ICAEW THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

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Our ref: ICAEW Rep 111/07

Your ref:

Amanda Bowe
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Dear Ms Bowe

**FSA Discussion Paper 07/1: A Review of Retail Distribution**

The Institute of Chartered Accountants in England and Wales (the ICAEW) is pleased to respond to your request for comments on *Discussion Paper 07/1: A Review of Retail Distribution.*

The ICAEW's Financial Services Faculty was established in 2007 to become a world class centre for thought leadership on issues and challenges facing the financial services industry, acting in the public interest and free from vested interests. It draws together professionals from across the financial services industry and from the 25,000 ICAEW members specialising in the sector. This includes those working for regulated firms, in professional services firms, intermediaries, and regulators.

This response has been prepared having consulted with the ICAEW's Financial Services Faculty and other interested parties. We have reviewed the Discussion Paper and are pleased to submit our comments on a high-level basis.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW Representation

**ICAEW REP 111/07**

**FSA Discussion Paper 07/1: A Review of Retail Distribution**

**Memorandum of comment submitted in November by The Institute of Chartered Accountants in England and Wales, in response to Financial Services Faculty consultation paper *Discussion Paper 07/1: A Review of Retail Distribution* published in June 2007.**

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**INTRODUCTION**

1. The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the *Discussion Paper 07/1: A Review of Retail Distribution* published by Financial Services Authority.

**WHO WE ARE**

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the ICAEW provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.

**GENERAL COMMENTS**

4. In principle, the ICAEW supports any initiative that is capable of protecting the interests of retail consumers, and which is likely to result in the more positive engagement of consumers in the retail investments market.

5. We welcome the review of retail distribution and are broadly supportive of its high-level objectives.

6. A review of the retail investments market should be considered within the broader context of personal financial planning more generally, which therefore includes personal cash flows, protection insurances, tax planning and long-term care.

7. The starting point for a review of retail distribution should be to generate a clear understanding of all issues from a consumer-centric perspective with the objective of finding ways to improve existing models and practices. We are not convinced that the existing model is fundamentally dysfunctional to the extent that it warrants the degree of re-engineering that is implied within this review.

8. We believe the underlying reasons for the problems in the sector are primarily demand related. Low levels of confidence in financial services, lack of interest, supply-side issues, poor levels of financial capability, and high levels of personal debt have conspired to deflate demand below its natural equilibrium.

9. We also recognise that supply-side problems need attention to better engage customers in a way that meets their needs and is commercially viable. In this regard, we believe technology has a key role to play and have made reference

to this issue in our response to *DP 07/2 Platforms: The Role of Wraps and Fund Supermarkets.*

10. The primary focus of the review should be to find practical ways to increase consumer engagement, improve the quality of advice and behaviours of suppliers and consumers and facilitate the closure of the savings-gap through the provision of appropriate investment products at low cost. Sensible consumer engagement will require clear and easily explained advice propositions. In our view, the proposals in DP 07/1 seek to address the individual market failures identified but, when taken as a whole, could confuse consumers.

11. The degree of market failures has been mixed and the performance across the sector has not been homogenous. For example, the independent sector has exhibited different characteristics to, say, the tied sector, and there have been substantial differences in the relative performance between firms. The DP's most concrete proposals concern the top-end of the market, which is not in our view where the majority of problems lie. The current mid-market business model would be squeezed by the proposals, yet no clear alternative is proposed and we are concerned that this important segment could be worse served in the future.

12. Other countries have had similar problems to those experienced in the UK retail investments sector. In many respects, the UK retail investments market has been relatively successful in comparison to many overseas markets. In particular, the UK has a relatively highly developed independent advisory segment when compared to other European countries.

13. A consistent, balanced regulatory approach is an essential pre-condition for efficient and stable markets in the retail investments sector. Recent changes to the polarisation and disclosure regimes are still to embed in the market and, in our view, it is premature to say that a radical overhaul in structure is required.

14. The needs of less affluent consumers are not necessarily straightforward, and it will be important that they can access a full advice service when appropriate. We support the introduction of a light-touch, assisted sale service for those with simple needs, but do not think such a service should extend up into the middle-market, where a more comprehensive service is required to protect consumers' interests.

15. The average standard of advice delivered to retail customers more generally needs to improve, and the general standard of qualifications needs to be raised. However, professional ethics and the integrity of suppliers and consumers alike are equally if not more important factors in generating favourable market outcomes in the retail investments sector.

