and when the complaints are scaled (Table 3), offering RI as well as other services (M or GI) seems to impact negatively on customer satisfaction. This result may be a consequence of the fact that the multiple services dummy is related to a size (it is bigger firms that offer RI, e.g., credit cards, on the top of other services), hence the significance of the coefficient estimated for the dummy picks up the remaining of the size effect.

In general, the poor performance of the variables in explaining the number of complaints about RI services may be the result of the more heterogeneous character of the RI relative to the other two groups (e.g., credit cards differ significantly from investment). Therefore, it may be too much to expect any common factors for this group.

Table 2. Regression results with White heteroskedasticity-consistent standard errors & covariance. The number of complaints at a firm (All data) or individual services (M, GI, and RI) levels are used as the dependent variables.

	All data			M			GI			RI		
	Coefficient	t-Statistic		Coefficient	t-Statistic		Coefficient	t-Statistic		Coefficient	t-Statistic	
Constant	475.6***	3.678	-1.831	-1.547	-27.183	-0.710	42.903	0.652				
FOS levy	0.170**	2.376	0.003***	3.244	0.007	1.069	0.054*	1.907				
Retained profit to net assets ratio	-0.038*	-1.880	0.0004***	-2.759	-0.009	-0.054	-9.289	-1.128				
The number of advising staff that have left to the number of advising staff currently in place ratio	866.6***	2.961	7.853**	2.196	229.9***	2.940	35.300	1.259				
The number of competent staff to the number of advising staff ratio	-125.9**	-2.024	-2.039	-1.627	-27.387	-0.953	-111.538	-1.101				
Multiple services dummy	-264.2**	-2.102	15.126***	3.719	85.183*	1.696	147.855	1.486				
Revenue of the individual services to the total regulated business revenue			13.151***	5.725	165.159***	4.361	79.496	1.473				
R-squared	0.049		0.119		0.009		0.037					
Adjusted R-squared	0.047		0.116		0.008		0.034					
Observations	3548		1700		3387		1801					

Table 3. Regression results with White heteroskedasticity-consistent standard errors & covariance. The ratio of the number of complaints at a firm (All data) or individual services (M, GI, and RI) levels to the FOS levy are used as the dependent variables.

	All data			M			GI			RI		
	Coefficient	t-Statistic		Coefficient	t-Statistic		Coefficient	t-Statistic		Coefficient	t-Statistic	
Constant	7.747***	3.709		-0.00781	-0.867622		-0.381	-0.610		0.074	1.095	
Retained profit to net assets ratio	-0.0002	-0.950		-0.000**	-2.816		-0.0001	-0.051		-0.003	-1.247	
The number of advising staff that have left to the number of advising staff currently in place ratio	11.309***	2.732		0.062**	2.138		3.330***	2.602		0.031	1.457	
The number of competent staff to the number of advising staff ratio	-1.458**	-2.034		-0.016	-1.599		-0.458	-0.973		-0.081	-1.021	
Multiple services dummy	-5.587***	-2.833		0.110***	3.508		0.794	0.984		0.042*	1.871	
Revenue of the individual services to the total regulated business revenue				0.099***	5.181		2.725***	4.405		0.047	1.389	
R-squared	0.006			0.047			0.008			0.004		
Adjusted R-squared	0.005			0.044			0.007			0.001		
Observations	3545			1697			3385			1801		

Compatibility statement

Introduction

1. This annex sets out our view on how the proposals in this CP are compatible with our statutory objectives and the principles of good regulation.

Compatibility with our statutory objectives

Market confidence – maintaining confidence in the financial system

2. We are aware of the arguments made by some respondents to the Discussion Paper that publishing complaints data may reduce confidence in the financial system. However, we believe that transparency in this area will instead increase the confidence of consumers that firms will handle their complaints promptly and fairly.

Public awareness – promoting public understanding of the financial system

3. We believe our proposals will promote public understanding of the financial system by increasing the information available about the nature and volume of complaints and how complaints-handling arrangements operate in practice.

