Social Contexts and Responses to Risk Network (SCARR)

Working Paper
2005/6

Risk and Regulation in Financial Services and Communications

Peter Lunt
Sonia Livingstone
Tanika Kelay

Contact

Author:	Peter Lunt, University College London Sonia Livingstone, London School of Economics and Political Science Tanika Kelay, University College London
Address:	Department of Psychology University College London Gower Street London WC1E 6BT
EMail:	p.lunt@ucl.ac.uk
Tel.:	0207 6795401

ESRC priority network 'Social Contexts and Responses to Risk' (SCARR)
School of Social Policy, Sociology and Social Research (SSPSSR)
Cornwallis Building NE
University of Kent at Canterbury
Canterbury,
Kent CT2 7NF, UK
http://www.kent.ac.uk/scarr/

Introduction

Within the SCARR network,[i] our project is concerned with public understanding of regulatory regimes in the two areas of financial services and communications. In each of these sectors, a new, conglomerated regulator has recently been formed (the Financial Services Authority – FSA, in 2000 and the Office of Communications – Ofcom, in 2003).[ii] These regulators continue many of the traditions and procedures of earlier regulators – being focused on economic policy, concerned to regulate firms, etc. But there are also some crucial differences. Our research seeks to analyse the changing regulatory context within which the public makes decisions concerning, for our first case study, savings and investments, pensions and mortgages, and for our second case, telecommunications, information and communications technologies, and broadcasting.

These changes are evident in the shifting boundaries of responsibility between the consumer, the supplier, the regulator and government in the context of a changing regulatory regime. They are also evident discursively in the negotiated relation between "consumers" on the one hand and "citizens" on the other – a distinction we deliberately put to one side for the present by using the term "public". And they are evident in the new or expanded range of activities linking the regulators and the public, encompassing public education, public debate, other forms of public engagement and participation and a renewed discussion of "public value" (particularly relevant to the welfare aspects of financial service provision and the public service and universal service dimension of communications).

These changes are complex and are still being worked out by the regulators and stakeholders. However, they clearly involve a diversification of regulatory activities and a broadening of scope to encompass sector-wide issues beyond the level of the firm. They also seek a uniform approach to regulation across the sector rather than evolving regulation piecemeal in response to issues in specific sub-sectors, as was the case for traditional regulation. However, the FSA and Ofcom are creatures of statute, being brought into being by legislation and being bound by a range of statutory obligations. There are potential tensions, therefore, between the broader activities of the new regulators and the constraints and limitations on their activities arising from their statutory background. This may have the consequence of raising public expectations of regulation that the regulators may lack the power, resources or mandate to achieve (Skidmore, Miller, & Chapman, 2003).

We summarise the underlying regulatory changes thus:

Former Regulatory Regime	Emerging Regulatory Regime
Traditional	Post-Traditional
Hard	Soft
Direct	Indirect
Rulebook	Oriented to self-regulation

Table 1

Our Approach

As part of the first phase of our project, we are undertaking an analysis of the range of activities of the regulators, focusing on their relations to stakeholders and the public. Our method is to examine processes of public engagement and consultation, the legislative background to the statutory obligations of the regulator and particular decisions and practices of the regulators, all by means of an analysis of relevant policy documents, together with a survey of media coverage and a series of key actor interviews with regulators and other stakeholders.

In the second phase, we will undertake an empirical study of the public's understanding of regulation in relation to the financial services and communications sectors. We interpret 'public understanding' broadly, not merely to include public awareness of regulatory policies and problems (both FSA and Ofcom have ongoing research programs to monitor public awareness of their activities) but also to include broader questions of the public understanding of regulation and its relation to the risks that people face in their everyday lives.

This paper presents our initial analysis of the first phase of research, focusing upon the financial services regulator, the Financial Services Authority (FSA). We ask how the FSA's approach to risk fits with social scientific theories of risk, and why it takes them in the direction of increased public engagement. This paper offers only a partial account of the FSA's approach to risk, focusing on two selected speeches given in the early days when the regulator first set out its task to the wider policy community – one by the Managing Director and Head of Financial Supervision at the FSA, and secondly a speech given by the then Director of Consumer Relations at the FSA.

- Speech by Michael Foot, Managing Director and Head of Financial Supervision, FSA - entitled *Our New Approach to Risk-Based Regulation – What Will be Different for Firms* (Foot, December 2000).
- Speech by Christine Furnish, Director of Consumer Relations, FSA (since replaced by Anna Bradley in 2002) – entitled *Getting a Fair Deal for Consumers* (Farnish, December 2000).

In the new regulatory climate, the regulators seek to be transparent and informative in their communications with interested parties (particularly firms). Consumer representatives, similarly, seek to engage with regulators in publicly accountable forums.

The analysis we present here is not a detailed discourse analysis but an account of the arguments deployed in the speeches. The analysis is guided by the following research questions:

- What is the FSA's approach to risk analysis and assessment?
- How does the FSA's risk strategy lead it to interact with commercial and consumer representatives?
- What implications are there for consumer education, empowerment and protection?
- How far and in what ways does the FSA's risk strategy meet public expectations?

Table 2

The FSA's Approach to Risk Analysis and Assessment

Delivered 12 months before the establishment of the FSA, but 6 months after Royal Assent was granted to the Financial Services and Markets Act, 2000, the opening passage of Foot’s (2000) speech maps out the FSA’s general approach to risk and regulation thus:

- *“To achieve a more consistent form of regulation, and a more cost effective allocation of our finite resources across the whole range of financial services*” (Foot, 2000: Paragraph 3)

- In contrast to the previous (industry specific) approach to regulation, which was constrained by the boundaries of particular industries, the FSA can look across most of the financial services sector.

- Another important general operating principle is the intention to be more proactive than traditional regulators – “*to warn off and head off things before the event*” (Foot, 2000: Paragraph 3)

- The focus of activities is intended to be more “thematic”, with “*a reduction of resources we deploy on day to day supervision of firms in order that we can release people to spend more time on thematic and industry wide work*” (Foot, 2000: Paragraph 3)

In this way, lighter touch regulation is aimed at firms across the whole sector in order that they work in a proactive and thematic manner.