16. The DP contains some valid and relevant proposals and focuses attention on the problems that need to be addressed. We do not believe that the underlying proposal to reconfigure the market in the ways described will, on balance, improve the situation. Rather, it could create an advice gap in the key middle-market segment and confuse consumers by introducing new terms and artificial rigidness into the market. We believe that an incremental, market driven approach within a supportive regulatory environment will generate the most favourable long-term solutions.

## RESPONSES TO SPECIFIC QUESTIONS

### Professional Financial Planning and Advisory Services – Full Advice

**Q1: How will increased requirements and consequential higher costs of providing full professional financial planning services affect advisory firms? Could the impact be significant enough for them no longer to offer these services, and, if so why?**

17. If these proposals are implemented in their current format, they would reduce the availability of independent full-advice services, and increase the costs of those services to consumers. This would have a particularly detrimental impact on the provision of higher quality advice to the mass-market segment. Rural areas could be particularly disadvantaged as it is often smaller independent firms who provide this type of service in less densely populated areas of the UK.

18. For those advisory firms that continued to offer independent full-advice services, the tendency would be to focus on high-net-worth customers to the detriment of the less affluent.

19. We do not believe that the proposals for introducing Primary Advice will resolve the problems in the mass-market.

**Q2: Is it helpful to re-define the term 'fee-based' to mean any advisory remuneration derived in discussion with the customer, and not influenced by the product provider?**
**How would this work in the different market sectors?**

20. There is merit in redefining the term 'fee-based' along the lines outlined in this DP as the concept retains flexibility, whilst facilitating full disclosure.

21. We do not believe that the key issue relates to the term 'fee-based'. The most important issue relates to transparency of remuneration and informed agreement that advisors act in the best interests of customers. Consumers and advisors must from outset fully understand what services and products are to be provided, how the costs of delivering those products and services are to be met, and the long-term implications thereof.

22. The high-net-worth segment of the retail market is more likely to suit a 'purist' fee-based model, but we believe that the mass-market will continue to be serviced by commission-based models. Provided this is clear to customers, we do not think that the descriptive tag attached to the advice service needs to be different. Whilst such a tag may be relevant for regulatory risk assessment, it may not be relevant for consumers.

**Q3: Do you agree with defining 'independence' in terms of freedom from bias, even if the adviser only selects products from a limited range? How far should this be taken, if at all? Would an independent label still have value, if these ideas are implemented?**

23. We believe that there is still some usefulness and value attached to the term 'independent' and that it would be detrimental at this stage to replace that term with a new and possibly more confusing terminology.

24. The term 'independent' should in principle attach to the ability to offer whole of market advice, and the existing definitional model of independence is essentially therefore appropriate.

25. The principle issue again relates to generating clear, simple comprehensible communications that are understood and valued by the general public.

**Q4: Should we allow, in principle, the grandfathering of advisers to the new professional financial planner role if they do not have the necessary minimum qualifications or an equivalent? If we did allow this, what might be the consequences and how should we then encourage advisers to secure relevant qualifications? If you think we should not allow grandfathering, why not?**

26. We believe we are already in a transitional stage toward the professionalisation of the retail advice sector. The objective of the review, therefore, should be to find ways to build on and accelerate this existing trend. Any regulatory changes should not have the unintended consequence of undermining the positive developments that are already underway.

27. The focus should be finding practical ways to improve technical competence, and raising standards of advice and behaviours more generally. We think the general minimum standard of qualification needs to rise. However, qualifications of themselves do not represent the only measure of competence, and due regard must be given to experience, regulatory track-record, integrity and professional ethics.

28. We believe that advisers should be free to seek higher-level qualifications if they think that will be of value to consumers. We do not think that qualification alone should be a determinant of regulatory status.

29. As regards managing the transitional period, a number of issues need to be evaluated, including:

    i. Awareness of the potentially detrimental implications of excluding experienced and competent advisers from the marketplace;

    ii. Establishing mechanisms for assessing minimum levels of competence, within practical and frameworks and realistic timescales; and

    iii. Adopting a pragmatic approach to these issues, and which should include the requirement to achieve an appropriate minimum standard within a pragmatic time-frame.

## General Financial Advisers

**Q5: Do you agree with the proposed distinction between professional financial planner and general financial adviser? If greater distinction is needed between general financial advisers and professional financial planners, how might this best be achieved?**

30. We do not think that the proposals to reconfigure the classification of regulated advisers as proposed in this DP will help to resolve the problems in the retail advice market. The primary objectives must be inspiring confidence and public trust in the sector, raising the general standard of advice, and creating an environment that allows suppliers to deliver appropriate, comprehensible products and services, at sensible cost, to a financially literate and engaged mass-market.

31. We do not think that the term 'professional' should be used in this or any related context: as all advisors, irrespective of regulatory classification, should be required to act professionally.