Consumer protection – securing the appropriate degree of protection for consumers

4. Our proposals do not amend the rules about the handling of complaints, so they will not add to the formal protection already offered to consumers by the rules. But we believe that publishing complaints data may lead some firms to improve the quality of their products and services and their complaints-handling arrangements.

The reduction of financial crime – reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime

5. We do not believe that our proposals will have any impact on financial crime.

Compatibility with the principles of good regulation

Efficiency and economy – the need to use our resources in the most efficient and economic way

6. The direct cost to the FSA of implementing these proposals will be minimal. We believe that these proposals will complement our existing supervisory tools to help achieve our objective that customers are treated fairly, including when they complain.

Role of management – the responsibilities of those who manage the affairs of authorised persons

7. The proposals will emphasise the responsibility of firms' senior managers to comply with the regulatory requirements, by requiring those firms covered by the proposed rules to publish and explain the complaints data that they already give us.

Proportionality – the restrictions we impose on the industry must be proportionate to the benefits that are expected to result from those restrictions

8. In developing our proposals in this area, we have taken into account the costs to firms and consumers, using cost benefit analysis of the proposed regulatory requirements. This is why our proposals are focused on a limited number of firms which account for the vast majority of complaints.

Innovation – the desirability of facilitating innovation in connection with regulated activities

9. The proposals will give firms scope – within the proposed rules – for presenting and explaining their complaints data in the way they think is best suited to their own type of business and customer profile. We believe that firms will be able to take different approaches and learn from their peers which are more effective.

International character – the international character of financial services and markets and the desirability of maintaining the competitive position of the UK

10. We believe that our proposals recognise the international character of financial services and markets and will not damage the competitive position of the UK. While these proposals will not apply to branches of EEA firms operating in the UK, we do not believe that this variation in treatment will be sufficient to affect the competitive position of the UK.

Competition – the need to minimise the adverse effects on competition that may arise from our activities and the desirability of facilitating competition between the firms we regulate

11. We believe that these proposals will serve to facilitate competition between the firms we regulate. The information that the proposals will make available will provide an additional basis on which firms may compete with one another. Although only a minority of firms will be covered by the proposed requirements to publish their own complaints data, publishing aggregate data for the remaining firms will enable some comparisons to be made.

FSA Code of Practice on Regulatory Transparency

Statement of Intent

The FSA is committed to being an open and transparent regulator. We have a presumption in favour of using transparency as a regulatory tool to help us achieve our objectives where each of the following principles are met:

- we will not publicly disclose information that we believe would infringe any statutory restrictions on us, including those set by FSMA;
- we will proactively disclose information that we believe on balance serves, rather than harms, the public interest; and
- the disclosure meets our standards of economy, efficiency and effectiveness.

Principles

- 1 **We will not publicly disclose information that we believe would infringe any statutory restrictions on us, including those set by FSMA.**

We will not disclose information which:
would amount to public censure, without prior due process

We are permitted under FSMA to publish a statement where we consider a firm is in breach of a requirement under that act, but in doing so we must first follow due process. This includes issuing the firm with a warning notice and decision notice and engaging with any representations, including at the Financial Services and Markets Tribunal.

And/or
is confidential information, unless there is a relevant gateway or other exception under FSMA;

Information that we receive in relation to our functions under FSMA may only be published if any of the following conditions is met:

- we have the consent of the person who provided the information and (if different) about whom the information relates; or
- the information is already publicly available; or
- the information is not attributable to a particular firm eg it is anonymised or aggregated; or
- there is a 'gateway' under FSMA. In the context of publishing information to a wide audience, the gateway most likely to give us discretion to publish information is if disclosure would enable or assist us carry out our public functions under FSMA (not applicable to information where publication is prohibited under a Directive).