Table 3

These, then, are the general operating principles to be brought to bear on meeting the statutory objectives of the Financial Services and Markets Act, 2000. Foot (2000: Paragraph 4) summarizes these as:

- Market confidence
- Public understanding

- Consumer protection
- Reduction of financial crime

Table 4

Hence, the FSA approach to risk analysis identifies, weighs and mitigates against risks to the achievement of these objectives. However, Foot (2000) argues that it should not be presumed that the aim of regulation is to reduce risk altogether, a point much discussed in the literature on regulation and risk. Hence the FSA adopts what Foot (2000) admits is a specialized use of the term 'risk':

> *"That [risk] is nothing to do with commercial risk taking, which of course is a key aspect of the financial sector's activities. It is not our role to restrict appropriate risk taking in authorized firms, our model is concerned with the risk that the FSA will not achieve its statutory objectives"* (Foot, 2000: Paragraph 4)

Following this approach, risk analysis involves assessing and prioritising all the possible threats to the FSA achieving its objectives, this guiding the priorities for resource allocation and strategy. Various risks are identified and linked to the above statutory objectives (Paragraph 5):

- Risk to market confidence
    - The financial collapse of a significant number of firms
    - A significant market malfunction
- Risk to public understanding
    - Inadequate general financial literacy
    - Inadequate understanding of particular goods and services
- Risk to consumer protection
    - Resulting from Misconduct/mismanagement of institutions (e.g. failure to control sales forces)
    - Resulting from financial crime or market abuse

- Risks to the reduction of financial crime
    - Fraud
    - Money laundering

Table 5

Next, Foot (2000: Paragraph 6) identifies three likely ‘sources’ of risk to the fulfilment of the FSA’s statutory objectives, denoting, firstly how the regulator characterises risks; rather than choosing a narrow form of risk characterisation, the FSA recognise that risks emanate from several ‘avenues’. Secondly, by embracing a broad form of risk characterisation the FSA demonstrate themselves as willing to acknowledge the complexities and challenges posed to them in terms of assessing and managing such risks.

- The external environment
- Consumer and industry wide risks
    - E-commerce
    - Specific problems with particular products
    - Vulnerable groups of consumers
- Individual financial institutions

Table 6

The importance and priority of each risk is to be determined through an assessment of:

- The impact on the FSA’s objectives, should the risk occur
- The probability of the risk occurring
- An integration of these impact and probability analyses

Much of the detail in Foot’s speech, however, is focused on how these activities of the regulator will impact on firms and the questions of how broader, sector wide issues and externalities are dealt with is less clearly specified. Impact analysis is oriented to the statutory objective of maintaining market confidence. , for which the FSA conducts risk assessment, (referred to as "impact analysis") for the roughly 11,000 firms in the financial services sector, as well as for specific cross-sector risks (e.g. credit card risk). "Impact analysis" involves assessing the potential scale of the risk by measuring market share, the number of consumers potentially affected, the resources (mainly financial reserves) of the firm available to cope with the consequences, and so forth.[iii] On the basis of this analysis, firms are to be categorised as high, medium or low impact.

Each firm (again the implication in the speech is that this exercise can in principle be applied to products or sector wide developments) is rated for the probability that risks may occur. Probabilities are calculated using a basket of measures of the practices of firms, and in making judgments about the management processes of firms, the FSA's other statutory objectives also become salient. For example, the managerial competence of the firms is considered (a consumer protection issue), together with issues of control and communication at the point of sale (related to public understanding) and issues of product failure (relevant to consumer protection and to financial crime).

Foot (2000: Paragraph 9) divides the factors that potentially increase risk in financial service firms into business risks and control risks:

- Business risks
  - Market, credit operation, legal risks, financial soundness, strategy and measures based on customer's products and services
- Control risks
  - Marketing, selling and advice practices, systems and controls, organizational factors including measurements of quality of staff and board

Table 7

Lastly, aggregate statistics are then produced that combine impact and probability classifications to identify firms that are high to medium impact and high to medium probability, and this provides the basis for the allocation of regulatory resources. Thus the FSA adopt a traditional approach to risk assessment whereby the measures are taken of the potential impact of risks and the probability of occurrence of risks so that risky firms and products can be identified in order to prioritise regulatory activity to secure their objectives.

These analyses are used to shape the relation between firms and regulators. While not intended for publication, they form the basis of a dialogue between the regulator and firms. Firms or products that score high on impact and probability scores are more likely to be subject to traditional modes of regulation, inspection and auditing. Low to medium risk firms and products are expected take steps to deal with identified business and control risks as part of a system of self-regulation.

These analyses are also used to guide the allocation of regulatory resources over and above specific regulatory activities aimed at particular firms. As Foot (2000) notes, the new regulatory regime includes a shift in emphasis away from firm-specific regulatory activities towards *"consumer orientated and industry wide activities"* (Foot, 2000: Paragraph 14), for reasons of focus and efficiency (this shift being recognised by statute).[iv] For example, it is considered preferable to improve the information campaigns accompanying product development than to deal with claims of mis-selling later (Foot, 2000). Consequently, an important distinction is drawn between compliance rules, which apply to all firms regulated by FSA, and assessing engagement in the broader regulatory activities of authorization, base-line monitoring, sectoral review/thematic work, monitoring of specific institutions to mitigate specific risks, and response to crystallization/escalation of specific risks (Paragraph 18).

Overall, these changes in regulatory practice aim to provide incentives for self-regulation (including encouraging firms to implement consumer-oriented policies and to identify risks before they escalate into crises) while traditional regulatory activities are targeted at potentially high risk firms and market developments (and at developing technically sophisticated means of monitoring and analyzing indicators of cross-sector risk to the FSA's statutory objectives). From its inception, the regulator was aiming to provide an incentive to firms to establish a relationship with them based on self-regulation. The incentive being a relative freedom from traditional modes of rule-book regulation with the exception of basic codes of conduct (e.g. fair dealing and truthful communications) which apply uniformly across financial services.

The FSA's Consumer Policy

At the same time as Foot's speech setting out the FSA's approach to risk, Christine Farnish, the FSA's Director of Consumer Relations, gave a speech detailing the FSA's view of its statutory objectives regarding consumer relations. Entitled *Getting a Fair Deal for Consumers* (2000), the speech begins with a reminder of the principle that, since risk cannot be entirely excluded from the financial services industry, regulation should not aim for a zero risk environment.

The FSA's approach is governed by the perceived need to balance a fair deal for consumers against the potential burden on industry (including the financial and regulatory burden). Hence Farnish (2000) argues that the regulator should seek to limit the impact on consumers of risks arising from the management and control procedures of firms by requiring firms to manage and facilitate public understanding and consumer protection, but *"without placing such an onerous burden on providers that innovation and competition are stifled"* (Paragraph 2). Further, she positions consumer awareness and consumer protection as complementary, so that in its consumer policy, the FSA seeks to promote public understanding, but complemented by appropriate consumer protection measures for such events as pose an immediate, widespread or potentially costly threat to consumers (and thereby to the FSA's key statutory objective of market confidence). As she puts it,

> *"prevention is better than cure, and in our view having better informed, more financially literate, consumers is the best way to achieve an environment in which normal market mechanisms can work to drive up quality and value"* (Farnish, 2000: Paragraph 2).

This new importance given to consumer protection and public understanding is grounded in an analysis of successive crises in consumer financial markets. These, it is claimed by the FSA have resulted from confusion on the part of consumers as well as from external threats to markets or from poor products. Consumer confusion, in turn, is seen to derive from information asymmetries between firms and consumers – specifically, a lack of timely information, consumers' perception of the relation between their own and the firm's responsibility and, a later addition to the FSA's agenda, a broader conception of the public's understanding (or lack thereof) of the risks inherent in financial service products. As we will see, this emphasis on risk assessment and the focus on information asymmetry speaks to a traditional approach to expert risk assessment that stands in a complex relation to much of the activities of the regulator that seem more oriented towards strategies related to prevention or precaution.

