



AIFA Response to DP08/03 Transparency as a Regulatory Tool

AIFA is the trade association that represents UK regulated independent financial advisers (IFAs). Membership of AIFA is voluntary and on a corporate basis. AIFA currently represents over 80% of IFA firms in the UK.

IFA firms are the leading distribution channel for retail financial products in the UK. Last year they generated 73% of business by monetary value and are the major sector advising and arranging retail life and investment products in the UK. As such, IFAs represent a dominant force in the maintenance of a competitive and dynamic retail financial services market.

We believe that transparency as a regulatory tool is only part of the answer and we would welcome the opportunity to meet with the FSA to further discuss how we are able to help the regulator meet its objectives.

1. Do you agree that transparency is a legitimate regulatory tool?

AIFA believes that transparency is only legitimate in certain circumstances, in specific sectors, and without reference to proportionality and pragmatism it is difficult to whole-heartedly agree with such a wide ranging statement.

Clearly transparency is desirable conceptually. However, the well versed arguments relating to industry cooperation and engagement with their regulator must be carefully considered. Indeed, FSA acknowledge in the Discussion Paper that significant transparency already exists, which should be commended. However, AIFA is concerned that the DP implies an under-current of change in tone, and as always unintended consequences need to be considered.

All subsequent responses address situations where transparency could be legitimate on occasions and do not represent a tacit overriding agreement with the proposal.

2. Do you agree that this high level cost benefit analysis captures the main potential impacts of regulatory transparency, both positive and negative?

AIFA questions a number of aspects of the high-level CBA. For example, if a consumer lacks information about the quality of a firm it may lead to “inefficient or unsuitable purchases”. Aside from FSA’s own admission [6.17] that publication of firm specific complaints data suggests “it is not possible to infer from them some underlying ‘quality of service’ factor”, AIFA observes that FSA is neither a price regulator nor do we see any evidence as to why a purchase could be unsuitable.

Inefficient purchases suggest that FSA regulates the price of a product; AIFA firmly believe that it is for market forces to prescribe, and if markets are not working efficiently the OFT operate as a price regulator. Unsuitable purchases imply a regulatory failure in disclosure, suitability or eligibility rules, and per se, the publication of, for example, complaints data should not impact this.

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

The approach of a Code would seem logical to apply consistency to application of theory. The word ‘Code’ implies a set of rules or standards that set out expected practice that is not open to interpretation, yet FSA states that the Code “does not remove the necessity for using judgment in our decisions”. If a Code were in place, to retain the confidence of regulated firms FSA must exercise caution before any deviation from that Code is considered.

4. 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 the FSA’s standards of economy, efficiency and effectiveness?**

AIFA question the need to include the first principle in the Code. It would appear self-evident that FSA would not infringe their statutory restrictions, and they would indeed face challenge if they did. To therefore self-declare adherence to this seems superfluous.

We do not believe that disclosure of all public interest issues is necessarily sufficiently pragmatic or proportionate.

We do believe that disclosures should meet FSA’s standard of economy, but question how this can be assessed accurately on a case-by-case basis, the method of challenge to these decisions, and the consequences of error.

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

We do not believe the Code as drafted is entirely appropriate, given our comments above. Therefore we are not making further comments on the existing proposed Code.

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

To contextualise AIFA's response to the questions relating to publication of complaints data, AIFA members would be highly unlikely to feature in the 125 firms responsible for 95% of complaints, and only a tiny minority of our larger members would feature in the 400 firms accounting for 99% of complaints, underlined by IFA's infrequent referral to the FOS. We therefore respond primarily from a third-person position.

Theoretically the publication of complaints data could assist FSA is achieving their regulatory objectives; the benefits of encouraging poorly performing firms to react is clear.

However, the practical realities are far from simple. Too much information will confuse whilst too little could easily paint the wrong picture. Finding the balance of enough information to reliably and meaningfully inform will be a real challenge.

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

Of most concern, if the economic-cycle was such that many complaints were generated as a result of external economic factors, AIFA believes it could make market confidence more difficult to control as the potential leveraging effect of a small number of complaints in a public arena could damage market confidence.

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

FSA acknowledge in their own guidance on TCF that absence of complaints data does not necessarily imply that a firm is treating their customers fairly. Indeed, it could be that a firm is failing to explain the complaints procedures fully to a client.

By contrast, a firm with many complaints could be over-zealous with its application of complaints handling procedures. Therefore, AIFA fails to see how the publication would benefit consumers, given that they would also not be in a position to infer a 'TCF' measure from the data.

Of the specific data items, most require contextualisation that is not readily available, and is complex. However, the inclusions of 'redress payments' would seem to be particularly inflammatory. If CMC firms start targeting firms that paid the highest redress, surely the detriment to the remaining, fairly-treated and content customers of the firm would in itself be unfair.

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

Clearly if data were to be published contextualisation would be critical. However, given the breadth of complaint types, their source, the reasons for them, outcomes and speed of resolution, combined with product types, providers and methods of distribution, AIFA struggles to see how this data could ever be sufficiently and accurately contextualised to add value to a consumer, and within FSA's own efficiently and economic objective.

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

As is currently in evidence with regard to eligibility to the FSCS, most consumers are unaware of 'brands' and underlying business ownership. So to publish data on a group, rather than firm/brand, basis would appear to be of limited value.

However, clearly some firms justifiably submit complaints data on a group basis. To subsequently expect these firms to re-submit the data on a firm/brand basis would be uneconomic and unfair.

11. 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?

We have no additional comments.