32. We doubt that consumers really understand the different terminology used in retail advice, or that they will do within any reasonable future timeframe. We are concerned, therefore, that the review should generate the right behaviours by helping consumers to understand the basic concept and value of personal financial planning and to clarify existing terminology. It is unlikely that this would happen at a time when a new advice proposition and infrastructure capabilities were introduced to the market.

33. A higher basic minimum standard of competence and behavioural standards provide the best safeguard for consumers. Minimum standards should be assessed against a variety of benchmarks, including a minimum level of qualification. In due course, we believe that the minimum qualifications for full advice should be higher than they currently are and in this respect are in broad agreement with the proposals contained in this DP.

**Q6: Is there sufficient incentive for advisers to want to be professional financial planners? What further restrictions should we place on the permitted activities of general financial advisers, if any, and why? Should they have to offer a fee option?**

34. Please refer to our comments on Q5, Q7 and Q8.

**Q7: Do you think that this two-tiered approach is desirable and, if so, should this be a transitional feature of the market or more permanent? Should there be any other classification of adviser offering full advice services beyond professional financial planner or general financial adviser?**

35. The creation of a rigid and / or complicated tiered-approach is likely to further confuse consumers, and would impose artificial rigidity into the market.

**Q8: What are the arguments for and against mandating the use (or preventing the use) of particular remuneration methods, for instance requiring the use of fee-based remuneration according to our wider definition by all advisers? What might be the market consequences if we took such action? How else might we encourage firms to adopt particular remuneration methods (or discourage the use of some others, for instance traditional indemnity commission)?**

36. The regulator may be able to encourage higher levels of competence through an incentive offered via regulatory dividends, whereby economic and operational benefits are given to firms that can evidence higher levels of competence, integrity and ethical behaviours.

37. We do not support the idea of imposing rigid remuneration structures on firms and consumers. The important issue relates to full and unambiguous disclosure, and informed agreement by all parties to the content and implications of what is proposed. Regulation should focus on facilitating these objectives, rather than superimposing rigid frameworks on suppliers and consumers. We do believe that clear upfront agreement of remuneration is critical for all levels of advice.

38. Subject to the above comments, markets forces will match customers with suppliers and, within a supportive regulatory framework, market forces will continue raise the level of professionalisation in the sector. This process is already underway.

**Q9: Should we allow, in principle, the grandfathering of advisers to the general financial adviser role if they do not have the necessary minimum qualifications or an equivalent? If so, how should we encourage (or require) any up-skilling to the necessary standards?**

39. We refer you to our response on Q4 and our comments as above.

**Primary Advice**

**Q10: What are likely to be the characteristics of the target consumer segments for Primary advice?**

40. We believe that the retail investments market in the UK can, in simple terms, be segmented along the lines outlined below:

    i. High-net-worth customers with relatively complex needs, who require and value longer-term, personalised relationships with a fee-based personal financial planning expert.

    ii. The middle-market customer segment, defined by their relatively limited wealth, but with a substantial proportion still having relatively complex personal financial planning needs. This customer segment has a mixed propensity to save and is far less likely to regularly engage with the retail investments market, often having little comprehension and / or trust of the retail financial services sector. These consumers are less likely to want or have the means to pay fees, and are likely to be serviced by business models that have not moved away from a commission-based model. It is not clear to us how the RDR will result in a better outcome for these consumers.

iii. A less affluent customer segment not generally possessing the means to save and more likely to be dependent on state provision, but who, nonetheless, require relatively simple financial advice and limited range of straightforward financial products.

41. The Primary Advice model as described in this DP would primarily be targeted at the less affluent segment. We do think a simple assisted sale process, with consumer protection augmented through product restrictions, has a role to play in extending market access to these consumers. We do not think that the model will be capable of extending 'up' to adequately address the needs of this segment.

**Q11: Do you think there is enough potential benefit suggested by this DP for Primary Advice to become a significant advice channel in the UK? If not, what else might be done to encourage firms to enter such a market?**

42. We do not believe that the term 'Primary Advice' is appropriate and believe the inclusion of the term 'advice' is misleading in this context.

43. As described, Primary Advice represents a combination of information delivery and assisted sales process. As such, the term 'advice'; should be decoupled from the idea of a simplified, assisted sales process.

44. In general terms, we are supportive of initiatives that encourage the introduction of simple, transparent and flexible savings and protection products. If more products were designed on this basis, the potential risk of losses arising from suitability issues and changed circumstance would be reduced.

