Consultation response

FSA Product Intervention Discussion Paper (DP11-01)

from the Money Advice Service

April 2011
About us

The Money Advice Service is a new nationwide service that provides free, unbiased advice to help everyone make the most of their money. We do this by offering personalised and practical money advice online, over the phone and face-to-face.

We were set up by the Financial Services Act 2010 to deliver the ‘public awareness’ objective that was previously a responsibility of the Financial Services Authority, but with an expanded remit to deliver advice and help people manage money better.

After a transition phase as the Consumer Financial Education Body, we launched as the Money Advice Service on 4 April 2011.

We welcome the opportunity to respond to this consultation.

Executive summary

- Product design and distribution strongly affect the way people choose products and manage money, and sometimes lead consumers to make decisions that are not in their best interests. People are better equipped to manage money in a market where they are more able to make informed decisions that lead to good outcomes.

- Over time, the Money Advice Service can be expected to help improve the demand-side weaknesses identified in the DP, so that consumers are more informed, aware and active; but there will continue to be a need for regulation to address these issues.

- We agree that case-by-case judgement will be necessary to avoid unintended consequences and limited customer choice.

- In principle, we support the more intensive supervisory approach that has been adopted. We suggest that a more transparent approach could be explored, where possible, and where it would help consumer decision-making.

- Many of the measures suggested seem valid and would address some of the behavioural biases identified. We would consider increasing the quality of disclosure and consumer information to be of particular interest.

- Of the suggested interventions, we comment on banning or mandating product features, price intervention and consumer warnings, as these have the potential benefit of helping people to manage money.
Introduction

This is our response to the FSA’s Discussion Paper on Product Intervention. The FSA proposes a debate about when, and to what extent, there should be regulatory intervention in the product life cycle. The Money Advice Service is responding because there is a link with our statutory function to enhance public knowledge and understanding of financial services, and people’s ability to manage their money. Our response primarily focuses on the likely impact of product intervention on people’s ability to manage money.

Given that product intervention is likely to be a significant part of the conduct strategy of the FSA and its successor bodies, this response contains some references to credit products not currently regulated by the FSA where they are relevant to this debate.

Response

We welcome the Discussion Paper opening this debate and the opportunity to contribute to it. In principle, intervening at various points in the product life cycle in order to protect consumers is welcome. In practice, the impact of intervention should be reviewed to ensure it has the intended effect.

Product design and distribution strongly affect the way people choose products and manage money, and sometimes lead consumers to make decisions that are not in their best interests, as the DP observes. People are better equipped to manage money in a market where they are more able to make informed decisions that lead to good outcomes. Product intervention may help to achieve such a market, although we agree that a regime where consumer detriment is impossible is likely to be unattainable.

Product intervention is also more likely to succeed if the ‘demand-side weaknesses’ identified by the DP are also addressed directly, by seeking to help more consumers become more empowered, informed and aware.

Q1: What issues should we consider in relation to how our product intervention approach affects equality and diversity?

Equality and diversity could be considered in relation to the FSA’s objectives (and FCA’s objectives in future), especially around securing the appropriate degree of consumer protection. It may be helpful to investigate where there are unequal outcomes and where product intervention may help to address those inequalities.

Q3: Do you have any comments on our market failure analysis?

We agree that ineffective competition in retail financial services can result from ‘demand-side weaknesses’. Over time, the Money Advice Service can be expected to help improve these so that more consumers are more informed, aware and active; but there will continue to be a need for regulation to address these issues.
We also agree that the judgment about the significance of a problem goes beyond the numbers affected and the amount of loss. As well as the points noted in the DP – whether the impact is on people's core financial interests, people in financial hardship, or is long-lasting or irreparable – it may be worth considering wider social costs and benefits where these are evident or measurable. For example:

- The FSA has published research of the effect of a person's financial capability, particularly ability to make ends meet, on their wellbeing\(^1\).
- The impact of indebtedness on a person's credit report can affect their ability to access further credit, as well as employment and housing\(^2\).

Q4: What do you think are the criteria by which we should judge when to intervene further?

We agree that case-by-case judgement will be necessary to avoid unintended consequences and limited customer choice. As the DP identifies, too much choice can be overwhelming and can lead to poor decisions, so less choice is not inherently bad for consumers. But it is likely that restricting choice also impacts on people’s ability to choose products and manage money. The existence of these trade-offs supports the need for case-by-case judgement.

Q5: Are there any other relevant indicators that would help us identify potential problems?

The FSA has identified that products can become problematic for consumers over time, due to market conditions, or if they reach beyond the target market. It is also true that major events in an individual's life can mean that their financial capability reduces significantly\(^3\), and therefore that certain products may no longer suitable for them. It may be very difficult for firms to account for all eventualities, but products that are not responsive to changes in customers’ circumstances may indicate a potential problem.

