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Nicholas Ryder [a]

[a] Law School, University of Glamorgan, E-mail: nryder@glam.ac.uk

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TWO PLUS TWO EQUALS FINANCIAL EDUCATION—THE FINANCIAL SERVICES AUTHORITY AND CONSUMER EDUCATION

By NICHOLAS RYDER*

THREE WEEKS after the Labour election victory in May 1997, Gordon Brown announced that work would begin on the reform of the regulatory structure created under the Financial Services Act 1986[1]. The Financial Services Act 1986 was enacted due to general concern at the limited degree of regulation of financial services, and the publicity given to a number of scandals. Under the Financial Services Act 1986, the Treasury delegated its regulatory powers to the Securities and Investment Board whose primary function was to authorise and supervise the numerous regulators[2]. The fragmented approach of the 1986 legislation is evident by the fact that there are numerous statutes relating to the regulation of financial services. This has continued to cause uncertainty and an unsatisfactory division of responsibility between several regulators[3]. Self-regulating organisations (SRO) are legal bodies, financed by and supervising their own members and operating in different sectors of the investment industry. In order to be recognised they must have adequate rules for investor protection equivalent to the Financial Services Authority's own rules. The most relevant SRO for solicitors is the Personal Investment Authority, which is concerned with the sale to the public of financial services. In order to be recognised, a prospective SRO must apply to the FSA for recognition and, if the application satisfies the statutory conditions, it must be accepted.

The financial services industry in the United Kingdom was not effectively enforced under the Financial Services Act 1986 as highlighted by a number of "high profile" cases[4], which indicate the failings of the regulatory system of the financial services and damaged the confidence of current and potential investors. In 1992 Justice[5] compared attempting to understand the Financial Services Act 1986 regulatory regime to "wading through a lake of blancmange".

The movement to the reform of the Financial Services Act 1986 began whilst the Labour Party were in opposition. They declared their intention to

*Law School, University of Glamorgan: nryder@glam.ac.uk

1 H. C. Debs. cols. 508–11, May 20, 1997.

2 Haynes, A. (1997). *Butterworths Financial Services Law Guide*, London: Butterworths.

3 HM Treasury (1998). *Financial Services and Markets Bill: A Consultation Document Part One Overview of Financial Regulatory Reform*. London: HM Treasury.

4 Misselling of personal pensions, the mismanagement of unit trusts; the misfortune of the Mirror Group pensioners, home-income plans sold to the elderly and the failure of secure convictions in many of the most highly publicised fraud trials.

5 Justice (1992). *The Protection of the Small Investor*. London: Justice.

reform the regulation of financial services and to replace the inadequate and controversial 1986 legislation. Alistair Darling stated:

> "We propose to make the SIB directly responsible for the regime broadly covered by the 1986 Act. . . . We no longer need a distinction between the SROs and the SIB, as that is expensive"[6].

Furthermore, in its 1997 Business Manifesto, the Labour Party pledged to redress the problems of the regulation of financial service sector:

> "As the guardians of other people's money there needs to be effective supervision of the industry. Good regulation, as well as guaranteeing probity, can also be a source of competitive advantage for the industry".[7]

The proposed reforms were published in July 1998 in the form of the much publicised Financial Services and Markets Bill. The main reasons according to the Government for the reforms were that the previous system was costly, inefficient and confusing for both regulated firms and customers. The Government claimed that the reform would establish a single, statutory regulator for the UK financial services industry, with clearly defined regulatory objectives and a single set of coherent functions and powers. Part III of the Bank of England Act 1988[8] transferred the Bank of England's powers and responsibilities for the supervision of the banking sector and wholesale money market institutions to the Financial Services Authority[9] (FSA). The FSA will regulate banks, building societies, insurance companies, friendly societies, Lloyd's, fund managers, credit unions, investment and pension advisers, stockbrokers, derivative traders and professional firms offering investment services[10]. This would include firms such as solicitors and accountants who offer their clients investment services[11]. The process of reform was complete when the Financial Services and Markets Act received Royal Assent on the 14 June 2000.