45. The success of mass-market solutions requires significantly higher levels of consumer engagement if the economies of scale necessary for low-margin mass market business are to be achieved. Technology has a role to play in delivering low-cost mass-market solutions, and we draw your attention to our response on DP 07/2.

46. It is reasonable to infer that the general level of knowledge required to advise on simplified, risk-controlled products would be less than that typically required for more traditional products. We think that the FPC is an appropriate minimum standard for primary sales people.

**Q12: What should be the conditions for Primary advisers to be called independent?**

47. See above – we think the 'independent' description should continue to mean 'whole of market'; it will not be relevant for Primary Advice.

**Q13: Is Primary Advice the right name? Would use of the term 'information' instead of 'advice' give consumers more confidence to use these services? What might be the implications of using the term 'information'?**

48. We refer you to our comments in respect to Q10 – Q12, as above.

**Non-advisory services**

**Q14: What issues in relation to non-advisory services should the Review consider, and why?**

49. We have no comments.

**Other implications of service propositions**

**Q15: What are the possible implications for consumers, if the proposed market for advice is introduced?**

50. Please refer to our comments as above.

**Q16: Would the ideas put forward help more consumers to access financial advice relevant to their needs? Do you have other ideas?**

51. We believe the development of generic advice and improved levels of financial capability are essential if improvements are to be made in the retail advice sector. Employers and trade unions have contributions to make in these areas.

**Conclusions**

**Q17: Do you think that the view of the future distribution market for investment products set out in this DP can address the current market problems? If not, why and what could?**

52. We believe that the proposals for reconfiguring the retail sector create artificial rigidity and are unnecessarily complicated and add to consumer confusion. If these proposals were introduced in their current format they would be likely to reduce the supply of full advice services to the middle-market.

**Q18: Will many firms make significant changes to their business models? If so, why and how? If not, why not?**

53. Firms will be better placed to answer this question.

**Making the transition**

**Q19: We welcome views on what would represent a sensible transition period for the industry.**

54. The retail sector has already begun to raise standards of professionalism in response to the demand from consumers. We believe that this process needs to accelerate and that the sector is already in transitional period.

55. Any 'transitional period' should be managed on an incremental and flexible basis. By this we mean that FSA should consider year-on-year whether the market is delivering better outcomes for consumers, and the availability of advice, rather than rely on a single tolerant ex-anti metric such as, 'all advisors to reach new qualification level by 20XX'.

56. A review of the retail distribution sector should be based on developing areas of strength and addressing areas of weakness, but in ways that do not generate unintended, negative consequences.

**Q20 In what ways could we help firms to change their business practices and standards to adapt to new requirements that might emerge from this review?**

57. We have no comment.

**Chapter 3 – Professional financial planning and advice**

**Higher standards of competence and behaviours**

**Q21: Do you agree that these qualifications are at the right level for the roles described?**

58. We are supportive of the proposal that advisers should be better qualified. However, until significant emphasis is placed on competence based qualifications, rather than purely knowledge testing, we do not believe that the identified problems in the market can be fully addressed.

59. At the knowledge level, we feel the CII Diploma level or equivalent should become the minimum standard benchmark for the advisory community.

60. Competence, however, needs to be perceived as more than just the ability to acquire higher levels of knowledge. The ability to communicate and relate to customers is equally important, as is the embedding of an ethical mindset. A broader basis of assessment is required, and examinations and competence testing needs to reflect that need, whilst paying due regard to experience.

61. We draw your attention to the points we have made earlier in this response as regards the issues relating to grandfathering.

**Role profiles**

**Q22: Do you agree that there would be clear benefits for consumers of introducing role profiles?**

62. Consumers and advisors must have and clear and unambiguous understanding of the respective terms of any relationship, and in this sense role profiles have an important part to play. However, we believe that the real value of role profiles lies with their application in the internal management of businesses, and in the relationship firms have with the regulator.

63. We do not think that prescriptive or mandated role profiles are necessary or will facilitate the evolution of new business models and practices that could benefit consumers.

**Q23: What role should regulation play in helping to make the necessary changes to qualifications and behaviours?**

64. We believe regulation should encourage advisers to evidence that they have the requisite knowledge, skills, and behaviours and that advisor are applying these in their dealings with clients.

65. The regulator has a role to play in identifying and publishing good practice and eliminating bad practice, and in encouraging a move away from exclusively knowledge-based examinations toward a more balanced combination of knowledge and competence based assessment.

**Better labelling of services**

**Q24: Do you agree that better labelling of available services would help in building the professionalism and reputation of the sector and in making services clearer to consumers?**

66. Yes. Clarity is of the utmost importance, and we think that clear, unambiguous expectations about services and products are one of the strongest drivers for change in this sector.