While Farnish (2000: Paragraph 3) acknowledges the difficulties often raised by industry representatives (that financial service products are complex, the potentially high costs of meeting unfettered objectives in public understanding), she outlines the FSA's mixed strategy as including:

- Long term promotion of public understanding (to facilitate effective consumer decision-making)
- Intervention in crises as they occur (e.g. the pensions crisis, mortgage endowment mis-selling)
- A focus on provision of information and management of the point of sale (by the regulator, the industry and by consumer representative bodies) with a particular emphasis on emerging products (e.g. stakeholder pensions)

Table 8

Responding to Crisis

In the years immediately preceding the formation of the FSA there were a number of financial crises. These are often cited in speeches and policy documents, both because they illustrate the limitations of traditional regulation and because, by giving prominence to the kinds of financial risks facing consumers, they illustrate the FSA's new approach (engaging in consultations and discussions to help firms interpret their obligations, developing policy tools to assess, evaluate and manage risks in financial services, bringing issues to the attention of the consumer and enhancing public understanding).

Farnish (2000) illustrates the FSA's approach to consumer policy (above) with an account of the response to the emerging crisis over endowment mortgages.[v] From 2000-2002, the FSA set itself the aim of increasing consumer awareness of the problem (while avoiding contributing to a potential consumer - and media - panic that might lead consumers to cash in their endowment policies on unfavourable terms).[vi]

This aim relied heavily on the expectation that, given widespread adverse publicity and growing consumer awareness, it would be in the interests of firms to resolve issues around potential mis-selling quickly and fairly.

Yet, as Farnish (2000) herself acknowledges, critics have argued that the FSA should, instead, have required a wholesale review of all mortgage endowment sales, particularly since companies may have been slow in making consumers aware of their financial position and rights, partly by using legalistic, defensive tactics in response to consumers' complaints. Moreover, it seems that firms have not (yet) resolved the problems as hoped, perhaps optimistically, by the FSA. Consumer representatives continue actively to campaign on these issues and, more recently, FSA policy has shifted towards consumer compensation.[vii] As Farnish (2000) concludes ruefully,

> *"Our work on endowments – like the pensions review – has exposed the industry's customer relations and communications to the harsh glare of publicity, and I am afraid to say that those customer relations services in many firms have been found wanting"* (Farnish, 2000: Paragraph 5).

Have lessons been learned? The FSA hopes that firms have learned that improvements are required in customer relations (e.g. providing regular feedback on the performance of investments) and in complaint handling by firms (Farnish, 2000: Paragraph 6). The FSA too has reviewed its own actions, introducing new guidelines on fair and efficient complaint handling, together with a requirement on firms to submit regular returns on volumes and types of consumer complaints received to them. However, as befits their consumer policy, the FSA is also concerned to further improve consumer awareness and understanding of the potential costs and benefits of financial service products. Their work towards this goal includes (Paragraphs 7-9):

- Research on awareness and public understanding (which consistently demonstrates deficits and failures in current provision of information)
- The production of comparative tables within particular markets as an aid to consumer decision-making
- A review of documents and other forms of contact with consumers
- Establishing a task force on the use of past performance data in financial service advertising

- Promoting the teaching of financial literacy in the national curriculum (and developing appropriate teaching resources)
- Developing a web-based advice services (e.g. choosing financial service products, stakeholder pension decision trees, etc)

Table 9

Of course, many of the regulator's activities are not oriented towards crisis, being precisely aimed at developing incremental policies to prevent the development of crises. Hence the FSA's work summarised above (though we note that, while its statutory regulations require risk to be analysed according to threats to the regulator meeting its objectives, crises erupt from the risks in financial products and services and must be analysed as such).

Undoubtedly, preventing crisis represents a significant challenge to the regulator. However, in the domains of financial services (and perhaps even more so in the case in communications), 'crisis' is to be understood not so much as the potential catastrophic emergence of a specific risk event (as in the domains of chemical hazard or food risks, for example) but rather as the gradual emergence of a preventable problem. Such a crisis may fall short of the criteria for market failure but nonetheless have an insidious effect on consumers, which may in turn affect market confidence. Hence there is an indeterminacy between the language of risk assessment developed in Foot's speech and the language of prevention or precaution in that of Farnish. Consequently, as a whole, the FSA's risk policy balances commercial and consumer interest in order to address issues of management, control and public relations on the commercial side and public awareness, understanding and decision making on the consumer side. We have seen that this issue plays out in the complex relations between crisis response and statutory obligations in the regulators.

In considering whether the FSA's strategy (Table 9) is sufficient and likely to be effective, a pertinent question given the critical scrutiny it is under from both firms and consumer representatives, it is worth identifying the key features of the crisis over mortgage endowment mis-selling. What, in short, does the case of mortgage endowment mis-selling reveal about risks in financial services and about the relation between the regulator and the public? We can identify a range of consumer issues facing all concerned – the regulator, firms and consumers themselves:

- The problem was sector-wide, establishing the need for monitoring the whole sector rather than periodic checks on particular firms[viii]
- Multiple factors combined to produce a complex problem (e.g. the projection and past performance of products, issues to do with incentive structures, disclosure, public understanding, managing the point of sale)[ix]
- The problem originated at a time of relatively high (and volatile) interest rates, these providing a poor basis for long-term projections
- The issue took a long time to emerge, building up slowly to an apparently unstoppable crisis of considerable proportions
- It has been difficult to achieve a consensual view of the causes and extent of the financial detriment to consumers.
- It is possible that suppliers and consumers had systematically different interpretations of the risks inherent in the products[x]
- There has been much coverage of the issue in the media, both raising awareness but also encouraging consumer panic
- Consumer representative bodies have made the issue a campaigning issue, raising key issues of consumer protection and awareness
- Consumers faced some considerable 'financial literacy' challenges in terms of making appropriate risk assessments and future projections
- Consumers required considerable scepticism at the point of sale, if they were to assess the clarity, fairness and truthfulness of information[xi]
- With hindsight, consumers appeared to trust firms rather than act as critical consumers

Table 10

It is open to question whether the FSA's work plan for consumer policy is sufficient to cope with these challenges.

Theorising the FSA's Approach to Risk Management

Mapping the risk management strategies of the regulator as they relate to the public is no easy task. Across their range of activities, the FSA adopts a varied approach to risk management, from the direct regulation of firms and products classified as high risk to seeking to increase financial literacy in the longer term, from the traditional, rule-book auditing of firms to more diffuse institutional practices oriented towards the public (education, information provision, advice, research, representation). From auditing firms and collecting data on the performance of products and the operating practices of firms to encouraging self-regulation in firms and through trades associations. From engaging directly with the public in public education and the provision of generic advice aiming to enhance public understanding to working with consumer representatives with specific campaign objectives.

Thus far we have articulated the FSA's official view – that risk assessment should be based upon the achievement of statutory objectives, combining the focused regulation of firms and products, reactions to crisis and the longer term promotion of market conditions that reduce risk. We now seek more systematically to consider this official view in relation to academic research on risk as part of our critical analysis of the changing relationship between regulators and the public. To take the analysis forward, we draw on Ortwin Renn's paper, *Risks and Society* (Renn, 2000), as this offers a framework for analysing the various dimensions of risk evident both in the public statements of risk policy (e.g. FSA speeches, as outlined earlier) and the particular case of the FSA's intervention over the crisis in mortgage endowments.