Products can also become problematic if they are used for a time period other than intended. For example, credit card cash advances or exceeding a bank overdraft limit for temporary or emergency credit\(^4\); or longer term savings and investment products used for short term saving.

Q6: Do you have any comments on the supervisory approach we have adopted, or suggestions to help develop it?

In principle, we support the more intensive supervisory approach that has been adopted, again on the basis that an outcome of such an approach should be that people are better able to manage their money. As mentioned previously, any such approach should be reviewed to ensure it is having the intended effect.

---

2 For example, Financial Inclusion Evidence Review, 2010, HM Treasury
We suggest that a more transparent approach could be explored, where possible, and where it would help consumer decision-making. For example, if the results of business model analysis contain insights into consumer behaviour that could be used more widely and could help consumers to make more informed decisions, it could be published. This could be in the form of examples of good and poor practice, as the FSA has done elsewhere. Although few consumers would use this information themselves, it could help advice services to help people manage money.

Q7: Should we give further consideration to new rules to prescribe conduct by firms when designing and managing products?

Yes, it is worth further consideration and consultation.

Q8: If so, what should be covered?

Many of the measures suggested seem valid and could address some of the behavioural biases identified. We have focused on those proposals where prescribing conduct of firms may be expected to increase consumers’ ability to manage money, which in turn should help us exercise our statutory function.

We would consider increasing the quality of consumer information and disclosure to be of particular interest, since this could help to empower consumers as well as promoting product transparency. There is debate on the merits of compulsory disclosure, and the FSA will know from its own research that quality is more important than quantity. But clearer illustration of the risks, costs and other product features may help people to make more informed decisions and could help address some of the demand-side weaknesses identified in the DP.

Disclosure could harness the effect of norms by, for example, providing information on the different patterns of usage of a product, based on other consumers’ behaviour. In a well known example, utility bills informed customers how much energy was used by their neighbours. Similarly, disclosure could be based on firms’ own expectations of how consumers will behave. For example, a notice savings account could illustrate the rate, both with and without withdrawals, to help customers see beyond the headline rate. Salient feedback on behaviour can support money management – for example, credit card providers remind people who make only minimum repayments how long it will take to repay the balance.

The timing of consumer information is also important – research has found that the further away from renewal of an insurance policy a reminder letter is sent to a consumer, the less likely the person is to switch.

---

5 Nudge, Thaler and Sunstein, 2008
8 Presentation by Ian Hughes, Consumer Intelligence Ltd, at the Financial Services Research Forum, November 2010
Q11: Do you have any comments on any of the possible additional interventions?

As in our response to question 8, we have focused our answers on the suggested interventions where prescribing conduct of firms might be expected to increase consumers’ ability to manage money.

- **Banning or mandating product features** could, in some cases, help people to manage money. For example, the Lending Code includes a standardised order of payments on credit cards, which may be expected to help people to stay in control of their credit.\(^9\)

  Mandating product features might take the form of product benchmarks. We believe that consumers could benefit from further benchmarking in some markets, by helping to compare products against predictable, standardised features. However, for a benchmark to be effective, consumers must be aware of and understand its features, or otherwise be satisfied that the benchmark is suitable for them.

- **Price intervention** could help people to maintain control of their money where they otherwise face unreasonable charges – the FSA has already intervened in charges for mortgage arrears, for example. Price intervention might also include mandated price transparency. For example, the only example of mandated price transparency, lenderscompared.co.uk, helps its users to consider the overall cost of credit.

- **Consumer warnings** are suggested. As the DP mentions, we already work with the FSA to produce consumer alerts and some plain-speaking consumer information that firms must provide. An example is the Sale and Rent Back factsheet, which tells consumers to “only consider these schemes as a last resort” and spells out the risks.\(^{10}\) Where products are outside the scope of FSA regulation, the Money Advice Service is still able to work with relevant stakeholders on consumer warnings.

---

\(^9\) The Lending Code, March 2011: [www.lendingstandardsboard.org.uk/docs/lendingcode.pdf](http://www.lendingstandardsboard.org.uk/docs/lendingcode.pdf)

\(^{10}\) Sale and Rent Back factsheet: [www.moneyadviceservice.org.uk/_assets/downloads/pdfs/your_money/a5_guides/sale_and_rent_back_schemes.pdf](http://www.moneyadviceservice.org.uk/_assets/downloads/pdfs/your_money/a5_guides/sale_and_rent_back_schemes.pdf)
Robert Yuille  
robert.yuille@moneyadviceservice.org.uk  
Tel: 0207 943 0537

Published: April 2011

The Money Advice Service  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS  

Tel: 0207 943 0500

Contact enquiries@moneyadviceservice.org.uk