**Enhanced role and focus of professional bodies**

**Q25: Do you agree with these proposed measures to enhance the role of professional bodies and do you think these would make a difference to the professionalism of the financial advice sector?**

67. The professional bodies have a long established culture of promoting professional ethics and integrity and the ICAEW has a strict obligation to act in the public interest. These are all issues that are relevant as regards the need to raise the levels of professionalism in the retail advice market. We believe that it would be beneficial to all stakeholders for the professional bodies to play a more active role in this vitally important sector.

68. We would welcome further dialogue with the FSA about its expectations of professional bodies. In other areas of work (notably, in statutory audit and

insolvency work), the professional bodies are the regulators, operating under the oversight of a supervisor. Indeed, that model is present in 'non-mainstream' investment business under the designated professional body arrangements within the terms of the FSMA 2000.

69. There needs to be a clear articulation of whether the professional bodies play a purely promotional or some kind of supervisory role – and if the latter a very clear delineation of responsibilities with the FSA.

**Q26: Do you agree with the overall recommendations of the Professionalism and Reputation Group?**

70. We agree with the overall view that the professional bodies have an important role to play. However, as things stand it is difficult to see how the recommendations referred to in this DP provide any real incentives for individual advisers to join a professional body. In one respect, joining a professional body could be perceived as an additional burden over and above FSA regulation. The incentives must lie in having FSA recognition of the professional body, and any qualifications and / or monitoring of competence and behaviours of members by the respective professional body.

71. Whilst we can understand the potential for a regulatory dividend for having better qualified staff, we are not sure of what is meant by the phrase 'tiered professionalism'. Consumers should expect professional behaviours from all advisers, and a firm could have highly qualified and ethical staff who are not members of a professional body.

**Q27: Do you have other suggestions for how the overall aim of raising professional standards and enhancing the reputation of the market could be met?**

72. The shift in emphasis toward a more principles-based regulatory environment implies a higher level of discretion, which in turn implies requires higher levels of competence and professionalism. We think that TCF will raise standards and should encourage higher levels of professionalism, as should improved communication between industry and the regulator.

73. Market forces are already beginning to raise the levels of professionalism in the sector and we believe the market needs to be encouraged to build on these existing trends. However, we also believe that if levels of professionalism are to be achieved the regulator needs to be able to more reliably identify and drive out bad practice. We understand that FSA is looking to enhance its supervisory resources and focus on this sector and we support that initiative.

74. The established professions have emerged in response to market demand. If the professionalisation of the sector is to gather momentum it must ultimately be demand driven. For that to happen, there must be a general perception that the services are necessary and valued, and that the providers of those services are acting in the best interests of their customers. It is an evolutionary process.

**Q28: What role should we play in raising professionalism as opposed to relying on the professional bodies? Or can the industry lead the way in delivering improvements?**

75. We believe that all stakeholders must work together to raise the standards in the sector.

76. The FSA has a role to play as a facilitator to provide market incentives for those firms that are prepared to raise levels of professionalism. We have referred to:

    - the opportunity to provide regulatory dividend;

    - the need to work on a more collaborative basis with all stakeholders within a more principles-based regulatory culture; and .

    - the opportunity for improved risk-based supervision and enforcement.

**Regulatory and prudential standards to manage liabilities**

**Q29: Do you agree with the group's view that a system of risk-based financial resource requirements for personal investment firms, with a higher minimum requirement than at present, and which includes regulatory dividends, will contribute to better outcomes for consumers and a more sustainable distribution sector?**

77. We have responded separately to DP 07/4 on prudential requirements.

78. We are not convinced that there is evidence to support the argument that there is a necessary casual relationship between the level of capital held by an investment firm and its propensity to mis-sell.

79. The introduction of higher levels of capital adequacy is likely to exclude smaller firms from the market and this is likely to have a detrimental impact on consumers.

80. However, we do think that raising capital requirements could reduce the likelihood of short-term players entering and exiting the marketplace and, in this sense, could be beneficial.

81. On balance, we agree that there should be some increase to minimum capital level.

82. We are in general supportive of the principle of some sort of regulatory dividend for lower risk firms.

**Q30: Do you agree that firms that give financial advice should be required to make some provision or arrangement for liabilities to customers who may come to light after they have ceased trading?**

83. We believe that run-off cover, segregated trust and bonding arrangements each have merit, and we refer you to our detailed response to *DP 07/4: Review of the Prudential Rules for Personal Investment Firms.*

**Q31: Do you agree that giving small firms incentives to employ compliance service providers will help increase the quality of their advice? Do you have other ideas on enhancing supervision of small firms and what are they?**

84. We do not believe that giving small firms incentives to employ compliance consultants will per-se increase the quality of advice. Much would depend on the calibre of the consultants and their ability to influence behaviours in practice.