Renn (2000) argues that there is a potential conflict between risks as assessed by experts or regulators and risk perception by the public. Consequently, policy makers face the following dilemma: taking a lead from the public might result in unacceptable costs to the industry (and regulator), but taking a lead from expert/regulatory analysis might lose public support and increase public apathy. Such a polarisation of perspectives is symptomatic of the "legitimation crisis", in Habermas' terms (1988, 1991) of late modernity, for it is fuelled by problems of communication between representatives of the system world and the life world, these in term stemming from a crisis over the normative grounds for legitimation. Though not without his critics(Calhoun, 1993; Outhwaite, 1994) Habermas advocates a rapprochement based on a combination of rational decision making procedures with public engagement in a context free of the strong interests of the administration as well as personal interests. Translated into policy terms, this suggests the value of an attempt to mediate – under carefully managed conditions - between policy, commerce and consumers. How shall this be achieved?

As we have seen from the FSA case, the key policy imperative is to identify a sound basis for understanding risk (i.e. risk assessment, evaluation and management) in order to prioritise the allocation of regulatory resources so as to prevent risks and/or ameliorate their consequences. In seeking a practical resolution of problems arising from the complexity of issues surrounding risk analysis Renn (2000) distinguishes between risk assessment, risk evaluation and risk management:

- Risk
    - The possibility that human actions or natural events lead to consequences that affect aspects of what humans value
- Risk assessment
    - The scientific process of identifying unwanted consequences (and their causes) and calculating their probabilities and magnitude
- Risk evaluation
    - The process of determining the acceptability of a given risk
- Risk management
    - The process of reducing risks to a level deemed tolerable by society and assuring control, monitoring and public communication

Table 11

Working primarily within the domain of natural hazards, Renn (2000) argues that multiple factors now increase the potential impact and probability of negative consequences. These include increasing populations and population densities; increase in social risk and decrease in technical risks; coupling of risk sources; increased emphasis on non-fatal health risks; and so forth. These features, which Renn (2000) suggests are typical of the risks confronting contemporary society, mark an important departure from the traditional characterization of hazardous (e.g. chemical) risks – in terms of potentially life threatening, technical/organic problems, with identifiable single causes and localized impact. We can translate Renn's (2000) features of contemporary risks (rather than hazards) into the language of financial services as follows:

- Increasing exposure to financial service products and their associated risks, because of -
    - Increasing personal wealth
    - Shifts in welfare provision to more personal funding of welfare
- Social risks in financial services
    - Social comparison
    - Knowledge gaps in public understanding
    - Mis-selling and communication problems
    - Product base for low income groups
    - Relationship breakdown
- Coupling of risk sources
    - Diversification of product exposure (portfolio effects)
    - Interaction between externalities and the underlying risks of investments
    - Interaction between selling practices and consumer understanding
- Non-extreme financial and welfare risks
    - Values and lifestyle threats
    - Level of welfare provision
- Global markets
    - Global economic risk
- Transfer of risky financial service products to vulnerable groups
- Longer term cycles and trends
    - Changes in welfare provision
    - Low interest rates

- Aging
- Relationship breakdown
- Growth of expectations
- Changing social values (individualization)

Table 12

If we were discussing the domain of hazardous events, these factors would not traditionally be considered directly within a risk assessment but rather they would represent the background conditions against which risk assessment, evaluation and management take place. Yet when faced with non-hazardous forms of risk, which are more diffuse and less acute, it might be argued that these factors are crucial to the assessment of risk itself. For example, in the endowment mortgage crisis, it has never been suggested that there was a problem with the actuarial work on projections. Rather, the mis-selling problem arose from the choice of parameters framing the explanation of these projections to consumers at the point of sale, compounded by slow reactions from firms in updating projections of investment performance. In other words, a broader, consumer-oriented analysis of risks should be included in risk assessment (where this is currently driven by actuarial assessments).

Hence, while for Renn (2000), risk evaluation bridges risk assessment and risk management, taking the results from assessment and translating them into goals for the latter (see Table 12),[xii] we suggest that risk evaluation (at the point of sale) interacts with the management of risk (by firms and regulators), thereby both feeding into risk assessment. Although it is a moot point as to whether the factors we identify as combining to create risks in financial services (outside of the risks arising exclusively from changing economic circumstances) are best understood as components of risk assessment or risk evaluation (in Renn's terms). Irrespective of this, for financial services a broader set of challenges lie ahead for risk assessment/evaluation. These include:

- Consideration of psychological, social and cultural detriment
- A more integrated approach to consumer risks (across products)
- An analysis of the potential impacts on diverse (stratified) consumers
- The development of tools to describe underlying risks (e.g. 'traffic

lights')

- The transfer of expertise in risk assessment to the presentation of risks at the point of sale
- Development of forgiving technologies/products to provide access to variations in investment vehicles and relate these to the presentation of product risks

Table 13

Renn (2000) proposes a traffic light system in which a green light is given if all risk evaluation factors are set at a relatively low level; if a few parameters are intermediate or high, a yellow light would be allocated, and if more factors register as highly likely, then the risk is intolerable (red light). For the consumer in this proposed regime, the product might be given yellow or red as a result of high ratings on a broad range of risk factors including issues of risk evaluation even though the traditional measures of impact and probability would have suggested a green light. For example, in the mortgage endowment crisis, the point of sale information was based on a narrow, actuarial concept of risk, but the consumer most likely understood the information presented very differently, assuming a much broader assessment of relevant risk parameters had been made, with a different consequent risk evaluation. Indeed, had this broader range of factors been considered, a yellow or red classification would have applied.[xiii]

In short, and echoing Renn's (2000) legitimation problem, it seems that under conditions of uncertainty, the potential for miscommunication is rife between experts (who favour the language of actuarial analysis) and publics (who speak the language of personal risks). What are the implications for risk management? Renn (2000) argues for a distinction between risks that are well served by traditional, technical, narrow risk assessment and risks that require the adoption of precaution-based management. In the latter case, regulation may be required even when no risk is indicated by traditional measures of impact and probability. This may apply either when the consequences of a decision are uncertain or, although the consequence of a decision are certain, there are different interpretations of the potential outcome – in short, when the outcome is ambiguous (and so requiring 'discursive risk management' to reduce misunderstanding). If we follow this line of argument, one may suggest that the mortgage endowment selling crisis was an example of uncertainty (in terms of long-term projections). But, where Renn (2000) sees ambiguity arising from differing interpretations of the outcome, we suggest instead that this case revealed ambiguity of a different kind, for what was critical were the differing interpretations (between financial advisor/seller and consumer) of what was on offer in terms of risk analysis and risk evaluation. The issue is best understood as a meta-cognitive one – where there was miscommunication about the nature of the risk model underlying illustrations of product performance given to the consumer. From the firms' perspective such illustrations are reasonable in that they show what can be known with certainty about the relation between performance of the product and interest rates and uncertainties (about long term interest rates) are handled as assumptions to the illustration. From the consumer perspective, the illustration was, arguably, not understood as a simulation of the known performance characteristics of the product but as projections of the potential performance of the product. In other words the consumer does not recognise the distinction between uncertainty and certainty and it maybe that they assumed that the illustration included an assessment of the probability of the values that formed parameters to the illustration. It is open to question whether consumers can be taken to understand the distinction between the function and the parameters in such an illustration. It is also a moot point as to how clearly the advisors at the point of sale were aware of this fundamental difference in understanding between their firms and the consumer. The basis of the miscommunication on this reading does not reside in the expression of different modes of reasoning (instrumental and social logics) as suggested in Renn's Habermasian background. Instead what was in play was something much more specific about the understanding of the underlying risk model structuring the illustration of projections at the point of sale.