2 We will proactively disclose information that we believe on balance serves, rather than harms, the public interest.

By serving of the public interest we mean:

facilitating the delivery of our statutory objectives and strategic aims, including:

- a) consumers are able to make informed judgements about firms and products, so reducing inefficient or unsuitable purchases;
- b) competition between firms is stimulated; and
- c) firms improve their understanding of FSA regulatory requirements and so reduce costs of compliance and/or improve quality of compliance.

and/or

facilitating the scrutiny and accountability of our performance, including:

- a) publication promotes the accountability of, and/or confidence in, the regulator leading to greater public confidence in the financial system; and
- b) there is greater scrutiny of FSA decisions and actions, leading to improved timeliness, quality and consistency.

By harming of the public interest we mean:

hindering the delivery of our statutory objectives and strategic aims, including:

- a) consumers may misunderstand information, and so make less efficient or less suitable decisions;
- b) enforcement actions may be prejudiced including, for example, a risk of evidence being destroyed;
- c) negotiating positions may be prejudiced;
- d) adverse effects on our ability to deal promptly with market failure or consumer detriment;

- e) risk to the FSA's supervisory approach;
- f) risk to market integrity or stability; and
- g) relations between UK and international organisations may be prejudiced.

3 Disclosure should meet the FSA's standards of economy, efficiency and effectiveness.

We are committed to making information available in ways that maximise our ability to achieve our statutory objectives and the principles of good regulation set out in FSMA. We will not make the disclosure unless the means and medium of doing so are likely to be effective, and their costs proportionate.

Where the cost relates to making Rules in support of collecting and publishing data the test is cost benefit analysis; where the cost is to us the test is whether we are using our resources in the most efficient and economic way.

Information should be presented in such a way as to be:

- relevant to the intended audience;
- sufficiently timely to affect the behavioural changes being targeted;
- targeted through media appropriate for reaching the prime audience(s) at the right time;
- presented in a way designed to maximise audience understanding; and minimise the potential for misunderstanding.

The information being disclosed must be sufficiently robust to support the intended outcome. Information should be sufficiently comprehensive, substantiated, timely and accurate so as not to be generally misleading.

List of Questions

- Q1: Are you content with the information to be published by firms under the proposed complaints data publication rules?
- Q2: Do you agree with the proposed application of the complaints data publication rules to firms that receive 500 or more complaints in the relevant reporting period?
- Q3: Do you agree with the proposals on joint reporting, and the proposals on how groups and brands should be shown?
- Q4: Do you have any requests for further guidance that the FSA could offer about which complaints should be included in firms' complaints returns?
- Q5: Do you agree that the rules linking the complaints reporting period to each firm's accounting reference date should remain unchanged?
- Q6: Do you agree with the proposed timetable for implementation?
- Q7: Do you agree with the proposed requirements on firms to provide contextualisation data alongside their complaints reports? If not, what alternative data would you suggest?
- Q8: Do you have any comments on the cost benefit analysis?
- Q9: Question for firms: Is publication of complaints data likely to stimulate efforts to reduce valid complaints from arising? If so, what extra costs would action to reduce valid complaints entail? What effect on the volume of valid complaints do you expect as a result of these actions?

Proposed Handbook text

DISPUTE RESOLUTION: COMPLAINTS (PUBLICATION OF COMPLAINTS DATA) INSTRUMENT 2009

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 February 2010.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Dispute Resolution: Complaints (Publication of Complaints Data) Instrument 2009.

By order of the Board
xx 2009

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

complaints data publication rules *DISP 1.10A.*

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Application to firms

...

1.1.3 R (1) ...

...

(3) The complaints data publication rules do not apply in respect of activities carried on from a branch of an EEA firm in the United Kingdom.

...

Application to payment service providers

1.1.10A R This chapter (except the *complaints record rule*, ~~and the *complaints reporting rules* and the *complaints data publication rules*~~) applies to *payment service providers* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.

...

FSAVC Review

1.1.11 R Where the subject matter of a *complaint* is subject to a review directly or indirectly under the terms of the policy statement for the review of specific categories of *FSAVC* business issued by the *FSA* on 28 February 2000, the *complaints resolution rules*, the *complaints time limit rules*, the *complaints record rule*, ~~and the *complaints reporting rules* and the *complaints data publication rules*~~ will apply only if the *complaint* is about the outcome of the review.