There are three methods by which an individual or a firm may be permitted to provide investment advice under the 1986 Financial Services Act. Authorisation may be obtained directly from the Financial Services Authority. Anyone authorised in this way by the FSA is subject to the

6 H. C. Debs. 14 December 1995 cols. 1184–5.
7 Labour Party (1997). *Labour's Business Manifesto: Equipping Britain for the future.* London: Labour Party.
8 Section 21 Bank of England Act 1998.
9 Hereafter the FSA.
10 HM Treasury (1999). *Financial Services and Markets Bill Explanatory Notes.* London: HM Treasury.
11 An "investment" is defined under section 1(1) of the Financial Services Act 1986. The term includes stocks and shares, government and local authority securities, units in collective investment schemes and long-term insurance contracts.

provisions of the Act through the conduct of business rules made by the FSA. Secondly, a SRO or self-regulating organisation lays out rules and regulations with which a person who is a member must comply. The SRO's rules relating to investment business must be at least equivalent to the conduct of business rules of the FSA. Examples of the SROs are the SFA, IMRO and the PIA. The third and final method of obtaining authorisation is through a RPB. Members of this profession can be authorised under the Financial Services Act 1986 by holding a certificate issued by their professional body. It should be noted that the Financial Services Act 1986 provides a number of sanctions for carrying out investment business without the authorisation required in the legislation. It is a criminal offence by virtue of section 4 of the Financial Services Act 1986. In addition to the criminal sanctions imposed by section 4, sections 5 and 6 set out the civil remedies available. If any parties enter into an agreement without the necessary authorisation, the agreement is unenforceable and the wronged investor is entitled to compensation

Financial Services and Markets Act 2000

The Financial Services and Markets Act is divided into 30 parts, 429 sections and 20 schedules. The Act provides for the constitution and accountability of the FSA and defines the scope of regulated activities. The Treasury is permitted to state what amounts to a regulated activity by virtue of section 22 of the Financial Services and Markets Act 2000. A regulated activity must be described as a specific activity that applies to a specified investment[12] that can amount to any asset, right or interest. The Treasury have recently completed a consultation process on the regulated activities under the Act. The Regulated Activities Order contains four parts and three schedules. Part I makes provision for the commencement and interpretation of the Order. Part II specifies the kinds of activity and the exclusions applicable to each activity. The third part of the Order concerns the kinds of investments to which regulated activities relate. Part IV, makes provision for amendments to the Consumer Credit Act 1974 and transitional provisions with respect of mortgage contracts. Schedule 1 outlines categories of insurance while schedules 2 and 3 provide for the provisions from the Investment Services Directive that are relevant to the applicability of certain exclusions in the Order.

Generally, the Act stipulates for the control of financial promotion as well as outlining the powers of the FSA. Furthermore, the regulation and marketing of collective investment schemes, creates certain criminal offences and provides powers to impose penalties for market abuse.[13] For

12 Section 22(1)(a) Financial Services and Markets Act 2000.
13 HMSO (2000). *Explanatory Notes Financial Services and Markets Act 2000 Chapter 8*. London: HMSO.

example, by virtue of section 401 of the Financial Services and Markets Act 2000, the Financial Services Authority has been given the power to prosecute offences contained within the Act.[14] Under section 402 of the Financial Services and Markets Act 2000, the Financial Services Authority has been given the power to prosecute for two additional types of offences, insider dealing[15] and breaches of any money laundering regulations. In addition to the general criminal offences, the most important offences are contained in Part XXVII. Sections 397(1) and (2) create the offence of a person making materially false or misleading statements. Furthermore, section 397(3) creates the important offence of market manipulation. This section makes it a criminal offence to undertake any course of conduct that creates false or misleading impression as to the relevant price, market or value of relevant investments for the purpose of creating the impression and inducing a person to purchase or sell investments.

Perhaps the most innovative and controversial aspects of the Act is the inclusion of the provisions relating to market abuse[16]. The provisions relating to market abuse are contained in Part VIII of the Act. It is submitted that the provisions are to enable the operations of the market to become more open and clear and to impose penalties for behaviour that is considered to amount to market abuse or malpractice. It is quite clear that the creation of the FSA will have a dramatic impact on the providers of financial services within the United Kingdom.

Statutory Objectives and Duties of the FSA

The most innovative and important aspect of the Financial Services and Markets Act 2000 has been the development of the statutory objectives that have been imposed upon the FSA. For instance, section 2 of the Act outlines the general duties of the FSA. In particular, under section 2(1), in discharging its functions, the FSA must as far as is reasonably possible act in a way that is compatible with its regulatory objectives. The FSA is to have four statutory objectives under the Financial Services and Markets Act 2000:

14 Such offences would include for example carrying on or purporting to carry on a regulated activity without any authorisation or exemption (section 23), making false claims as to being authorised (section 24), communicating an invitation or inducement to engage in investment activity in breach of the restrictions on financial promotion (section 25), misleading the FSA and other contraventions in relation to the exercise of Treaty rights (schedule 4) and issuing an advertisement or other information specified in the listing rules without prior approval or authorisation from the competent authority (section 98).

