Annual Public Meeting 2020 responses to pre-submitted unanswered questions

The questions below were submitted prior to the Annual Public Meeting on 24 September, but not answered at the meeting.

9 October 2020 update: this document was updated (see from page 5) with additional questions submitted on the day, but not answered, and our responses.

Peter Brown: Due to the pandemic, we are all suffering greatly an income loss and higher costs. We now have the BI claims trail which could cost billions of pounds and some insurers may file for bankruptcy which means the debt will fall on the FCA and then onto us. Have you or will you approach the Government for assistance and also ask that any fines issued don't go to the government, but into your finances to reduce our costs, now and into the future. It seems it is a tax revenue that they get which basically comes out of insurers, investment houses and banks building societies and brokers etc.

We are aware of the financial difficulties the pandemic is causing to firms in financial services as well as across the economy. For that reason, we considered carefully our approach to fees for 2020/21 and took action to protect smaller and medium-sized firms from the burden of regulatory fees:

- We have **frozen minimum fees** to protect the smallest firms. This means that 71% of the 60,000 firms we regulate will see no change from last year in the fees they pay.
- We have **extended payment terms** to help medium-sized and smaller firms, extending the period for paying their fees by two months to 90 days. This means that 89% of firms will have until the end of 2020 to pay their fees and levies.

The Financial and Services Markets Act (FSMA) prevents the FCA from taking fine income into consideration when setting its budget. FSMA is also very clear that the FCA should not benefit from any income received from Financial Penalties and that income should be paid to HMT after deduction our Enforcement costs. The ability to retain our Enforcement costs means that Enforcement action is broadly cost neutral to authorised firms that are not subject to Enforcement action themselves.

In the current circumstances, we are not intending to approach HMT for financial assistance to fund the FCA costs from financial penalties.

Mike Ball: To what extent do you believe Banks and other Financial Service Companies are/were prepared for negative interest rates, and what plans did the FCA have in place to ensure clients did not suffer as a consequence?

Low interest rates have been a feature of the global economy for several years, and they affect consumers in different ways – lowering costs for borrowers but reducing what they earn on their savings and investments. In terms of our expectations of financial services firms in these conditions, our Principles for Businesses make clear that they must treat their customers fairly and communicate with them in a way that is clear, fair and not misleading.

Should interest rates in the UK decline further and become negative, this would present some technical and systems challenges, although as we have seen in other countries – such as Japan and Sweden – where negative rates have been introduced, these challenges should not give rise to disruption to the financial system or the services provided to consumers. We expect firms to make appropriate plans for a range of potential scenarios, including to ensure they continue to meet their obligations in how they treat their customers and communicate with them.

Keith Webb: After six months so far of remote working caused by lockdown restrictions, many organisations have reduced their internal risk governance including partial or full suspension of the internal audit plan, reduced-scope Board committee meetings for risk and internal audit (or reduced frequency), remote monitoring of critical activities and fewer governance activities. What advice is the FCA giving to Boards and executives about these changes and what level of reduced risk coverage is acceptable? Do firms still need to meet their full annual planned timetables for risk control coverage, for example?

We are aware that the pandemic has presented to firms' operations, management and resources. This is why, alongside taking the regulatory action mentioned in our previous answer to provide necessary flexibility within our rules and ensure markets continued to function effectively, we announced the postponement of certain planned regulatory publications and reviews.
In these circumstances, it may have been appropriate for firms to reschedule certain planned oversight, testing and audit activities. In doing so, however, we expect firms to consider what alternate steps should be taken to ensure they sufficiently manage the risks they pose of harming their customers or the markets in which they operate. Firms' boards and senior managers must continue to carry out adequate oversight and remain responsible for discharging their regulatory responsibilities at all times.

Dmitrijus Apockinas: What kind of key changes to the regulatory regime of APIs and EMIs can the industry expect after the transitional period, apart from the already published The Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018?

The payments services sector is developing rapidly. More firms, new products and third-party providers are entering the market, with some firms growing quickly. We want to ensure consumers and small and medium-sized enterprises (SMEs) can safely access a variety of payments services and will be monitoring firms' progress. We are supporting HM Treasury on the payments landscape review and are consulting on limited changes to the regulatory technical standards on strong customer authentication and common and secure communication (the UK-RTS) to limit the risk of disruption to open banking in the UK as EU certificates will be revoked on 1 January. We are also aware of challenges flagged by industry on open banking (such as the 90-day reauthentication requirement).