...

Application to licensees and VJ participants

1.1.14 R This chapter (except the *complaints record rule*, ~~and the *complaints reporting rules* and the *complaints data publication rules*~~) applies to *licensees* for *complaints* from *eligible complainants*.

- 1.1.15 R This chapter (except the *complaints record rule*, ~~and~~ the *complaints reporting rules* and the *complaints data publication rules*) applies to *VJ participants* for *complaints* from *eligible complainants* as part of the *standard terms*.

...

1.5 Complaints resolved by close of the next business day

- 1.5.1 R The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the *business day* following its receipt:

...

- (3) the *complaints reporting rules*; ~~and~~
- (4) the *complaints record rule*, if the *complaint* does not relate to *MiFID business*; and
- (5) the *complaints data publication rules*.

After DISP 1.10 insert the following new chapter. The text is not underlined.

1.10A Complaints data publication rules

Publication of summary and context of complaints

- 1.10A.1 R (1) Where in accordance with the *complaints reporting rules*, a firm submits a report to the *FSA* reporting 500 or more *complaints*, that *firm* must, within 10 *business days* of the submission date, publish a summary of the *complaints* data contained in that report.
- (2) For each type of business the *firm* must also publish the contextualisation data set out in the table at *DISP 1 Annex 1AR*.
- (3) The *firm* must publish the data referred to in (1) and (2) in the format set out in the complaints publication form in *DISP 1 Annex 1BR*.
- 1.10A.2 E A *firm* will be taken to have complied with *DISP 1.10A.1R* if within the time limit set out in that *rule* the *firm*:
- (1) ensures that another *person* publishes the data on its behalf; and
 - (2) publishes details of where the data is published.
- 1.10A.3 G *Firms* may choose how they publish the data. However, the data should be readily available. For this reason, the *FSA* recommends that *firms* publish the data on their websites. *Firms* may publish further information and explanation with the data in order to aid understanding.

- 1.10A.4 R *DISP* 1.10A.1R does not apply where a *firm* is part of a *group* and a joint report reporting 500 or more complaints has been submitted to the *FSA* covering that *firm* in accordance with *DISP* 1.10.1CR.
- 1.10A.5 R To the extent that the tariff bases referred to in *DISP* 1 Annex 1AR do not apply to any of the types of business conducted by the *firm*, the obligation under *DISP* 1.10A.1R(2) to publish contextualisation data does not apply.

Joint reports

- 1.10A.6 R (1) Where in accordance with *DISP* 1.10.1CR, a *firm* submits a joint report on behalf of itself and other *firms* within a *group* and that report reports 500 or more *complaints*, that *firm* must, within 10 *business days* of the submission date, publish a summary of the *complaints* data contained in the joint report.
- (2) For each type of business for which the joint report reports one or more complaints, the *firm* must also publish contextualisation data set out in the table at *DISP* 1 Annex 1AR. Each item of contextualisation data must be the relevant aggregate figure for all the *firms* covered in the joint report.
- (3) The *firm* must publish the data referred to in (1) and (2) in the format set out in the complaints publication form in *DISP* 1 Annex 1BR.
- 1.10A.7 E A *firm* will be taken to have complied with *DISP* 1.10A.6R if within the time limit set out in that *rule* the *firm*:
- (1) ensures that another *person* publishes the data on its behalf; and
- (2) publishes details of where the data is published.
- 1.10A.8 R Any *firm* covered by the joint report, other than the *firm* that submitted the joint report, must publish details of where the summary of *complaints* data referred to in *DISP* 1.10A.6R(1) is published.
- 1.10A.9 G *Firms* may choose how they publish the data. However, the data should be readily available. For this reason, the *FSA* recommends that *firms* publish the data on their websites. *Firms* may publish further information and explanation with the data in order to aid understanding.
- 1.10A.10 R To the extent that the tariff bases referred to in *DISP* 1 Annex 1AR do not apply to the types of businesses conducted by the *firms* covered by the joint report, the obligation under *DISP* 1.10A.1R(2) does not apply.
- 1.10A.11 R Where more than one *firm* covered by the joint report conducts a type of business, and the relevant tariff base referred to in *DISP* 1 Annex 1AR does not apply to one or more of those *firms*, the *firm* that publishes the summary of *complaints* data should publish the aggregate figure for tariff bases for the *firms* to which they do apply.