85. We do, however, agree with individual risk ratings for smaller firms and more detailed data to support those ratings.

**Q32: Do you agree that we should consider changing the time limits we set for the periods within which cases can be referred to the FOS by introducing a 15-year 'long-stop', such as applies in the courts?**

86. Please refer to our comment as below within Q33

**Q33: What do you consider to be the risks and benefits of introducing a 15-year 'long-stop'?**

87. We are extremely cautions of any proposals that may reduce consumer protection, but we do believe that this is an issue that warrants a detailed and considered analysis.

88. The nature of financial services is such that the consequences of negligent advice and underperforming products may not become apparent for many years. We believe it is important to differentiate between unsuitable recommendations at the point of sale and underperformance of products due to changed market conditions and / or changed personal circumstances.

89. The benefits of establishing finite timescales for liability could be substantial and should encourage more capital to flow into the retail sector, with consequential improvements in the supply of products and services to consumers.

**Q34: Should this 15-year 'long-stop' apply to business undertaken before and after the introduction of this 'long-stop'?**

90. Yes. If this can be done in relation to business undertaken before the introduction of the long-stop we see no reason in principle to exclude such business from the long stop.

**Q35: Do you agree that stakeholders should try to identify circumstances that may prompt valid complaints at an earlier stage, and within a 'long-stop' period?**

91. In principle, yes.

**Q36: Do you agree that stakeholders should seek ways of ensuring that measures taken by the industry to prompt valid complaints are taken into account when deciding whether a consumer was aware that he or she had grounds for complaint?**

92. Yes. In addition, we would encourage as industry move to more flexible, transparent products. These are more likely to be capable of accommodating changed market conditions and / or changed personal circumstances, and hence mitigating consumer detriment that might not be related to poor advice.

93. Consumer education and clear disclosure at the point of sale and regular reviews thereafter can also help to manage these issues.

**Q37: If it is not possible to agree on consumer responsibilities, would it help to agree on a set of 'sensible consumer actions' when buying a retail investment product, which could be made available to customers and taken into account when considering complaints, even if these are not legal obligations on consumers? Do you have other suggestions?**

94. Yes, this would be sensible. It would increase consumer engagement and help to mitigate the potential for detriment.

**Q38: Do you agree that preparing a record of good contemporary market practice, by a group with strong industry and consumer representation and credibility, would lead to greater certainty about the standards against which advice will be judged?**

95. We believe that TCF should deal with the majority of these issues. Such a record should help to provide clarity and certainty and could therefore be beneficial.

**Q39: What do you think the cost of preparing a record of good contemporary market practice, and revising it annually, might be?**

96. We have no comment to make.

**Q40: What regulatory incentives, in addition to risk-based prudential requirements, do you think would encourage financial advisory businesses to improve the quality of their advice?**

97. We think that improved data collection, targeting of supervisory and enforcement resource, and skills-based training requirements would make the most impact.

**Transparency of remuneration**

**Q41: What data should be collected, and from whom, to help us to focus our attention on those firms most likely to be causing consumer detriment when advising consumers to switch product?**

98. Data will need to come from both advisors and providers to gain some assurance as to its reliability.

**Q42: Do you agree that greater clarity for consumers on what services are being supplied, how much they are paying for them, and more influence for consumers on remuneration generally will help to address inappropriate advice risks?**

99. Yes. We believe that improved clarity and transparency is essential.

**Q43: How, if at all, should we intervene on the issue of consumers' rights to switch off trail payments?**

100. There should be a requirement that firms are clear what services those trail payments represent: deferred payment for services already received, or payment for subsequent review?

**Customer Agreed Remuneration**

**Q44: What do you think is the most appropriate approach under Customer Agreed Remuneration (CAR) to matching payments (in terms of amounts and timing) from the consumer to the provider, and payments from the provider to the intermediary, and why? What role, if any, might there be for regulation, or for guidance from other parties, to establish uniformity of approaches in the market?**

101. In general terms, we are highly supportive of any initiatives that generate greater transparency, and address the problems associated with agency issues and conflicts of interest. In this regard, we believe some of the ideas emerging from this DP around CAR are encouraging.

102. At least one product provider distributes its products on the basis of a 'fee compensation model'. This fee-compensation model share; the same or very similar characteristics described as CAR in this DP.

103. We suggest, therefore, that the fee-compensation model which is already in existence represents the most relevant starting point for assessing the feasibility of the idea of introducing a more generalised CAR type model.