Philip Meadowcroft: In January 2016 the Treasury instructed the FCA to investigate whether action could be taken against the former directors of HBoS who held office immediately prior to the company's collapse. More than four and a half years later we have not received the FCA's report. So, three questions, please, Chairman about timely action needed from the FCA:

- **1) Has the HBoS can been kicked so far down the road it has been lost in the long grass?**
- **2) Why is it possible for the FCA – charged by the Treasury Select Committee to undertake an important investigation – simply to keep schtum and hope everyone forgets about HBoS?**
- **3) In March 2018, the Treasury Select Committee instructed the FCA to investigate whether the board of Aviva plc had committed**

market abuse by the announcement of the redemption of irredeemable preference shares. More than two and a half years later, the only comment made by the FCA came three months ago when the FCA responded to my enquiry which was placed by the TSC. The FCA interim CEO announced on June 4th this year that a contested case had arisen with one or more of the parties following the FCA delivering the statutory but secret Warning and Decision Notices to those involved. Sounds to me like a spot of Maxwellisation whitewash being applied to some finger-marked walls. Chairman: isn't it about time this matter was cleared up and dragged on no further - three months or more of Maxwellisation is surely enough?

- **I am relying on you, Chairman, to do your utmost to ensure the delivery this morning of clear and straightforward answers to the specific points raised in my questions.**

HBOS

Our investigation into certain former HBOS senior managers is complete. We are unable to comment further other than to say that the case remains on foot.

Aviva

In line with our policy, we are unable to comment on ongoing regulatory proceedings. Following an investigation, when the FCA is proposing to exercise its regulatory enforcement powers in a contested case, the Financial Services and Markets Act 2000 (FSMA) requires the FCA to give statutory notices (a warning notice and decision notice) to the subject of the action. The person to whom a warning notice is given has a right to make representations on the FCA's proposed decision. The process by which this happens is private under the legislation. More information about the process can be found on our website.

Russell Facer: What steps are FCA taking to reduce the level of compensation being paid out by FSCS? Prevention of claims arising but also the restructuring of businesses to leave liabilities on those firms being left to fund the increasing levies. Although FCA is only the collector of FSCS levies, the increasing levy for the retail intermediary life distribution and investment intermediation sector is encouraging some firms to look for alternative methods to avoid paying these (which cannot be good for access to advice or reputation of the profession). There appears to be no indications that the funding structure or the level of the levy will change in the near future. What plans does the FCA have in place to tackle these problems?

We are aware that many firms have seen an increase in their regulatory costs driven by increases in FSCS compensation costs, in particular in the investment sector. In May, the FSCS announced that the compensation costs levy for the Life Distribution and Investment Intermediation class would total £229 million for 2020/21 (compared to the £189 million raised in 2019/20). The FSCS explained the increase was due to increasing numbers of pension mis-selling claims and claims against the failed firm, London Capital and Finance. Firms in the intermediary class have told us that the increase is unfair since good advisory firms are being made to pay for the bad advice given by failed firms.

The FSCS is an essential part of the regulatory framework; providing a safety net to protect consumers when regulated firms go out of business and are not able to meet claims themselves. FSCS protection helps to maintain confidence in the financial services sector, which benefits all firms. The FSCS funding model was recently reviewed and we believe that the changes we made produce the fairest and most sustainable way of distributing the compensation costs. For example, the providers contributions means that provider firms pay ~25% of the intermediary firms compensation costs, thus reducing the burden.

We do however recognise that the FSCS levy cost is currently too high and that this can have a significant impact on firms' finances, which is heightened due to the current market conditions that are impacting businesses. Ultimately, another wholesale review of the funding structure would not address the fundamental issue that the costs are too high. We are however committed to exploring ways in which those costs can fall. Particularly, we raise the following points on FCA's approach to tackle these problems:

1. Our Business Plan for 2020/21 highlights consumer investment as a key priority area over the next 1-3 years, with a view to achieving three targeted outcomes: 1) investment products are appropriate for consumer needs, 2) consumers make effective decisions about their investments, and 3) firms and individuals operate under high regulatory standards and act in consumers' interests. This work aims to reduce the harm which consumers can suffer. In particular, our work through preventative supervisory and enforcement action is focused on reducing regulatory costs by stamping out poor practice from the market, and working to ensure that, where bad practice does occur, the resulting redress liabilities are as much as possible paid for by the firms causing the issues, rather than the rest of the market through the FSCS.

