Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Submitted online

Dear Sir / Madam,

Financial Services Consumer Panel response to the Public Bill Committee's call for evidence on the Financial Services and Markets Bill

The Financial Services Consumer Panel (the Panel) is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominately on the work of the FCA and so we are responding to this call for evidence because the Financial Services and Markets Bill (the Bill) includes many provisions directly relevant to the FCA's objectives and functions.

This letter reiterates some of the key points we have made to HM Treasury in our responses to consultations as part of the Future Regulatory Framework Review. We wish to draw these points to the Committee's attention to inform their consideration of the Bill. Our comments are grouped into 6 themes: regulatory independence (and a proposed call-in power), the Consumer Duty, the competitiveness objective, the role of the Panels, access to cash and buy-now pay-later

1. Regulatory independence

We reiterate the necessity to ensure and protect the independence of regulators. This is a fundamental pillar of effective regulation. It is critical for the stability of - and consumer confidence in - the overall regulatory system[1]. We have expressed concern throughout the Future Regulatory Framework Review that the additional powers awarded to HM Treasury, now included in the Bill, undermine this independence[2].

Regulators are able to take a long-term view of regulatory change, considering both what has happened before and what the impact on markets, consumers and firms would be over a time period that can span many Parliaments. Regulators also, by virtue of their remit, consider the financial services sector as a whole and so can consider the impact of change in one area on those in another, as well as any unintended consequences. The FCA's primary consumer protection objective is a critical component here, requiring the

[1] https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_frf_proposals_for_reform_20220209.pdf p2

[2] See https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_frf_review_phase_ii_20210219_v2.pdf p4 and https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_frf_proposals_for_reform_20220209.pdf p5 and p8

FCA to consider the impacts on consumers, including businesses, and particular groups such as vulnerable consumers or the digitally excluded.

The Panel believes the possibility of HM Treasury intervention created through the Bill, and the risk of changing political priorities, would create a more uncertain regulatory environment. This would make it less attractive for firms to invest and would potentially undermine consumer confidence. It would also hinder the FCA's ability to deliver against its objectives. The Bill further complicates an already challenging remit for the FCA. The changes would make consumer protection more time-consuming to deliver and less easy to maintain. Regulatory instability risks damaging firms' confidence to invest, diversify and grow their products and services for consumers. There is a risk this could act as a brake on growth and on domestic and international competitiveness. Indeed, our contacts with industry suggest that stability and predictability in regulation supports business success, competitive advantage and hence growth. Volatility risks the opposite. Accordingly, controls should be put in place to prevent regulation becoming volatile and unpredictable, in particular at points of political change.

The potential for regulatory instability is not the only negative impact of HM Treasury's proposed new powers in the Bill. The Bill also risks undermining the strength of the consumer voice, to the detriment of consumer interest. We have previously called out the lack of a level playing field, with a strong industry voice, backed by access and resources used for lobbying HM Treasury, which is not matched by commensurate influence and access from the consumer perspective[3]. Given the new powers awarded to HM Treasury in the Bill, it has become even more important that the consumer voice is hardwired into all levels of the policy and regulatory system to redress this balance. It would be important that this was also addressed for any interventions by HM Treasury. This could be done by increasing policy makers' direct contact with consumers, for example via focus groups, as well as proactively inviting consumer representatives to participate in roundtables and debates when developing new policy. Such an approach would also reflect and support the important regulatory principle of transparency in regulatory procedures and processes.

Undermining regulatory independence increases the complexity of regulatory procedures and processes and makes it harder for consumers and scrutinising bodies to understand who is accountable for a particular decision. This would make it more difficult for independent stakeholders to effectively challenge the decisions made by regulators and those influencing them. It could also impact on consumers' ability to access to redress. This undermines key pillars of the regulatory system.

Below we discuss some of the specific Bill provisions we believe will negatively impact regulatory independence.

Rule reviews

We are concerned by the Bill provision which would confer on HM Treasury the ability to require a rule review if they consider it is in the public interest and where it does not appear to them that a regulator's existing or proposed rule review proposals are "appropriate for the purposes of carrying out an effective review"[4]. This would confer

[3] https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_frf_proposals_for_reform_20220209.pdf p5

[4] We expressed our concerns about this proposed power to HM Treasury: https://www.fs-

considerable discretionary powers of intervention on HM Treasury, risking regulatory independence. We appreciate the Bill includes a number of provisions around the exercise of this power (such as prior consultation with the regulator, minimising the effect on the regulator's other functions, laying of the direction and the regulator's report before Parliament afterwards). These are welcome. However, there is a real risk that the FCA's approach and timetable for rule review, as set out in its general strategies and a specific rule review policy statement, could be overridden by HM Treasury intervention under different criteria, thereby compromising the regulator's independence.

Additional "have regards"

We are concerned by the provision for HM Treasury to require regulators to "have regard" to matters specified by HM Treasury in relation to rule-making[5]. We note the stated purpose of this power is to enable government to ensure more specific public policy priorities can be reflected in regulatory rulemaking[6]. Yet it would create additional criteria for the FCA to apply, further complicating an already challenging remit for the FCA, especially if different "have regards" matters conflict with the FCA's other duties. The power as drafted does not include any safeguards around the use of this power to prevent such issues arising, other than a degree of Parliamentary scrutiny through the power being exercisable by secondary legislation.