15 Contrary to Part V of the Criminal Justice Act 1993.

16 Market abuse is defined in section 118(1) of the Financial Services and Markets Act 2000 as behaviour that occurs in relation to qualifying investments traded on a market to which the section 118(1) applies. Furthermore, that satisfies any one or more conditions as set out in section 118(2) and is likely to be regarded by a regular user of the market is aware of the behaviour as a failure on the part of the persons or persons concerned to observe the standard of behaviour that is reasonable expected of such a person.

- To maintain market confidence in the financial system[17];
- to increase public awareness[18];
- to ensure consumer protection[19]; and
- to prevent and reduce financial crime[20].

Section 3 Financial Services and Markets Act 2000—To maintain market confidence in the financial system

The FSA's market confidence objective is defined as maintaining confidence in the financial system.[21] The first statutory objective of maintaining confidence in the UK financial system is shared jointly with the Bank of England, and which according to the FSA can be delivered effectively within the framework document[22]. This co-operation is further enhanced by the cross membership arrangements made by the Treasury, which exists between the FSA and the Bank of England.

Section 4 Financial Services and Markets Act 2000—To increase public awareness

For the first time in the United Kingdom a financial regulator has been given the important task of educating consumers and increasing public awareness in relation to financial services. The FSA plans to undertake more work on promoting public awareness of financial services than the previous regulators have undertaken[23]. Patricia Hewitt, the then Economic Secretary, welcomed the initiative and said:

> "Savers and investors are often intimidated by the complexity and range of financial services products available. They need to understand them better to have the confidence to use them effectively. This new role in consumer education for the FSA is a major step forward towards achieving wider understanding and confidence in the financial services industry"[24]

This is a welcomed initiative from the FSA, but in practice it may prove

17 Section 3 Financial Services and Markets Act 2000.
18 Section 4.
19 Section 5.
20 Section 6.
21 Section 3(1).
22 Memorandum of Understanding between HM Treasury, the Bank of England and the FSA.
23 Vass, J. (1998). *A guide to the provision of financial services education for consumers*. FSA, London: FSA.
24 HM Treasury News Release, 25 May 1999, "Financial Education Must Start Early".

very difficult to achieve. This is a view echoed by The Association of Unit Trusts and Investment Funds:

> "If the Treasury is right and a large part of the population doesn't understand what a percentage figure is, then we are talking about a failure of the school system. We don't believe the FSA will ever have a budget large enough to educate consumers sufficiently from such a low level".[25]

Section 4 (1) of the Act states that the public awareness objective is: promoting public understanding of the financial system[26], section 4(2) of the Act provides that this includes promoting the awareness of the benefits and risks associated with different kinds of investment or other financial dealings and the provision of appropriate information and advice. As a result of the objective contained in section 4, the FSA hosted its first Education Conference[27]. At the launch of the conference, the chairman of the Financial Services Authority Howard Davis stated:

> "We see basic numeracy skills as being the key to children managing their personal finances when they are older. For this reason, the FSA supports the National Numeracy Strategy and other government initiatives in the drive to raise numeracy standards. Today's conference illustrates our commitment to the national drive to improve these standards in all of our schools. Personal finance education will be included in the National Curriculum from this September so we must ensure that teachers are confident that they will be given the full support and guidance they need. For this reason, the FSA has been working closely with the Department of Education and Employment and the Qualifications & Curriculum Authority on preparing the guidelines for personal finance education. We see this as a key part of our work to meet our statutory objective of promoting understanding of the financial system. We are keen to assist teachers with their understanding of this whole area. Today we are launching MEGA MONEY—giant, three-dimensional, card coins which have been designed to support teachers' numeracy work in the primary classroom. Our new consumer website, to be launched

25 Joint Committee on Financial Services and Markets Bill (1999), Appendices to the Minutes of Evidence, Appendix 20.
26 Section 3(2) defines the financial system as including the financial markets and exchanges, regulated activities and other activities connected with financial markets and exchanges.
27 FSA Press Release, *Children will benefit from personal finance lessons in the classroom*, 7 March 2000, FSA/PN/038/2000-04-27.