Amend the following as shown.

1.11 The Society of Lloyd's

...

- 1.11.6A R Where in accordance with *DISP* 1.11.6R, the *Society* submits a report to the *FSA* reporting 500 or more *complaints*, within 10 *business days* of the submission date the *Society* must publish a summary of the *complaints* data contained in that report.
- 1.11.6B R The *Society* must publish the data referred to *DISP* 1.11.6AR in the format set out in the complaints publication form in *DISP* 1 Annex 1BR omitting columns C and D.
- 1.11.6C G The *Society* may choose how it publishes the data. However, the data should be readily available. For this reason, the *FSA* recommends that the *Society* publishes the data on its website. The *Society* may publish further information and explanation with the data in order to aid understanding.

After *DISP* 1 Annex 1R insert the following new Annexes. The text is not underlined.

1 Annex 1AR Contextualisation data

For the purposes of this Annex the references to tariff bases in rows and columns of <i>FEES</i> 5 Annex 1 mean the tariff bases provided in the <i>firm's</i> most recent statement of the total amount of <i>relevant business</i> provided to the <i>FSA</i> in accordance with <i>DISP</i> 5.4.1R.	
Type of business	Contextualisation data
Banking	The tariff base in row 1, column 2 of the table in <i>FEES</i> 5 Annex 1R
General Insurance and Pure Protection	The sum of A and B. A being the tariff base in row 2, column 2 of the table in <i>FEES</i> 5 Annex 1R. B being the tariff base in row 17, column 2 of the table in <i>FEES</i> 5 Annex 1R
Home finance	The tariff base in row 1, column 2 of the table in <i>FEES</i> 5 Annex 1R
Investment	The tariff base in either rows 8 or 9, column 2 of the table in <i>FEES</i> 5 Annex 1R whichever is applicable.
Decumulation, life and pensions	The tariff base referred to in row 4, column 2 of the table in <i>FEES</i> 5 Annex 1R

1 Annex 1BR Complaints publication form

The format referred to in *DISP* 1.10A.1R.

Complaints publication form

Firm name:

Group: (if applicable):

Other firms included in this return (if any):

Period covered in this return: [e.g. 1 January – 30 June 2010]

Brands covered:

1	A	B	C	D	E	F	G
		Number of complaints opened	Contextualisation data	Contextualised new complaint numbers	Number of complaints closed	Complaints closed within 8 weeks (%)	Complaints upheld by firm (%)
2	Banking		Number of relevant accounts	Number of complaints per 1000 relevant accounts			
3	Home finance		Number of relevant accounts	Number of complaints per 1000 relevant accounts			
4	General insurance and pure protection		Annual premium income	Number of complaints per £1m of premium income			
5	Decumulation, life and pensions		Annual premium income	Number of complaints per £1 m of premium income			
6	Investments		Number of approved persons	Number of complaints per approved person			

Where the tariff bases referred to in *DISP* 1 Annex 1AR do not apply to a type of business conducted by the *firm*, or in the case of a joint report by the *firms* covered by the joint report, columns C and D may be left blank.

Amend the following as shown.

