



**The Actuarial Profession**

making financial sense of the future

consultation response

**DP 06/04**

**The roles and  
responsibilities of providers  
and distributors for the fair  
treatment of customers**

**December 2006**

This response has been prepared by the “Life Treating Customers Fairly Working Party” of the UK Actuarial Profession. The working party has been set up to consider how the TCF initiative impacts on the operations of UK life insurers and to comment on how they can continue to improve the way they meet the requirement to treat their customers fairly.

We would like to thank the FSA for producing DP 06/04 and for the chance to respond to the proposals set out in this document.

Overall, we are very supportive of the draft “Statement” in DP 06/04. We believe that it is a useful statement and does help clarify some of the difficult areas of the respective responsibilities of providers and distributors. We believe that the balance is right between clear division of roles and joint responsibility for quality along the distribution chain, and this should support all the desirable aims of good service, fair treatment, risk management and profitability.

There are two areas where we feel more could be said:

1. The paper recognises different business models, but does not include as a specific example “wrap providers”. We believe that this is a growing presence in the market for financial services and equally believe that they do not fit into the traditional profile of a provider nor are they providers of advice and, therefore, classic distributors.
2. The role of the FSA. The FSA is the body that awards financial advisers with the authority to advise customers and providers with the ability to design and provide financial products, and its oversight of provider/distributor relationships is of fundamental importance. Monitoring teams are responsible for identifying and eliminating unsuitable practices from the market. In this area in particular, the FSA cannot rely solely on market participants and we feel it would be worth highlighting this point in the Statement.

Answering the questions posed by the FSA:

## **2.1 Do you agree that this Statement accurately reflects the respective responsibilities of providers and distributors under the Principles?**

We believe that the Statement brings much needed clarity to this area.

For instance:

- Before this, providers could claim that it was not up to them to have any concern over whether their product was being purchased by the right clients, because it was up to distributors to advise clients. Equally, distributors could claim that they could not be expected to understand every nuance of a complex financial product. The Statement does answer these points.
- We believe that the division of roles between the two parties is well-identified for straightforward relationships. We agree with the requirements for providers to give distributors good quality training material and explanatory documents (especially for complex products) and the duty of distributors to ask for more where they do not understand the product. We hope that distributors note this duty and feel confident

enough to state “I do not understand this”. As professionals, we acknowledge the supreme importance of knowing what we do not know and the difficulty in sometimes “coming clean”. We also agree entirely with the duty of providers to give training courses as required.

We believe that, ultimately, the decision on who should be a distributor or provider rests with the FSA and that Monitoring teams need to eliminate any unsuitable practices from the market.

The paper recognises different business models, but could usefully say more on two particular models:

- We note the FSA's comments on distributor-led products and would add to that the new tendency of specialist product design companies (which are not regulated) to develop a product, find a distributor and then use the distributor's marketing muscle to get a provider to provide the product. We would suggest that the responsibility for product design here should be explicitly defined between the distributor and provider. The provider would need to make sure that the distributor understood the product that had been “sold” to them by the unregulated product developer and neither provider nor distributor is absolved from their responsibilities to treat customers fairly.
- Wrap providers require a new model of the market with the roles being split between:
  - (i) adviser of the customer (normally an IFA) who chooses the vehicle type and the fund performance engine;
  - (ii) the OEIC or collective provider who provides the fund performance engine without knowing what his product is being used for;
  - (iii) the wrap provider who effectively provides an administration and software service first and foremost and the legal vehicle secondly;
  - (iv) and potentially a risk benefit provider. Most wrap providers do not wish to provide any risk benefits and would want reinsurers to provide all of the cover here.

This gives a complex model for the provider/distributor interface as all of the advice and choice of fund and vehicle is carried out by the IFA and the wrap provider is only providing a service. “Factory gate” pricing has already arrived in this market and should help clarify the respective responsibilities of all of the participants to the customer.

We also wish to raise the problem of “orphan clients”. Even if a network still exists, it is not uncommon for the actual intermediary to have long since departed the business. Providers may not know when this has occurred so will then reasonably continue to service the customer as if the actual intermediary is still fulfilling their responsibilities. If the provider is expected to undertake additional measures in such cases, then there may be a role for the FSA to help providers identify these orphan clients.

There is a similar issue in respect of the potential lack of support for low net worth clients. Many advisers will naturally tend to concentrate on high net worth clients and will not wish to spend the time and effort and associated costs in servicing low net worth clients for potentially little reward. Likewise, providers are likely to find it uneconomic to service such clients and

this is even more of an issue where the provider-adviser agreement states that the provider must pay the adviser commission even if the adviser is not involved in the sales process as the adviser effectively “owns” the client. Hence we have a situation where many low income clients are not getting the support they need.

## **2.2 Do you consider that firms are already acting in line with the obligations referred to in this Statement?**

Individual firms are better placed to comment on this. However, by clarifying the respective responsibilities of providers and distributors, this Statement will certainly help to identify gaps.

We suspect that the gaps are most likely to exist in the monitoring of business partners. Where firms identify gaps in their own responsibilities they should already be addressing these as a part of a move to fully implement TCF.

## **2.3 Where a firm is not yet meeting the obligations referred to in the Statement, what is the likely cost to the firm of bringing their activities in to line?**

Again we are not best placed to respond to this question but would note that the monitoring of business partners could be an area of high cost. Proportionality should mean that detailed monitoring is only required where routine monitoring identifies concerns. We foresee a potential outcome being an unnecessary increase in the monitoring of advisers by providers and vice versa and would welcome greater clarity on FSA's expectations in this area. Such a requirement could, for example, have serious implications for providers that deal with a large number of distributors, perhaps leading them to reduce the number of distributors they deal with.

As noted earlier, specialist product development companies may warrant further consideration especially where they specialise in complex products (e.g. derivative-based products) that have high potential for consumer risk. They may find that their business model does not work in the new market if both provider and distributor look to them for detailed and comprehensive impact studies.

## **2.4 Do you agree that we are the right body to publish this Statement?**

Yes. We believe that the body that issues this statement needs proper and proportionate involvement of consumers as well as IFA's and providers. Whilst trade bodies can publish statements of good practice, only the FSA can really achieve consistency across the financial services industry.