> shortly, will contain a section specially designed for teachers in place by the spring".[28]

Research commissioned by the Financial Services Authority that was undertaken by the Centre for Research in Social Policy at Loughborough University concluded that there is a gulf between the financial knowledge and experiences of children in both low and high income households between the ages of six and eleven.[29] Commenting upon the conclusions Dr Julia Lourmidis of Loughborough University said:

> "The extent of the differences between the experiences of children from low and high-income households is very worrying. Learning financial skills is vital for all children if we are not to reproduce the economic inequalities that currently exist in society. Children growing up in low income households are being denied the opportunity to acquire the financial skills that children in higher-income households take for granted".[30]

Gill Hind from the Consumer Education Department at the FSA said that it is necessary that all children are given the opportunity to learn the necessary basic skills about managing their personal finances at school which is why the FSA has been working to closely with national curriculum bodies across the United Kingdom. He added:

> "This research shows that unless children from low-income households are given the opportunity to learn basic financial skills outside the home environment, the experience of their parents will simply repeat itself. It also shows the importance of teaching the value of money to children from higher-income households so that they are able to use credit sensibly in later life".[31]

The general finding of the research suggested that the attitudes to money varied amongst all the respondents in the research. The research highlighted a number of difficulties that young people face between the ages of 18 and 24 when it comes to financial services. For instance, they need assistance with managing money, to develop their financial skills, advice on savings, to help them prepare for the future and the need for prudent advice.[32] The FSA concluded that a majority of respondents in the

28 *ibid.*
29 FSA Research Identifies Huge Gaps in Children's Understanding of Finance: Children Must Be Given Opportunities To Learn Financial Skills, 7 March 2000, FSA/PN/039/2000, http://www.fsa.gov.uk/pubs/press/2000/039.html
30 *ibid.*
31 n. 29, *supra.*
32 *ibid.*

quantitative survey, who had taken out or considered a product in the last five years were not dissatisfied with the information available, claimed that they did not want more information and were confident that they had all the information to make the right choice of product. The fact that a majority of the consumers had confidence in recent financial decisions, despite the relatively low levels of shopping around, suggests that many would benefit from further information but are unaware that they need it. It is contested that a major task for the FSA is to get consumers to recognise that they have information needs in the first place. On the issue of the consumer obtaining information and advice the research identified some important factors that the FSA's consumer education work will need to take into account. For instance, life-stage events occurred in a third of cases of those people who participated in the research. The research concluded here that people knew that they had a financial necessity but did not know which product met that need.

In order to combat this problem, the Financial Services Authority intends to develop "life stage" or "event-based" financial planning material for consumers. The issue of the Financial Services Authority as a provider of information was referred to in the report. The Financial Services Authority admitted that if they were to meet their objective under the then Financial Services and Markets Act to promote public awareness of the financial system it would need to overcome certain barriers. These barriers included low awareness of the Financial Services Authority and the wrong impression of the Financial Services Authority. The Financial Services Authority assert that they can overcome such hurdles by reaching different groups of consumers by producing booklets that appeal to most consumers. The research suggested that the Post Office might be a particularly good way of targeting "lower social grades and lower income groups".

It is suggested that the Post Office would welcome the opportunity as proposed legislation aims to provide the Post Office with more commercial freedom. The Postal Bill was presented on 27 January 2000 and received its second reading on Tuesday 15 February 2000. The Postal Services Act received Royal Assent on July 28 2000. The wide-ranging Act aims to enact a number of proposals put forward in July 1999.[33] The Postal Services Act provides for the conversion of the Post Office into a public limited company that is formed and registered under the Companies Act 1985, the introduction of a new system of regulation for postal services operator/ providers, the creation of a Postal Services Commission, the promotion of competition by the Postal Services Commission and greater consumer protection by the creation of the Post Office User's National Council[34] with

33 Department of Trade and Industry (1999) *Post Office Reform: a world-class service for the 21st century*. London: Department of Trade and Industry.
34 POUNC.

the Consumer Council for Postal Service.[35] There is evidence to suggest that such a scheme would prove to be very successful. The Health Minister Yvette Cooper asserted that post offices assist the Department of Health:

> "Crown post offices issue leaflets called 'Health Advice for Travellers' to customers on request, check the customer's self-completion of form CM1 contained in the leaflet and issue properly completed and authorised Form E111 to entitled persons. These documents entitle the holder to free or reduced cost emergency health care in other European Economic Area states. Main post offices also display a poster and two leaflets informing the general public about entitlement to help with health costs. They distribute approximately one million leaflets per annum. Crown and other post offices pay cash refunds of prescription charges when presented with a properly completed claim form by a patient or his/her representative. Crown and other post offices distribute milk tokens under the Welfare Food Scheme on behalf of the Department. Milk token issues through post offices are to decrease over the next five years".[36]

It is contested that the above research suggests that financial consumers fail to shop around and have difficulty understanding the information. Furthermore, the research indicates that financial consumers find it increasingly difficult to identify products to match their needs. Figures indicate that at least three out of ten financial customers failed to shop around—with the highest and lowest social classes the most likely to ignore this basic step in financial self-defence. Oddly enough, the retired are less likely to comparison shop than those in full-time employment. And independent advice does not rate highly either. A greater number are likely to look at products from companies where they were already customers, than the number of people who would consider going to an Independent Financial Adviser (IFA) or other companies put together. The research has worried the FSA and could have an effect on how companies present information to prospective customers. The Guardian stated:

> "After 12 years of financial services regulation, the FSA concludes that many potential customers do not know what products are available or appropriate for their needs; are overwhelmed with information and do not know which leaflets to read; are surprised or shocked by the small print when they find out what it means; and are unaware of how to access comparative information."[37]

35 The Council.
36 H. C. Debs 10 January 2000 cols. 51–2W.
37 The Guardian: Naïve Consumers don't shop around: worrying new research highlight, the need for everyone to learn about financial products and services at school, April 22nd, 2000.

The author contends that merely producing information that complies with regulatory requirements is of little help to customers with no legal, investment or actuarial knowledge. One solution would be to teach financial matters at school.

The statutory objective of increasing consumer awareness can be linked to financial and social exclusion.[38] During the past three years the government has developed a policy towards preventing both financial and social exclusion. This policy would include the proposed amendments to the Credit Union Act 1979[39], transferred the regulatory function of the Bank of England[40] to the Financial Services Authority, commissioned reports by Social Exclusion Unit[41] into access to financial services and appointed a HM Treasury Taskforce[42] with the aim of assisting credit unions. A further way in which the government intended to combat both financial and social exclusion was by the establishment of the Social Exclusion Unit.[43] The FSA published research on financial exclusion in July 2000.[44] Part of the research asserted that in order to combat financial exclusion it would be advisable to improve financial literacy and combat psychological barriers. The research stated that by providing simple financial products through the appropriate delivery would not be sufficient to combat financial exclusion. At paragraph 7.61 the report stated:

> "There is widespread belief that financial services are irrelevant to someone on a low income. In part this is because, with many competing demands on their budget, people with low disposable incomes tend to put insurance, savings and pensions fairly low down on their list. But it is more than that. A lack of appropriate financial products and restricted access have fuelled a mistrust of financial service companies and created a belief that they have no interest in

38 The challenge of financial exclusion has been addressed by the Prime Minister, Tony Blair: "In too many areas it is hard to get banks or building societies to lend money or offer credit. Financial institutions are understandably nervous because they have had their fingers burned when people simply vanish without payment of their debts. But the result is that many people are trapped on welfare that could be making a decent living, many are trapped in a cash economy which means depending upon loan sharks charging extortionate rates of interest . . . This is simply not acceptable", H. C. Debs. 1998.

39 HM Treasury Consultation Paper (1998), *Proposed Amendments to the Credit Union Act 1979*, London: HM Treasury.

40 The transfer of the regulatory function from the Bank of England to the FSA can assist a policy against social and financial exclusion in a number of ways. For example, the FSA has undertaken detailed research into the causes of financial exclusion and is at the centre of the governments policy to assist credit unions in the United Kingdom, who are seen by the government as a part of the answer to solving these problems.

41 HM Treasury Report of Policy Action Team 14 (1999). *Access to Financial Services*, London: HM Treasury.

42 HM Treasury Taskforce Report (1999), *Credit Unions of the Future*, London: HM Treasury.

43 The Social Exclusion Unit was set up by the Government in December1997 to tackle combined and linked problems such as unemployment, poor skills, low incomes, poor housing, bad health and family breakdown. For more information see http://www.cabinet-office.gov.uk/seu/index.htm.