'Discursive risk management' (or more investment in risk communication) should, on Renn's view, be extended to embrace all aspects of risk as they relate to the interface with consumers and stakeholders. If this does not occur, and if the basis of risk assessment remains narrowly technical, we may assume that the broader risks accompanying product purchase will be fleshed out by the advisor and the consumer in the course of their communicative interaction: and herein lies the potential for (unaccountable) mis-selling, along with other possible consequences of miscommunication between firm and consumer. The FSA's response has been to develop better control procedures in firms and to enhance public understanding of risk. Yet we have suggested that this may be ineffective, unless the underlying miscommunication in terms of (mis)understandings about risk assessment and risk evaluation, particularly but not solely, at the point of sale are addressed.

The Precautionary Principle, Regulation and Risk Management

Our discussion of the relation between academic risk research on risk and the strategies of the new regulators suggests a broader context of social and cultural changes, with implications for the analysis of risk and communication.

> "*We live in an era where science and technology are advancing at an ever-increasing rate…many people have anxieties about the pace of change and the potential for major adverse consequences if new developments are not appropriately controlled - if science has greater power to do good, it also has greater power to do harm*" (Mobile Phones and Health: The Independent Expert Group on Mobile Phones: Stewart, 2000: pp 109)

Risk management appears to be at a turning point. Owing to the rapid growth of the "information society", individuals are becoming better informed, they face more choices and have greater access to information. Further, given the publicity accorded to a series of crises of trust in government and industry, it is likely that an increasingly cognisant public will become more critical of experts, particularly when decisions affect their day-to-day lives.

How is risk management (in its generic sense) adapting? There is evidence to suggest a shift away from traditional, rule-book forms of risk management (characterised by a lack of flexibility, a dichotomy between experts and the public, and the expectation of one-way communication from the former to the latter) towards more interactive or dialogic forms of risk management (characterised by a more forward-looking approach, including public consultation and participation in public-sector decision-making processes).

Although firms representing high risks will continue to receive close attention of a traditional kind from the regulator, in what follows we pursue the idea that the "lighter touch" approach of such bodies as FSA and Ofcom, particularly in encouraging self-regulation, overlaps with precautionary risk management. This lighter-touch includes a broad range of policy tools designed to intervene in processes that are vague, social and which spill over into consumer relations, public awareness, participation and education. This may be called "soft regulation", as it rests on an active engagement between regulator, industry and a diverse range of key actors representing stakeholder interests.

What is meant by precautionary risk management and why is it important? The Precautionary Principle is adopted by lawyers, bureaucrats and even some philosophers who argue that, when faced with risks with uncertain and potentially catastrophic downsides, it is always better to err on the side of caution.

> "*The precautionary principle is not merely confined to the spheres of health and science. In today's risk-averse world, just about every sphere of life, from business and politics to parenting and health, is increasingly organised around the notion that it is better to be safe than sorry*" (Guldberg, 2003).

In such circumstances, the burden of proof is said to lie with those who downplay the risk of disaster, rather than with those who argue that the risks are real, even if they might be quite small (Runciman, 2004). Hence, the Precautionary Principle:

> "*…should be considered within a structured approach to the analysis of risk which comprises three elements: risk assessment, risk management, risk communication. The precautionary principle is particularly relevant to the management of risk*" (EC Communication on the Precautionary Principle: European Union: 2000: 3).

Traditional risk-related applications of the Precautionary Principle have included the regulation of potentially risky or hazardous occurrences, chemical risks, environmental protection, sustainability and environmental policy, with scientific uncertainty being the key driver in adopting a precautionary approach.[xiv] Indeed, adoption of the Precautionary Principle has become a key feature of contemporary governance:

> "*In the UK, the outcomes of the official, high-profile inquiries into BSE and mobile phones at the end of the 1990s illustrate that the precautionary principle became a central tenet of New Labour environmental and health policy*" (Guldberg, 2003).

The Precautionary Principle was also invoked in Blair's defence of the invasion of Iraq, when he discussed the public's opposition to the war:

> “*Their argument is one I understand totally. It is that Iraq posed no direct, immediate threat to Britain; and that Iraq's WMD [programme] . . . was not serious enough to warrant war, certainly not without a specific UN resolution mandating military action. And they argue: Saddam could, in any event, be contained*” (Excerpt from Tony Blair’s Sedgefield constituency speech, in Runciman, 2004).

Thus he does not seek to suggest that one position is more valid than the other; rather he positions the government as erring on the side of caution when faced with an ambiguous threat.

Uses of the Precautionary Principle in Financial Services Regulation

The Precautionary Principle In Action: A Handbook (Tickner, Raffensperger, & Myers, 1999) lists five components of a precautionary approach.

- Taking precautionary action before scientific certainty of cause and effect
- Setting goals
- Seeking out and evaluating alternatives
- Shifting burdens of proof
- Developing more democratic and thorough decision-making criteria and methods

Table 14

In the case of financial responsibility, Tickner, Raffensperger, & Myers (1999) state that:

> “*Regulations alone are not likely to spur precautionary behaviour on the part of governments or those who are proponents of a questionable activity. However, market incentives, such as requiring a bond for the worst possible consequences of an activity or liability for damages, will encourage companies*

> *to think about how to prevent impacts*". (Tickner, Raffensperger, & Myers, 1999: pp. 4).

Furthermore, they state that there is a "*duty to monitor, understand, investigate, inform, and act. Under a precautionary decision-making scheme, those undertaking potentially harmful activities would be required to routinely monitor their impacts (with possible third party verification), inform the public and authorities when a potential impact is found, and act upon that knowledge. Ignorance and uncertainty are no longer excuses for postponing actions to prevent harm*" (Tickner, Raffensperger, & Myers, 1999: pp. 4-5).

Sunstein (2003) identifies four different versions of the Precautionary Principle, capturing both weak and strong applications.

- *Nonpreclusion Precautionary Principle*: Regulation should not be precluded by the absence of scientific uncertainty about activities that pose a risk of substantial harm.

- *Margin of Safety Precautionary Principle*: Regulation should include a margin of safety, limiting activities below the level at which adverse effects have not been found or predicted.

- *Best Available Technology Precautionary Principle*: Best available technology requirements should be imposed on activities that pose an uncertain potential to create substantial harm, unless those in favour of those activities can show that they present no appreciable risk.