2. Examples of workstreams aimed at preventing or reducing future claims include: 1) assessing suitability of defined benefit to defined contribution pensions transfer advice and assessing the suitability of pensions decumulation advice; 2) ensuring SIPP operators undertake appropriate due diligence (leading to a reduction in their holdings of non-standard assets); 3) intervention to restrict marketing of speculative illiquid securities to sophisticated and high net worth retail investors only; and 4) tackling shortfalls in Professional Indemnity Insurance for Personal Investment Firms. FCA's work in this area also aligns with FSCS's 'Strategy for the 2020s' which includes a 'Prevent' workstream which aims to reduce compensation costs. More generally, we work closely with all our regulatory partners to reduce consumer harm.

3. Regarding the advice gap due to good advice becoming inaccessible, we are currently evaluating the Retail Distribution Review (RDR) and the Financial Advice Market Review (FAMR). The market for retail investment and pensions products has evolved considerably since the RDR and FAMR were introduced. As part of our evaluation of how well they have worked, we have been reviewing their impact on the market to date and assessing how the market may develop, in order to assess whether it meets consumer needs now and in the future, and how our regulatory approach may need to evolve to help the market work well in the future. We plan to publish our report by the end of this year."

4. We are aware of the impact of the pandemic on businesses and that this could contribute to further firm failures. A key focus for the FCA over the coming months, and something we have concentrated on since the pandemic began, will

be to anticipate where failures may occur and, as far as possible, work with firms to manage an orderly wind down. Therefore, we are putting additional resources into monitoring and analysing firms' financial positions, so that we can intervene rapidly where necessary.

5. Steps have been taken to help smaller firms by extending the period for paying their regulatory fees and FSCS levies by two months to 90 days. This means that 89% of firms will have until the end of 2020 to pay their fees and levies.

Additional questions submitted on the day, but not answered, and our responses added to this document on 9 October 2020

Joanne Ellis-Clarke: The FCA recently launched a new register, which reported cost circa £5m. From a consumer perspective, it is still confusing, if not more confusing. How do you plan to address this?

We have been working to make the Register increasingly accessible and user-friendly. The Financial Services Register is an important tool for consumers. They use it to help them to avoid financial harm such as scams by unauthorised firms and individuals. We researched the new design and did extensive pre-launch testing with consumers and other user groups. This also included a range of targeted accessibility testing.

Our aim was to make the Register easier to navigate and understand. For example, we have made important information more prominent, including action taken in the past against individuals and firms. There is more information now about the protections available, and consumers can watch a simple video explaining how to use and understand the information in the Register. We are sorry you still find the Register confusing. So far, feedback from consumers has tended to be very positive, although professional users tend to prefer the old style. We have already responded to some of this feedback. For example, we have improved the ability to print Register pages, if users want to do that. We plan to continue to improve the Register.

Joanne Ellis-Clarke: I have reported dozens of scam companies via finprom link. Does the FCA monitor these reports and more importantly do you do anything with this information? I rarely get an automated acknowledgement never mind a response.

We have a web form that you can complete online in order to report a scam. We assess each of the reports that are sent through on the web forms and we refer them to the appropriate department to action as appropriate. However, we do not respond individually to these web forms.

Joanne Ellis-Clarke: Would the FCA consider implementing and then publicly issuing a quarterly balanced scorecard on the FCA?

We have no current plans to publish a quarterly balanced scorecard. In line with our commitment in the FCA Mission, published in April 2017, we are continuing to improve how we measure and report our performance against the outcomes the organisation is seeking to achieve.

In our 20/21 Business Plan, we developed a small number of clearly defined priorities, the outcomes we want to achieve and how these will be measured. We will report on the progress within our 20/21 Annual Report.

Andy Cawthera: Could you please outline the FCA's view on insurance captives owned by property managing agents who are authorised and regulated by the FCA for the mediation of insurance, and who place the building insurance policy and manages claims for leaseholders.