44 Financial Services Authority (2000), *In or Out? Financial Exclusion: a literature and research review*, London: Financial Services Authority.

meeting the needs of people on low incomes. This mistrust means that even redesigned products are likely to be viewed with a considerable degree of scepticism".[45]

A number of commentators have called for better information to be provided for financial customers that is written in "plain" English and provided by a credible unbiased source.[46] Furthermore, the research recommended that there is a need for information to build up trust and better relations between financial service providers and people who make little use of financial services. The report concluded with direct reference to the FSA's statutory objective that:

> " . . . The FSA has a remit to improve consumer information, advice and education and has consulted on how best to fulfil this function. The Authority has also embarked upon a programme of research in this area, which is wide ranging. The particular contribution of this report is, however, to focus on the needs of people who are considered financially excluded. There is, however, little research to draw upon that looks in detail at the very basic needs that this group has in terms of both knowledge and trust and, in particular, at how these needs are best met".[47]

Therefore, it is clear that the FSA needs to undertake not only more research into the ways in which it can assist more people to become more financially literate, but to actively encourage people who have little understanding of financial services to increase their knowledge. To combat the problems of financial education the Department of Education and Employment and the FSA asked a team of experts to consider ways in which people can improve their financial skills.[48] The Adult Financial Literacy Advisory Group[49], chaired by Derek Wanless, President of the Chartered Institute of Bankers, will aim to target the two million adults who have no access to or do not use financial services.[50] The aim of

45 *ibid.*
46 For more detail see National Consumer Council (1995). *Financial Services and low-income consumers.* London: National Consumer Council, National Consumer Council (1999). *Consumer concerns 1999: consumer's views of advice and information on financial services.* London: National Consumer Council, Pegram Walters Associates (1995). *Pensions publicity qualitative research: a final report.* Rep. No. PWA 3817. London: Pegram Walters Associates and Association of British Insurers (1999) Financial Exclusion—an ABI analysis of the background and issues to aid industry discussion. (Unpublished).
47 n. 23, *supra.*
48 Department of Education and Employment, Press Release, Blunkett's Advisory Group launches consultation on how to boost money skills for all, 7 April 2000.
49 Hereafter AdFlag.
50 AdFlag will give their recommendations to Mr Blunkett at the end of June 2000.

AdFlag[51] was to promote best practice in adult financial education and to ensure that these people are confident when making financial decisions. Mr Blunkett stated:

> "The financial sector has an important role in creating a more inclusive society. The one in 10 people in this country who do not have a bank account do not receive sufficient advice or help with financial planning. Those without accounts are often those without access to the Internet and 'on-line' services leaving them excluded from the knowledge economy. I am pleased that Derek Wanless has been able to bring together such an esteemed group of experts. AdFlag will help us take forward a recommendation of the Social Exclusion Unit to increase access to financial services by improving adult financial literacy. The Government is already working with financial service providers to tackle financial exclusion. For example, as announced in the Budget, we are encouraging banks to have basic bank accounts, which can be easily opened and cannot become overdrawn."

Derek Wanless added:

> "The Government, the FSA, the financial services sector and other agencies need to work together to ensure that people are equipped with the knowledge, skills and confidence to deal with their financial needs. I invite others between now and the end of April to give us their views on how we can develop new and existing initiatives to provide financial education for families in our most deprived areas. We are particularly interested in examples of successful local projects which may be capable of wider replication."[52]

In December 2000, David Blunkett welcomed the publication of the report on the ways to improve adults' financial literacy by AdFlag. The report[53], which made a plethora of recommendations that were directed at a number of organisations, made a number of specific regulations that

51 The members of AdFlag are Derek Wanless (Chair), President of the Chartered Institute of Bankers; Sue Skinner, Public Affairs Manager, Natwest Group; Mary Benwell, Director Of Learning, UFI Ltd; Mike Young, Director, British Bankers' Association; Shaun Spiers, Chief Executive Officer, Association of British Credit Unions Limited; Nicola Simpson, Director of Policy & Public Affairs, National Association of Citizens Advice Bureau; Gary Stears, Senior Economist, Association of British Insurers; Adrian Coles, Director General, Building Societies Association; Victoria Nye, Director of Education and Training, Association of Unit Trusts and Investment Funds; Paula Diggle, Head of Home Financial Services, HM Treasury; Gill Hind, Financial Services Authority; Alan Wells, Director, Basic Skills Agency; Tim Down, Divisional Manager of the DfEE Individual Learning Division.