104. We do not have a view on the timing or matching of payments. What matters is that the customer can agree remuneration on a properly informed basis.

**Q45: Do you agree with the concept of third party financing, and if so, how might this operate?**

105. We have no comments.

**Q46: What do you think are the main barriers, including taxation, which would prevent firms from moving to a CAR model? How might these barriers be addressed?**

106. Greater consistency is required, particularly as regards the tax treatment of fees and commission: fees are generally subject to VAT, whereas commissions are generally exempt.

107. We believe addressing the savings-gap requires a more consistent approach between the FSA and HMRC. We believe that greater incentives to save and further incentives to access financial advice would be helpful: for example, the costs of receiving financial advice could be subject to the same or similar favourable tax treatment as applied to personal pensions.

**Q47: Do you agree that CAR could assist advisory firms to move towards a fee-based revenue model (according to the current definition of fees)? Could this help to erode the perception that advice is a free commodity?**

108. Please refer to our comments to Q10 and Q48.

**Q48: What are the main challenges to implementing CAR, and what might be the implications for consumers, firms (of all types) and the FSA?**

109. We are highly supportive of greater transparency and unbundling of the cost of product from financial advice and we refer you to our previous comments. However, we reiterate our high-level comment that the middle-market is generally unlikely to want to pay fees, or their equivalent, and are less likely to be supportive of what you refer to as 'fee-based revenue' advisory models.

**Q49: What market mechanisms (if any) do you envisage could contribute to reducing the risk of advisers exploiting the extra information they might possess on consumers' willingness to pay? Would the risk of price discrimination be a concern for consumers and how might this risk be mitigated?**

110. Clear and effective disclosure, the menu and TCF should largely address the crux of these issues. However, and notwithstanding the competition issues, there may be some value in exploring the merits of maximum commissions, whilst the demand side of the market is weak.

Alternatively:

- a greater protection of customers' interests could possibly be achieved if commissions are regarded as client money, releasable to the firm only with the agreement of the client in lieu of covering the costs of advice and services; and.

- product providers could be asked to limit their incentivisation of advisor firms, and to report examples where reasonable norms were exceeded.

**Chapter 4 – Primary Advice**

**Primary Advice**

**Q50: What should be our role in endorsing the criteria for segmenting consumers for Primary Advice? What role is there for the industry to provide appropriate standardisation?**

111. We refer you to our earlier comments, but reiterate the following points:

112. We do not believe that the word 'advice' should be attached to the term 'primary advice' in the context this DP: Primary Advice, in essence, represents an assisted limited advice sale.

113. We see the Primary Advice proposition as relevant for people with straightforward needs and limited means. They could be referred for fulfilment from a generic advice process. Customers with existing holdings or more complex needs are unlikely to be well served.

114. We do not believe that the Primary Advice model is capable of meeting the needs of the middle-market segment.

**Q51: To what extent is there unmet demand for some form of simple advice, bearing in mind that the wider proposals in this DP and other market developments could alter the demand in the future?**

115. We believe that improving the levels of financial capability and generating higher levels of public trust in the retail financial services sector are at the heart of the demand side problems in the retail financial services sector. Greater transparency, simplified products and more straightforward regulatory processes are required if the problems in the sector are to be addressed.

116. There is a substantial need for mass-market generic advice, and it is important not to confuse simplified, assisted product-sales models with the need to supply comprehensible, objective generic advice and guidance.

**Q52: Do you think that a Primary Advice service would benefit consumers and, at the same time, provide sufficient consumer protection?**

117. Only in closely defined circumstances. The service should look to engage those who do not currently access the market.

**Implications of debt for savings advice**

**Q53: What are your views on the extent to which people with existing debts should be encouraged or discouraged by financial advice to make investments and to save?**

118. As a general principle, repaying personal debts ahead of making savings and investments is to be encouraged. However, many people make rational decisions to save and borrow at the same time. To create any hard–and-fast rules on and around this issue would be to overly-simplify the subject, and the most appropriate course of action will vary depending upon personal circumstances.

**Q54: Are there any particular exceptions and how should we consider this in the context of decision processes for Primary Advice?**

119. Customers should be informed of general good practice but should be asked about their preference, and allowed to proceed if that is their wish.

**Tax, Benefits and Primary Advice**

**Q55: What are the tax or benefits issues that could hinder the development and / or success of Primary Advice service? What are your views on how these might be resolved?**

120. We have to some extent already covered this point in our earlier comments.

121. Simplified, transparent products are to be encouraged.

122. Transferability between products (and platforms), and ability for products to be flexible enough to adapt to changed external market conditions and the changing needs during the duration of the personal financial planning lifecycle, is contingent upon a supportive tax and state benefits regime. Transferability and adaptability of products reduces risks to consumers and enables regular reviews to be completed at lower cost.