Call in power

We are especially concerned about Government's intention to introduce an amendment to the Bill which will allow HM Treasury to 'direct a regulator to make, amend or revoke [any] rules where there are matters of significant public interest'[7]. We strongly oppose such a power which would effectively allow HM Treasury to control the policy making functions that are rightly reserved for an independent FCA. Use of the power would be open to significant political interference and could create uncertainty and instability for firms to the detriment of consumers:

a) the implicit, if not express, threat to decisions by the FCA would fetter its ability to make decisions free from Ministerial influence, and thereby would defeat a crucial pillar of regulation, namely the regulator's independence.

b) it would create uncertainty for the FCA and for firms, to the detriment of consumers. As explained above, the possibility of intervention and the risk of changing political priorities would hinder the FCA's ability to set and deliver against a long-term strategy, stifling investment and innovation, to the detriment of consumers and acting as a brake on growth and domestic and international competitiveness.

c) even if the power were to be exercisable only where there are matters of significant public interest, this does not remove these threats and uncertainties.

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cp.org.uk/sites/default/files/final_fscp_response_hmt_frf_proposals_for_reform_20220209.pdf

[5] Financial Services and Markets Bill cl 29

[6] Financial Services and Markets Bill Explanatory Notes para 54

Indeed, it would risk creating another layer of uncertainty (around whether/when intervention is warranted), further damaging to consumer interests.

d) the Panel is concerned as to how the FCA's statutory duty to advance the consumer protection objective would be fulfilled on exercise of the call-in power.

e) The Panel is concerned that the potential for HM Treasury intervention, by increasing regulatory uncertainty, would make the UK a less attractive place for financial services firms to invest, reducing the range and quality of the products available to consumers.

2. The Consumer Duty

The Panel has long advocated for firms to be under a duty to act in the best interests of consumers. The new Consumer Duty (NCD) created by the FCA presents the best opportunity to raise the bar for conduct standards across financial services since the FCA was created.

We support the aims and objectives of the NCD and its adoption and implementation will be a key enhancement to financial services regulation. It rightly places the focus on delivering good outcomes for consumers, facilitating a move away from 'box-ticking' compliance and requiring firms to adapt and change their product and service offering to meet consumer needs.

Given the criticality of the NCD in improving standards for consumers in the UK, it is vital that any new provisions in the Bill do not undermine or delay the FCA's ability to embed the NCD.

3. The competitiveness objective

We remain opposed to a competitiveness objective, even as a secondary objective. As we have said in previous submissions to HM Treasury, we do not believe the secondary nature of the objective is sufficient to mitigate the risk that consumer protection is traded off against competitiveness and therefore diluted[8].

We welcome the clarification that a competitiveness objective would require regulators to facilitate growth in "the medium to long term"[9] as this provides an important safeguard against 'short-termism' and/or a 'race to the bottom'. If the competitiveness objective is to be retained, it is important this wording is retained throughout the Bill's passage through Parliament.

As drafted, the competitiveness objective includes the phrase "the economy of the United Kingdom (*including in particular the financial services sector*)". The reference to the financial services sector heightens our concern about the impact of the objective on consumer protection as it moves the focus of the measure away from the overall economic health of the UK towards the interests of one sector, and specifically the sector the FCA exists to regulate. We hope Parliament will probe and test whether this addition has any unintended consequences that could lead to worse outcome for consumers than if the wording required regulators to consider the competitiveness of the UK economy as a whole.

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[8] https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_frf_proposals_for_reform_20220209.pdf p2

[9] Financial Services and Markets Bill cl 4(3)(b)

An early test of the practical interaction between any new competitiveness objective and existing regulatory duties will come with the challenging process of integrating onshored EU law into the FCA Handbook. The priorities for this multi-year exercise, and any policy changes introduced in the process, must be subject to transparent consultation with industry and consumers, and employing an evidence-based process. This must include an analysis of the costs, benefits and risks, and where appropriate research. The Panel would expect robust consumer research, testing consumer impacts and outcomes, to be a key part of the process. In light of the new regulatory objectives and intervention powers vested in HM Treasury there is a significant risk of poor outcomes for consumers if such steps and processes are not included.

4. Role of the Panels

We welcome the Bill's provisions for the FCA to be more transparent about its engagement with us and the other Independent Panels, whilst preserving the role of critical friend to the FCA. As we have said previously, transparency is critical to the effective scrutiny of and trust in regulation[10]. We will work with the FCA to help them meet any new statutory requirements arising from Bill's provisions.

5. Access to cash

We welcome the Bill's provisions to appoint the FCA as the lead regulator in addressing access to cash issues. We had previously called for one regulator to be given overarching responsibility so that they could identify gaps, implement solutions and take oversight of the delivery of those solutions[11].

We would like to see the focus of the access to cash related provisions broadened to encompass access to banking services more widely. There are many consumers, often vulnerable consumers, who rely on or prefer face-to-face banking services. Solutions to a lack of cash access often focus solely on the provision of cash and overlook the many other services consumers can engage with in bank branches. Therefore, broadening the scope of the legislation will allow regulators and others to consider the wider role of bank branches and ensure continued access to face-to-face services for those that need them.

6. Buy now pay later (BNPL)

We wish to reiterate our call for HM Treasury to act decisively to bring forward the necessary legislation to bring BNPL within the regulatory perimeter. The current cost-of-living pressures are likely to encourage increased use of BNPL and so it is becoming ever more urgent that this market is regulated and consumers are afford the associated protections. We therefore support the proposed amendment to the Bill to make necessary provisions within 28 days of passing the Act.

Yours sincerely

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[10] https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_frf_proposals_for_reform_20220209.pdf p6

[11] https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_hmt_access_to_cash_consultation_20210928.pdf p2

Helen Charlton

Chair, Financial Services Consumer Panel