We are aware of concerns about insurance distribution firms, owned by property managing agents, which place building insurance policies for leasehold properties. Where the issues fall within the scope of regulation, we consider whether it is right for us to intervene.

This is a complicated area, however. Our regulatory framework is broadly designed to provide protection to customers of regulated firms. However, in these circumstances, the property managing agent is the customer of the insurance distributor and the leaseholders are not customers. This means that FCA rules creating protections are not directly targeted at protecting the interests of leaseholders. However, we would still expect the distribution firm to act honestly, fairly and professionally in the interests of its customers, so they should be looking to provide value for money to the managing agent, which should also benefit leaseholders.

We also note that, while firms and individuals may be authorised, not all of their activities are regulated by us. So, where a dispute between a managing agent and a leaseholder arises from the contractual provisions within the lease, rather than to activities regulated by the FCA, we are unable to intervene.

We are always concerned to hear about potentially poor conduct of firms and individuals, even when this may relate to their unregulated activities, as one of the conditions of retaining authorisation as a fit and proper person or firm is integrity. So, even where we do not have remit to intervene directly in a case, the information is still valuable to us and we take it into consideration. If you have information about regulated firms that you would like us to consider, please contact us: https://www.fca.org.uk/contact

Philippa Grocott: How well do you think the extended SMCR regime has been implemented by solo regulated firms?

The SMCR is reasonably new for solo-regulated firms, with the Senior Managers' Regime being only 10 months old and the Certification Regime and Conduct Rules still to come (by March next year). Based on what our supervisors have seen, the majority of firms have completed SM&CR documentation (Statements of Responsibilities and responsibilities maps, for enhanced firms) to a good standard. However, there are some which do not reach the level of quality expected. We will continue to engage with firms to achieve high standards of implementation of the SM&CR.

Mark Bishop: You didn't really answer Gina Miller's question about CP20/11, the consultation on changes to the complaints scheme. Will you agree to suspend it? If not, why not?

The changes are proposed to improve the Scheme by making it more accessible, transparent and simpler for scheme users, including clarifying our approach to compensatory payments. As set out in the Consultation document, we do not expect the proposals to substantially change the outcomes for most complainants, and overall the changes are expected to have a positive impact.

The Consultation explains that all complainants who have submitted complaints that are still outstanding at the date the revised Scheme comes into force - including those who have made complaints about LC&F or Connaught that are currently deferred – will have their complaint handled under the current Scheme, as per the transitional arrangements outlined. The consultation is open until 12 October, following which the Board will review and consider the responses carefully before making their final decision. Given this, we do not consider it necessary or appropriate to suspend the consultation. If you want to submit comments on the consultation, please do so.

Caroline Michel: Would the FCA consider endorsing a certification to provide firms with certainty the experts used for setting their systems/controls are adequately qualified? Many issues faced seem to stem from a lack of proper expertise? Being in the business for a long time doesn't warrant proper expertise.

We already require firms to ensure that all Senior Managers and people performing Certification Functions (i.e. people under the Certification Regime) are fit and proper to perform their role. This must be done on appointment and at least once a year. Staff are also required to meet the FCA's training and competence requirements, including completing relevant CPD.

Joanne Ellis-Clarke: How do you plan to close the loophole that permits companies to become "appointed representatives" and conduct the activities of a regulatory approved firm even though they are not FCA-approved?

This is not a 'loophole'. The Principal & Appointed Representative (PAR) regime is expressly provided for in legislation under Section 39 of the Financial Services and Markets Act 2000.

An appointed representative (AR) is a firm or person who carries on regulated activity on behalf, and under the responsibility, of an FCA authorised firm (the principal).

There must be a contractual arrangement between the principal and its ARs, and the principal must take full responsibility for ensuring its ARs comply with our rules. This includes ensuring ARs are fit and proper and that their activities are appropriately overseen.

As noted in our 2019/2020 Perimeter Report, we have identified some potential risks with the principal/AR model and found weaknesses in the oversight and control frameworks in place during recent thematic reviews of the general insurance and investment management sectors.

We remain alive to the potential risks of the model. We have already taken action to intervene in several cases and have engaged more generally with firms in the sectors concerned to raise awareness of the expected standards.