52 *ibid.*

53 That was published on December 12th 2000. DFEE (2000), *Adult Financial Literacy Advisory Group, Report to the Secretary of State for Education and Employment*, DFEE: London.

applied to the Financial Services Authority and providers of financial services in the United Kingdom. For instance, a number of recommendations were aimed at credit unions. Credit unions are the anonymous hero of the mutual sector of financial services within the United Kingdom. Much of the work and benefits that have been provided by credit unions have received little coverage from the press and have largely gone unnoticed by the public. A credit union can be defined as a member-driven, non-profit, self-help financial organisation. The credit union is established, organised by and comprised of members of a particular group or organisation. The members then agree to save their money together and to make loans to each other at reasonable rates of interest. Donnelly and Haggett[54] contend:

> "A credit union is a co-operative which encourages its members to save regularly and facilitates the borrowing of money at lower interest rates than those normally charged by financial institutions".

Barker[55], who contended, supports this view:

> "A credit union is a financial co-operative which offers its members savings facilities and access to low cost loans. It is owned, operated and democratically controlled by its members".

Section 1(3) of the Credit Union Act 1979 sets out the objects of a credit union. These include the promotion of thrift among the members by the accumulation of their savings[56], the creation of sources of credit for the members of the credit union[57], to use these savings for the mutual benefit of the members of the credit union[58], and to train and educate the members in the wise of money and in the management of their financial affairs[59]. It is contested that credit unions are an ideal financial institution to promote financial education to communities throughout the United Kingdom. The recommendations directed at credit unions included that the Association of British Credit Unions Limited (ABCUL) should consider working in partnership with other organisations such as the Basic Skills Agency and the Financial Services Authority to develop financial education training programmes which can be made available to members of credit unions. The second recommendation was that credit unions need to establish local partnerships with other local money advice and debt counselling agencies.

54 Donnely, A. and Haggett, A. (1997), *Credit Unions in Britain A Decade of Growth*, Information Press: Oxford.
55 Barker, A. (1995), *Credit Unions Rural Initiatives Credit Unions in Rural Areas Policy and Practical Implications*, ESP: West Yorkshire.
56 Section 1(3)(a) Credit Union Act 1979.
57 Section 1(3)(b).
58 Section 1(3)(c).
59 Section 1(3)(d).

Thirdly, that credit unions need to disseminate information on member financial education programmes and promote best practice. Finally, that credit unions need to maintain and distribute amongst their membership any generic financial educational material or advice which is produced by other organisations. It is argued that whether or not credit unions will be able to contribute to financial education will largely depend upon two factors, how the Financial Services Authority will regulate credit unions[60] and how successful the government's policy will be towards credit unions[61]. It is argued that not enough has been done to encourage both schools and credit unions to work together to ensure that the next generation of financial users has been educated. This is a view supported by McCarthy (et al) who suggests:

> "The role of local schools has been underestimated as a source of young credit union members and volunteers. More Irish credit unions need to recognise the potential of schools to spread the credit union idea, through effective education and information in the classroom, credit union open days for schools, and school credit unions. As would be expected in co-operatives, education of credit union members is vital. In the Irish context, both youth and non-youth members need education on credit union issues. Schools are best positioned to ensure that all young people are 'credit union literate' before they leave school. Youth must be given sufficient education and information to understand and value credit union ethos and principles and thus to enable them to become meaningfully involved. Older members must be educated to realise that the future of the Irish credit union movement lies with its youth members".[62]

The recommendations from the AdFlag report concerning the FSA were that communication and education programmes should be structured around life stage events to help encourage people to understand financial systems. Secondly, that the Financial Services Authority should work to ensure the availability of the Adult Learning Programme is widely known. Thirdly, that the Financial Services Authority should consider ways in which voluntary groups could be made aware so that they can assist their members to have access to these types of technology and programmes. Finally, that the Financial Services Authority should work with the Basic Skills Agency and others to ensure that the Financial Services Authority

60 FSA (2000), *The Regulation of Credit Unions*, FSA: London.

61 For more detail see the HM Treasury Consultation Paper (1998), *Proposed Amendments to the Credit Union Act 1979*, HM Treasury: London, HM Treasury Report of Policy Action Team 14 (1999). *Access to Financial Services*, HM Treasury: London and HM Treasury Taskforce Report (1999), *Credit Unions of the Future*, HM Treasury: London.