- *Prohibitory Precautionary Principle*: Prohibitions should be imposed on activities that have an uncertain potential to impose substantial harm, unless those in favour of those activities can show that they present no appreciable risk (Sunstein, 2003)

Table 15

We suggest that the new regulators, FSA and Ofcom, follow a weak adoption of the Precautionary Principle. This is seen in Foot's speech (2000):

> *"We will be guided by the legislation; we have principles of good regulation set out in the statute, we will be placing increased emphasis on consumer orientated or industry wide activities as alternatives to institution specific activities, and that is because we believe that they're very often more efficient and more effective in responding to many risks. So for example, a consumer information campaign which alerted consumers to the risks and returns inherent in a new product might help from the outset to prevent mis-selling, it would be much more costly to leave it until later to put right"*. Foot, 2000: Paragraph 17).

The FSA therefore face such issues as, what are the more or less risky alternatives, and who should take responsibility for them?[xv] They must also ask, what can be expected as a 'rational' response from the consumers of financial service products? And they must ensure provision for adequate margins of safety in all decision-making. In asking such questions, the Precautionary Principle can be seen to undergo a shift from a formal concept in risk management theory to a principle to which citizen-consumers are now expected to subscribe as part of everyday life.[xvi] For example, Farnish (2000) discusses how the aim of the FSA is to, "*ensure that consumers are provided with the information they need, not only to understand what's going on, but also to help them make informed decisions about what they should do…*" (Farnish, 2000: Paragraph 13). She refers to learning from past mistakes, referring to how the FSA responded to mortgage endowments: "*Our aim was to ensure that consumers were well informed, are prompted to take appropriate action, but weren't panicked by media scare stories*" (Farnish, 2000: Paragraph 14).

Achieving such goals remains a difficult task, leading one to wonder how, when balancing stakeholder interests and seeking risk assessment in the financial services and communications sectors, do regulators determine what levels of risk are acceptable? How are thresholds and levels of acceptability defined, and by whom? It seems that in the new culture of regulation, the Precautionary Principle represents not just a mechanism for dealing with uncertainty. It also offers an approach for dealing with less tangible forms of risks and conflicting stakeholder interests. In these contexts, social/cultural uncertainty is substituted for scientific uncertainty.

Indeed, adoption of the Precautionary Principle has not been without its critics. Sunstein (2004), in opposing the widespread implementation of the Precautionary Principle by European regulators, claims the principle to be incoherent, since "it purports to give guidance, but it fails to do so, because it condemns the very steps that it requires" (Sunstein, 2004: pp. 2), since precautions always give rise to new risks. Further, he argues that it is open to considerable cross-cultural variation in its application, rendering it inconsistent. And last, he is concerned that, since the availability heuristic (among other biases; e.g. Slovic, 1987) influences people's perceptions of risks, achieving positive results from adopting a precautionary approach is near impossible as some citizens may be more predisposed to focus on certain risks rather than others (Sunstein, 2004: pp. 29), leading us to question how regulators can "ensure" that citizens and consumers take appropriate action in response to potential risks.

Emergence of a "Looser" Form of Risk Management

Notwithstanding these and other criticisms, the new culture of regulation is adopting the Precautionary Principle as a decision making tool, particularly in promoting engagement with stakeholders, participatory dialogue with the public and the provision of information to make the public "better informed". This use of the Precautionary Principle has developed hand-in-hand with the transition from previous "hard" forms of risk management and regulation towards "soft" regulation. Arguably it has provided a way forward for advocates of soft regulation concerned that more stringent forms of regulation are no longer sustainable, given privatisation, globalisation, a distrusting public, and so forth. In this new culture, "communication" is central to the new, "looser" form of risk management.

In parallel, it is noteworthy that the risk management techniques employed within the new culture of regulation reflect a significant transition within academic risk research. Traditional risk theorists allied to the psychometric paradigm (e.g. Slovic, 1987) emphasised the gap between lay and expert knowledge, leading the way to an easy characterisation of the public as foolish or irrational. Research in this tradition has thus sought to improve policy-making by increasing public understanding of risk and improving the communication of risk information between the public, experts and decision makers (Slovic, 1987). How, they have asked, can expert's knowledge be disseminated to the broader public so as to close the growing knowledge-gap between them?

Otway and Wynne (1989) stated that the general paradigm of risk communication has focussed upon unexamined and unarticulated assumptions about who is communicating what, to whom, and in what context, resulting in an overly-simple approach to risk communication issues (Pidgeon, 1997). As Slovic (1987) has observed, traditional risk communication efforts have failed to curtail major conflicts or reduce much of the dissatisfaction with risk management, this being because of a failure to recognise the social and contextual complexities associated with risk and risk management (Slovic, 1997). Indeed, it has been argued that risk communication is “at a crossroads” (Otway & Wynne, 1989).

More recent research has stressed the importance of two-way communication and public participation in mutual learning and decision-making, thereby increasing trust (e.g. Lofstedt, 1996). Thus, modern approaches stress the importance of factoring in public reactions to risk and of genuine two-way interaction between experts and laity in order to reach a common view on risk. While our present context includes there are many more social actors than “experts” and “lay people”, it seems that the new approach to risk management adopted by the FSA and Ofcom reflects this shift in risk literature, providing a “working example” of two-way dialogue and public participation.

Much of this may, however, sound rather idealistic as an approach to risk management - involving a two-way exchange of information, with rules to ensure a just and fair process, and participation of all parties in decision-making (i.e. “mutual understanding” as opposed to “exertion of power” (Gutteling & Kuttschreuter, 2002)). In particular, there are clearly some difficult challenges to the general framework of regulators acting as a forum for the discursive management of conflicts over responsibilities for risks (in this case between consumer, industry and regulator) not least because the regulator is also a stakeholder in financial service provision. These activities and the broader set of activities of the regulator clearly go well beyond the specification of discursive risk management strategies in the face of ambiguities over evaluation of risks as articulated by Renn in his account of the precautionary principle.

It makes sense to see much of the regulators’ activities (particularly those related to self-regulation and consumer education) as oriented towards risk prevention and that underlying this is a loose adoption of the precautionary principle in that regulatory resources are being allocated on the basis of the presumption of risk rather than traditional risk assessment. The locus of regulatory activity is on the background conditions for risk communication between firms and consumers and on factors relevant to risk evaluation. Communication problems concern understanding of what has been included in risk assessment and the details of the interaction between firms’ practices and public understanding are less in focus than establishing principles of control and management and a broad enhancement of public understanding. Clearly, then, this “looser” form of risk management presents a number of challenges.

The Challenges Ahead

Many of the issues raised in this paper raise several challenges for the new regulators (listed in Table 16). In many respects these challenges epitomise many of the ongoing debates in the arena of risk research. During the course of our project we will explore these themes in detail. As we have seen, the formation of new regulators has been mirrored by changes in regulatory styles. This in turn has lead to the adoption of novel techniques for risk management in light of uncertainties regarding the ubiquitous nature of risks themselves. We have suggested that the use of precautionary measures is gaining prominence, thereby allowing regulators to adopt a position in which there is no ‘right or wrong’ as such. In this context adoption of precautionary approaches coincides with a ‘loose form’ of risk management where emphasis is more upon decision making approaches and generating dialogue. Thus, regulators acknowledge that the aim of regulation is not to diminish risks altogether (indeed the achievement of zero-risk is recognised as being near-impossible). Rather, on the basis of previous mistakes, their aim is to ameliorate conditions for dealing with risks; in doing do, ultimately their aim is to reconcile the interests of markets with those of the public. This is guided by the statutory obligations of FSA and Ofcom to combine issues of market regulation with questions of public interest. This is a further example of the interesting and novel ways in which new forms of regulation are undertaking their responsibilities, and demonstrates how they aim to consolidate both interests.