1 Annex 2G

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 – 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	<u>DISP 1.10A</u> <u>Complaints data publication rules</u>
<i>firm in relation to complaints concerning non-MiFID business</i>	<u>Applies for eligible complainants</u>
<i>firm in relation to complaints concerning MiFID business</i>	<u>Applies for eligible complainants</u>
<i>branch of a UK firm in another EEA State in relation to complaints concerning non-MiFID business</i>	<u>Does not apply</u>
<i>branch of a UK firm in another EEA State in relation to complaints concerning MiFID business</i>	<u>Does not apply</u>
<i>incoming branch of an EEA firm in relation to complaints concerning non-MiFID business</i>	<u>Does not apply</u>
<i>incoming</i>	<u>Does not</u>

<i>branch of an EEA firm in relation to complaints concerning MiFID business</i>						<u>apply</u>
<i>incoming EEA firm providing cross-border services from outside the UK</i>	...	...	...	...	...	<u>Does not apply</u>
<i>branch of an overseas firm (in relation to all complaints)</i>	...	...	...	...	...	<u>Applies for eligible complainants</u>
<i>payment service provider in relation to complaints concerning payment services</i>	...	...	...	...	...	<u>Does not apply</u>
<i>EEA branch of a UK payment service provider in relation to complaints concerning payment services</i>	...	...	...	...	...	<u>Does not apply</u>
<i>incoming branch of an EEA authorised payment institution in relation to complaints concerning payment services</i>	...	...	...	...	...	<u>Does not apply</u>
<i>incoming EEA authorised payment institution providing</i>	...	...	...	...	...	<u>Does not apply</u>

<i>cross border payment services from outside the UK</i>						
<i>licensee</i>	...	...	...	...	...	<u>Does not apply</u>
<i>VJ participant</i>	...	...	...	...	...	<u>Does not apply</u>

...

TP1.1 Transitional provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional Provision	(5) Transitional Provision: dates in force	(6) Handbook Provisions: coming into force
...					
<u>23</u>	<u>DISP 1.10A.1R and DISP 1.10A.6R</u>	<u>R</u>	<u>No firm is required to publish any data in accordance with DISP 1.10A.1R or DISP 1.10A.6R if that data relates to a reporting period ending on or before 31 December 2009.</u>	<u>6 February 2010 to 30 June 2010</u>	<u>6 February 2010</u>
<u>24</u>	<u>DISP 1.11.6AR</u>	<u>R</u>	<u>The Society is not required to publish any data in accordance with DISP 1.11.6AR if the data relates to a reporting period ending on or before 31 December 2009.</u>	<u>6 February 2010 to 30 June 2010</u>	<u>6 February 2010</u>
<u>25</u>	<u>DISP 1.10A.1R and DISP 1.10A.6R</u>	<u>R</u>	<u>A firm which would otherwise be required to publish data in accordance with DISP 1.10A.1R or DISP 1.10A.6R before 1 July 2010 may delay publication of the data until 1 July 2010.</u>	<u>6 February 2010 to 30 June 2010</u>	<u>6 February 2010</u>
<u>26</u>	<u>DISP 1.10A.1R</u>	<u>R</u>	<u>Where a firm, which has a reporting period ending on or after 1 January 2010, submits its report to the FSA in accordance with the complaints reporting rule between 1 January 2010 and 5 February 2010, the firm must publish the data referred to in</u>	<u>6 February 2010 to 30 June 2010</u>	<u>6 February 2010</u>

			<u>DISP 1.10A.1R no later than 1 July 2010.</u>		
<u>27</u>	<u>DISP 1.10A.6R</u>	<u>R</u>	<u>Where a <i>firm</i> is part of a <i>group</i> of <i>firms</i> which have a reporting period ending on or after 1 January 2010 and a joint report covering the <i>firm</i> is submitted to the <i>FSA</i> in accordance with <i>DISP 1.10.1CR</i> between 1 January 2010 and 5 February 2010, the <i>firm</i> must publish the data referred to in <i>DISP 1.10A.6R</i> no later than 1 July 2010.</u>	<u>6 February 2010 to 30 June 2010</u>	<u>6 February 2010 to 30 June 2010</u>

PUB REF: 001812

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: <http://www.fsa.gov.uk>

Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.