62 McCarthy, O., Briscoe, R. & Ward. M. (200), *Redesigning the Credit Union for the New Millennium: A Case Study of Ireland*, The World of Co-operative Enterprise: Plunkett Foundation.

learning materials meet the needs of all consumers including those who are financially excluded and inexperienced consumers.

Section 5 Financial Services and Markets Act 2000—Consumer Protection

The third statutory objective of consumer protection lies at the centre of the FSA. The FSA will put into place mechanisms for handling complaints and redress, which will offer greater simplicity and ease of access to consumers. The FSA will introduce a single financial services ombudsman scheme and unified compensation scheme, within which there will be appropriate differentiation between different markets and types of customer. Subsection (2) of section sets out the factors that the FSA must have regard to when they consider the appropriate degree of protection. These are, inter alia, the degree of risk involved, the sophistication and experience of the parties to the transaction, the need of customers for advice and information and the general principle that consumers should take responsibility for their decisions. There is no obligation on the FSA to place particular weight on any one of these factors. The imposition of such a statutory objective on the FSA is an important step to alleviate the perception created of financial regulatory bodies by the inadequate statutory framework that was the Financial Services Act 1986.

Section 6 Financial Services and Markets Act 2000—To prevent and reduce financial crime

The final statutory objective of fighting financial crime will combine the efforts of financial regulation with those of criminal law intelligence, investigation and the prosecution agencies. The function of the FSA will be to ensure that financial institutions have systems and practices in place to protect themselves against being used as vehicles by financial criminals. This provision does not impose any duties on firms.

The number of financial scandals has plagued and reduced the reputation of financial providers' confidence in the financial system. It is therefore clear why the FSA has been charged with reducing the extent to which it is possible for those organisations it regulates to be used in connection with financial crime.[63] The FSA claim:

> "We will be doing more work across the whole financial sector to assess the effectiveness of firms' money-laundering controls and customer identification procedures".[64]

63 Financial Services Authority (2000), *"A new regulator for the new millennium"*, FSA: London.
64 *ibid.*

The Financial Services and Markets Act 2000, imposes a statutory duty on the FSA to combat and prevent financial crime. Section 6(3) of the Financial Services and Markets Act 2000 defines financial crime as including fraud, dishonesty, misconduct in or the misuse of information relating to a financial market and handling the proceeds of crime. Despite the FSA playing a major role in reducing financial crime, there are many other forms of financial crime where the FSA will play a secondary role. This will include credit card fraud for example. The FSA will work very closely with other organisations such as the police, the Serious Fraud Office and the Department of Trade and Industry. In April 2000, the FSA published a consultation document outlining its proposed role with the current provisions for money laundering.[65] Commenting upon their role in relation to money laundering the FSA stated:

> "The new role will comprise both setting and enforcing standards and will fit with the objectives set for use by the statute [Financial Services and Markets Act 2000], especially the Financial Crime Objective".[66]

Commenting upon its new role the FSA stated:

> "This new law and, in particular, the financial crime objective and the powers described, will make the FSA's role in relation to money laundering significantly different from that of its various predecessor regulatory bodies".[67]

The statutory objective to prevent and reduce financial crime is likely to be very difficult to enforce, as financial crime becomes more widespread with the increasing use of the Internet by cyber criminals.[68]

Conclusion

For the first time in the United Kingdom a financial regulatory body has been given four specific statutory objectives. These objectives are at the centre of the Financial Services Authority and are the most important provisions within the Financial Services Authority. The statutory duty of improving consumer awareness and education with regards to financial services is fundamental as more and more people enter into the financial

65 Financial Services Authority (2000), *Money Laundering: the FSA's new role*, FSA: London.
66 *ibid.*
67 n. 65, *supra.*
68 For more detail see BBC News, Internet fraud threats to global finances, May 27 1999, http://news.bbc.co.uk/hi/english/uk_politics/newsid_354000/354891.stm. For a more detailed discussion on internet regulation see Reid, A. & Ryder, N. (2000), *The Case of Richard Tomlinson: The Spy Who E-mailed me*, Information & Communications Technology Law, Vol. 9, No. 1.

service arena. Evidently, this is a much-needed step where a high percentage of the population do not understand terminology and options that are available to them within the market place. The FSA faces an uphill task to improve conditions; links with the Post Office, schools, the Department of Education and Employment, credit unions and the main providers of financial services are only the start of what will prove to be a very difficult statutory objective to maintain. Assistance needs to be sought from credit unions who have a legal obligation to educate their members under the Credit Union Act 1979.