123. If the problems in the retail sector are to be addressed, there must be greater consistency of approach across the industry, which dovetails with the tax and state benefits system, and in respect of savings, investments and taxation.

**Standardised and portable fact-finds**

**Q56: Do you think that these standardised and portable fact-finds will help with the provision of advice to a wider range of consumers and help contain costs?**

124. Fact-finds only reflect the circumstances at the time they are completed.

125. A firm should be able to rely on a recent fact-find undertaken by a generic financial advisor or another firm.

**Q57: How should we strike the appropriate balance between verification of data and reliance on that data by other firms when using a portable fact-find?**

126. Customers should be asked to confirm that fact-find information remains valid.

**Product approval**

**Q58: Do you agree that using product criteria would help firms deliver appropriate products to the target market for Primary Advice?**

127. Please refer to our comments on Q59, as below.

**Q59: Do you think having FSA-endorsed products would help? If so, how would this work?**

128. Simple, standardised, flexible products with limited risks attaching, should help to reduce costs of advice and address some of the problems in the sector.

129. As regard the further development of low-cost simplified products, clear minimum standards would be required, including charges, transferability, scope, terminology, and risks. Such products should be developed and approved by market participants. The FSA will have a useful role in setting the framework but should not endorse particular products.

130. To date, there has been little appetite for simplified products. We suggest that more detailed research and analysis is required before any proposals are progressed to the next stage.

**Q60: Do you have any other suggestions or options for limiting risks of inappropriate products being sold via Primary Advice?**

131. We have concerns as regards the idea of the Primary Advice Model: please refer to our previous comments.

**Suitability**

**Q61: Do you agree that different suitability standards would encourage delivery of Primary Advice and what should these be?**

132. A proper suitability analysis is at the core of the advice process and at the heart of the regulatory regime and, subject to individual circumstance, represents the basis for providing appropriate advice and product selection. We do believe that it is vital that less affluent consumers with straightforward needs engage with the retail savings market. We do not think that engagement should be confused with advice.

**Decision processes**

**Q62: Do you think that decision trees would be a useful means of ensuring that consumers had access to some type of information / advice?**

133. Decision trees are useful mechanism for delivering information and for engaging consumers. However, we do not regard them as substitutes for a proper and considered advice process.

134. In addition to the suggestions made elsewhere in this response, we think that more attention should be given to delivering generic financial advice in the workplace.

**Q63: What other ways might be used to standardise the advice process for Primary Advice?**

135. We have no comments.

**Application of risk-based prudential requirements to Primary Advice business**

**Q64: How should risk-based prudential requirements and risk-based supervision for personal investment firms that give Primary Advice take account of the risk and consumer protection issues associated with it?**

136. We have provided detailed comments in respect of prudential requirements in our response to DP 07/4.

**Other ways of increasing access for more consumers**

**Q65: Does the boundary between advice and information need to be clarified? What other regulatory changes might help delivery of non-advised products to consumers in a clear and meaningful way?**

137. We think that far more work is needed to raise the levels of financial capability and in part these are issues which require attention at that level.

138. We also believe that advisors need clearer guidance on where the precise boundaries fall between generic unregulated advice, and regulated activities. We hope these issues will be adequately addressed within the review of generic advice, and that clear and unambiguous guidance will follow.

**Q66: Do you think that an 'assisted-purchase' model could work?**

139. Yes – but in limited circumstances. We refer you to our comments made earlier within this response.

**Q67: Are there any other models that you think could work?**

140. We favour an incremental approach and refer you to our answer to Q70.

**Q68: Is there an argument for more radical approaches, such as further compulsory savings (beyond the levels envisaged by Personal Accounts)?**

141. We have not considered this question.

## Chapter 5 – Legal and Regulatory Considerations

### Regulatory certainty

**Q69: Can you provide material examples of how regulatory uncertainty has created a barrier for your firm?**

142. Not applicable to ICAEW.

**Q70: Do the proposals put forward in this DP go far enough to improving the position? If not, what other measures could we introduce?**

143. In general terms, we are not convinced that the existing model is entirely dysfunctional. The focus of the review should be on making practical improvements to the existing model, rather than trying to replace that model with a more complicated and untested alternative.

144. We welcome the opportunity for further dialogue with the FSA to explore the issues raised in the DP in more depth, with the objective of finding practical solutions for resolving the problems in the retail financial services sector.

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