- Risk Characterisation
  - The nature of the “risks” themselves – they are not self-contained, they are ubiquitous
- Reaching Out to the Consumer
  - Public participation and civic engagement[xvii]

- How to Operationalise Civic Engagement?
  - Provision of information: Promoting awareness of issues
  - Protecting the consumer[xviii]
  - Incorporating public opinion into decision making processes and risk assessment[xix]

- Implications for Risk Communication
  - 'One-way' vs. 'Two-way' Models for Communication[xx]

- Role of the Media
  - Amplification/Attenuation[xxi]

Table 16

In terms of 'reaching out the consumer', the regulators attempt to encourage public participation and civic engagement. For both FSA and Ofcom, these are key aspects of their operating principles, where new relationships are being forged between regulators and citizens in risk management.

In addition, citizens and consumers are encouraged to use a precautionary approach in dealing with, and making decisions about potential risks, aided by the FSA's obligation to provide information and promote information about issues. With reference to the our analyses of speeches and examples cited on mortgage endowments, we have seen how the FSA aims to make consumers more aware and to educate consumers to be more literate in order that they are in a position to weigh up potential risks of such products. Emphasis is also placed upon taking a precautionary approach to interpreting projections and forecasts. Here, responsibility shifts to firms, and their duties to advise consumers in a clear and fair manner. Issues of responsibility therefore pervade many of the objectives that the regulators are trying to achieve. It is clear that regulators are attempting to implement a broader form of risk management, where several sets of social actors take responsibility for dealing with risks e.g. firms, regulators, consumers, consumer representatives (distributed precaution). This coincides with the movement away from traditional forms of regulation (ie. regulation of firms) to broader forms of management (encapsulating issues of public engagement and participation). Furthermore, in coinciding with this shift in regulatory approaches, this form of risk management deviates from previous one-way approaches (e.g. experts/firms – consumers). This new approach therefore attempts to foster conditions for plurality involving a broader dialogic approach between social actors in the context of the changing nature of risks (in order to avoid previous instances of asymmetries between firms and consumers for example).

Many of the diverse activities of the regulators aim at reducing risks and have many of the characteristics of precaution and prevention. However, we have argued that the activities of the regulator go beyond dealing with uncertainty resulting from differing technical accounts of risk or ambiguity resulting from differing evaluations of risk. Instead we see a range of activities, broadly oriented towards risk but oriented in very different ways. Some are examples of traditional modes of risk assessment and management but others are far more diffuse, incremental and aimed at systemic risks or background issues. Others are oriented to specific activities of firms and consumers and aimed at jointly meeting the potentially contradictory objectives of market confidence and public understanding. This variety of regulatory activities also involves diverse relations with a network of key actors involving a range of communication issues from the provision of information and generic advice to the regulator positioning itself as the public sphere for discussion of consumer and regulatory issues in financial services/communications. Our project aims to map these activities, relations and themes as a background to examining public understanding of regulation.

References

European Union. (2000). ***Communication from the Commission of the Precautionary Principle*****, from** **http://europa.eu.int/comm/dgs/health_consumer/library/pub/pub07_en.pdf**

Farnish, C. (2000). ***FSA Speech: Getting a Fair Deal for Consumers*****, from** **http://www.fsa.gov.uk/pubs/speeches/sp70.html**

Foot, M. (2000). ***FSA Speech: Our New Approach to Risk Based Regulation and What Will be Different for Firms*****, from** **http://www.fsa.gov.uk/pubs/speeches/index-2000.html**

Gough, J., & Hooper, G. (2003). *Communicating about risk issues*, from http://www.europe.canterbury.ac.nz/old/news/Gough%20and%20Hooper_paper.pdf

Guldberg, H. (2003). *Challenging the precautionary principle*, from http://www.countryguardian.net/The%20Precautionary%20Principle.htm

Gutteling, J. M., & Kuttschreuter, M. (2002). The role of expertise in risk communication: laypeople's and expert's perception of the millennium bug risk in The Netherlands. *Journal of Risk Research, 5*(1), 35-47.

HM Government. (2004). *Preparing for Emergencies: What You Need To Know*, from http://www.preparingforemergencies.gov.uk/pdfs/index.htm

Lofstedt, R. E. (1996). Risk communication. *Energy Policy, 24*(8), 689-696.

Otway, H., & Wynne, B. (1989). Risk communication: paradigm and paradox. *Risk Analysis, 9*(2), 141-144.

Pidgeon, N. F. (1997). *Risk Communication and the Social Amplification of Risk - Phase 1 Scoping Study*. University of Wales, Bangor.

Renn, O. (2000). *Risks and Society*. Paper presented at the International Conference: Risk Analysis and its Role in the European Union, 18-19 July 2000, Brussels.

Runciman, D. (2004). *The Precautionary Principle: David Runciman writes about Tony Blair and the language of risk*, from http://www.lrb.co.uk/v26/n07/runc01_.html

Skidmore, P., Miller, P., & Chapman, J. (2003). *The Long Game. How Regulators and Companies Can Both Win*. London: DEMOS.

Slovic, P. (1987). Perception of risk. *Science, 236*, 280-285.

Slovic, P. (1997). Trust, emotion, sex, politics and science; Surveying the risk-assessment battlefield. In M. H. Bazerman, D. M. Messick, A. E. Tenbrunsel & K. A. Wade-Benzoni (Eds.), *Environment, Ethics and Behaviour* (pp. 277-311). San Francisco: New Lexington Press.

Stewart, W. (2000). *Mobile Phones and Health, Independent Expert Group on Mobile Phones (IEGMP)*, from http://www.iegmp.org.uk/report/text.htm

Sunstein, C. (2003). *Beyond the Precuationary Principle*, from http://www.law.uchicago.edu/academics/publiclaw/resources/38.crs.precautionary.pl-lt.pdf

Sunstein, C. (2004). *Precautions Against What? The Availability Heuristic and Cross-Cultural Risk Perception*, from http://aeibrookings.org/admin/authorpdfs/page.php?id=1069

Tickner, J., Raffensperger, C., & Myers, N. (1999). *The Precautionary Principle in Action: A Handbook*, from http://www.biotech-info.net/handbook.pdf

Endnotes

[i] Social Contexts and Responses to Risk (url: http://www.kent.ac.uk/scarr/)

[ii] The Financial Services Authority (FSA) (url: http://www.fsa.gov.uk/) assumed its full powers and responsibilities in December 2001, having gained statutory status under the Financial Services and Markets Act, 2000. It is the UK's sole financial regulator, having replaced the work of several bodies (the Building Societies Commission, the Friendly Societies Commission, the Investment Management Regulatory Organisation, the Personal Investment Authority, the Register of Friendly Societies, Securities and the Futures Authority). The Office of Communications (Ofcom) (url: http://www.ofcom.org.uk/) is the independent regulator for the UK's communications industries. Formed under the Communications Act, 2003, the regulator assumed its statutory powers in December of that year. The formation of Ofcom replaced five existing regulators: the Broadcasting Standards Commission, the Independent Television

Commission, Oftel, the Radio Authority and the Radiocommunications Agency.