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

Whilst AIFA appreciates that the proposals may not require formal handbook amendments, we are disappointed that FSA does not consider adoption of a

formal DP/CP consultation process as appropriate, given that FSA acknowledge the subject to stimulate views which “are often strongly polarised”. Given the significance – perceived or otherwise – by all stakeholders, the combination of limited discussion and consultation, and extremely ambitious time scales is of concern.

AIFA also highlight FSA’s revised complaints data from 2009. Given the complexities of contextualisation as described above, changes in the raw data could lead to further costly, time-consuming work in 2009 and we strongly question whether any introduction, if appropriate at all, should be delayed until revised complaints data is collected.

13. Do you agree with our proposals concerning:

- **Anonymous, benchmarked results; and**
- **Non-fundamental OIVoPs (Own Initiative Variations of Permission).**

As identified in the DP, FSA already make use of some anonymous benchmarked results. The market on a wider level is also considering this, as clearly data such as anonymous benchmarking of performance, such as persistency or arrears for mortgages, forms a useful aspect of TCF Management Information. However, we broadly support the ongoing use of benchmarked data by FSA for firms. We do not think this would add value to consumers however.

Please refer to AIFA’s formal response to CP08/10 which does not support the proposals concerning OIVoPs.

14. Do you agree with our comments and proposals on:

- **Naming and ‘faming’; and**
- **Risk mitigation and redress.**

FSA comment on the possible ‘halo effect’ that naming and faming on a specific issue could bring to the entire work of a firm. If a ‘halo effect’ is a concern, surely exactly the same issue is true for a ‘negative-halo effect’, insofar as publishing one perceived negative specific aspect of a firm’s operation (such as complaints data) would create a ‘negative halo’ around the entire operation of the firm.

AIFA does not see the value added to consumers in publishing anonymised and aggregated information on redress in the FSA’s Annual Report. Negative statements, such as redress payments, do not underline the wider market successes, nor promote market confidence. Perceivably, there is an advantage to FSA’s own reputation in having achieved a certain degree of redress, but when considering the balance AIFA do not believe this should be published.

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

We have no further comments.

16. Do you agree that 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?

AIFA feel that FSA has a significant armoury of tools to deal with poor performance. As highlighted, AIFA believe the worst offenders should be dealt with through the formal enforcement procedures.

We also highlight that communication with the industry appears to be a constant and reoccurring theme within financial promotions, with the industry clearly articulating that existing tools 'were of limited relevance'. In this case, we are pleased to see FSA developing new educational material, but suggest that embedding and enhancing this material would be highly preferential to new additional measures at this stage.

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

The publication of 'real life cases' serves well to educate the community, particularly small firms that do not have dedicated compliance/financial promotions departments. We believe that where firms make every effort to comply with the rules, and also act swiftly to address areas of non-compliance when they are made aware of them, the regulator should take a pragmatic approach.

Public censure should only be used in exceptional circumstances where firms are found to be deliberately issuing misleading financial promotions or where there is refusal to cooperate with the regulator to rectify any failure.

18. Do you think that the benefit of creating a financial promotions Register, as described, would outweigh the drawbacks? If so, why?

During 2007's informal consultation, AIFA were not in favour of a Register and our objections stand.

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

AIFA acknowledges the publications made by FSA on TCF. However, we still believe some genuine firms struggle with FSA's expectations, and indeed struggle to fully understand what is expected of them. Self-certification of progress could be a further area of confusion – and add to the TCF cost already borne by firms.

Self-certification of adherence to TCF outcomes, including progress, would also in AIFA's view not serve consumers well. Firms who embraced TCF as a historic culture would have little to report by way of progress, having identified few areas for improvement. Firms starting from a lower initial position would have more progress to report but not necessarily be of equal standard. Combined with this is a comparative lack of understanding of TCF from consumers; unless coupled with a highly expensive and extremely undesirable marketing campaign the context would be lost on consumers.

Whilst we understand FSA's desire to publicise the results of their work on firms adoption of TCF, AIFA cautions that a further poor result on TCF – as per the June publication – could add impetus to an argument that TCF failings are part of a wider regulatory failure. This would not be a productive message to the industry or wider consumers.

20. Is the mix of measures outlined in paragraphs 6.79 to 6.87 appropriate for helping to achieve better progress?

Current FSA work on TCF is helping firms. AIFA believes that further industry guidance is always welcomed. Enforcement action is justifiable in cases of extreme breaches but we do consider the wide-spread use of s166 reviews as an expensive way of addressing concerns, particularly for small firms.

21. Are there other measures that you would like the FSA to take?

We have no further comments to add.

22. 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?

Given the parameters of this Discussion Paper and AIFA's stance, AIFA is not suggesting further data be published at present. If, when feedback on this DP is

provided, FSA wish to engage with practitioners AIFA would happily facilitate this industry discussion.

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

AIFA agree that further disclosure of capital is desirable.

24. Do you have suggestions for areas of regulatory transparency not mentioned in this Discussion Paper.

We have no further comments.

25. Do you agree with our proposals to improve the accessibility and content of our Disclosure Log?

AIFA has not made any FoIA requests. However, we caution that FSA's website is complex for regulated firms to navigate, and greater promotion of non-core information will not assist this.

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

AIFA suggest that FSA should consider relying on market forces when considering publicising and publishing data. If FSA publishes data on its website, and there is sufficient interest from third-parties – be that commercial organisations packaging data and licensing it for a fee, or intermediaries – be that firms or the wider media – publicising data for the benefit of consumers then that will occur naturally. If the data published by FSA is not relevant or of sufficient interest, then market forces will not encourage third-parties to become involved; in this case it would seem perverse to insist on wider publicity when there is insufficient demand.