[iii] Little of this is new, and the FSA collects such data as a matter of routine, reviewing the available sources of data periodically to see if alternative or additional statistics are needed.

[iv] To further its aims of encouraging self-regulation and increasing the salience of the consumer, the FSA deploys four classes of policy tool (Foot, 2000: Paragraph 14):

- Diagnostic tools
    - assessment and measurement of risks (e.g. routine visits or external expert assessment)
- Monitoring tools
    - Tracking the development of a particular risk (e.g. monitoring returns)
- Preventative tools
    - To limit or reduce risk (e.g. providing comparative information to consumers)
- Remedial tools
    - Response to crystallized risks (e.g. restitution, compensation)

To facilitate the application of these tools, the FSA has organized the sector into five divisions and allocated each firm (of the 11,000 +) to one of five categories (deposit takers, market and exchanges, major financial groups, insurance firms and investment firms) (Paragraph 15). Each division is managed separately by the FSA, although within each division the principles of allocating individual firms to risk categories on the basis of magnitude of impact and probability of risk are followed as a basis for assignment of regulatory resources.

[v] Endowment mortgages are insurance based investment schemes which aim to make the capital return to pay of the sum borrowed by the end of an agreed loan period accompanied by an interest only mortgage for the period of the mortgage. During the 1980s many consumers bought into endowment mortgages whereas the tradition in the British market had been to take on repayment mortgages. The basic problem was that re-projections of endowment policies indicated a widespread and significant short fall in the expected returns on these policies. Yet there was a widespread expectation amongst consumers that they would both cover the amount borrowed and gain a lump sum from the surplus at the end of the term.

[vi] Specifically, firms were encouraged to send out re-projection letters to the 11 million holders of endowment policies informing them of the current performance of the investment part of the endowment together with an indication of the expected short fall at the end of the term. In addition, the FSA sent letters to policyholders explaining what they could expect from firms and outlining complaints procedures.

[vii] Since the emergence of the endowment issue as a ‘crisis’ there has been much public discussion, debate and argument about responsibility to which the FSA has been a party. There have been many reports in the press, campaigns by NGOs (e.g. The Consumers’ Association) and consumer complaints considered by the financial ombudsman.

[viii] For example, were the projections based on up to date forecasts? Was there adequate review of the policy of selling endowments given the growth in the market? Was there adequate monitoring and management at the point of sale to check that the potential risks of the product were explained adequately to consumers? Was there a proper balance of the incentives given to advisors given the potential danger of mis-selling?

[ix] On issues of disclosure, for example, it is possible that firms knew that their projections were optimistic for a long time before they informed customers of this possibility. This may have been compounded by there being no clear, sector wide rules for disclosure of product performance.

[x] It may be that products were sold using a language more appropriate to a savings scheme than an investment product, giving a misleading impression of the risks involved. Were consumers clearly advised that there was a risk that their endowments would not produce enough to cover the amount they had borrowed?

[xi] It may be that consumers bought these products without being aware of the incentives for the seller/advisor, or the difference between independent and non-independent financial advice, or the schedule of charges associated with the product.

[xii] In the spirit of his critique of narrow risk assessment, Renn (2000) gives a wide-ranging review of the factors entering the risk evaluation phase from an expansive risk assessment – including traditional measures, measures of uncertainty, the gap between cause and effect, ubiquity, persistence, potential for social mobilization and equity issues.

[xiii] It is a moot point whether advisors at the point of sale (the bridge between technical and user specification of risk characteristics) were aware of this gap between the narrow and the broad assessment of risk and whether they played along with or even fed the miscommunication over risk.

[xiv] Note, however, that "the precautionary principle, which is essentially used by decision-makers in the management of risk, should not be confused with the element of caution that scientists apply in their assessment of scientific data" (EC Communication on the Precautionary Principle, 2000: 3). Typically the decision to invoke the Precautionary Principle rests upon substantiated facts. Where scientific information is insufficient, inconclusive or uncertain, decisions need to be taken as to whether to take action. If there is no evidence that something is harmful, but there are "reasonable grounds for concern" that the risk might be harmful then, again, precautionary measures are advocated.

[xv] Consider, for example, the FSA's task force on the use of past performance data in advertising, or its current working group on the development of risk indicators for financial service products. These working groups are composed of a variety of members from industry, consumer representative bodies and other interested parties (e.g. academic experts) and are given a brief to explore FSA policy in relation to a specific issue.

[xvi] The "Preparing for Emergencies" leaflets that were distributed to all households (Government, 2004) as part of a national campaign against terrorism is a good example of how use of the Precautionary Principle as a form of risk management has filtered into everyday life. Responses from the public were varied, ranging from "scaremongering" to "it's better to be safe than sorry". The way in which the government handled this operation is the key issue here, since they decided upon action rather than inaction in response to an indefinable threat.

[xvii] As noted earlier, the risk management approach adopted by FSA and Ofcom reflects a significant shift in risk literature (from dualist one-way communication to two-way communication in order to facilitate more dialogue). From the perspective of the regulators, what has been the driver for the emergence of citizen engagement? Is it in response to changing public views about governance and risks? Moreover, is it due to a growing understanding that existing forms of risk management (adhering to the notion of duality) cannot be sustained?

[xviii] Consumer Panels have been formulated to act in the interests of consumers, A key point for exploration is the activities of these Panels, and how they undertake their responsibilities to represent and protect the interests of consumers,

[xix] According to Gough and Hooper (2003) in public decision processes, the criteria for determining acceptability or tolerability of risks should incorporate considerations of public opinion or public perceptions of the risks in question. We are interested to explore whether/how the new regulators fulfil this notion.

[xx] Effective risk communication is an intrinsic element of risk communication, and in determining acceptable levels of risk (risk assessment). Traditional understanding of risk communications is that organizations utilise "one-way" models of communication. In advocating effective forms of communication, theorists have advocated "two-way" models. Applications are typically science-centred, whereby it is posited that the inclusion of both expert and lay perspectives in decision-making processes should be the cornerstone of effective policy-making. Ofcom and FSA appear to be undertaking the "two-way" model of risk communication, adhering to a holistic form of risk management where potential risks are assessed with regard to broader stakeholders and consumers/citizens/public.

[xxi] The media are in some respects a "tool" for regulators, where they are seen in the public sphere "doing regulation". The media also play a role in the formation of public views about regulation. However regulatory speeches and reports are not transmitted to the public in a pure form, they undergo interpretation from media commentators. Traditional areas of risk research on the role of the media in shaping public awareness and opinions about risks may be relevant in some cases e.g. amplification/attenuation by the media. The media may also play a role in "availability bias" – risk events that can be recalled by members of the public. These issues of mediation of regulation also form an important dimension of our project.