

# **A response to Journey to the FCA**

## Your questions answered

July 2013



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### **Introduction**

#### *Background*

On 1 April 2013, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) took over from the Financial Services Authority (FSA) as the bodies that regulate the financial services industry.

As the FCA, we regulate the conduct of around 26,000 financial firms and the prudential behaviour of 23,000 firms that are not covered by the PRA.

We also regulate some important parts of UK market infrastructure and we are the UK's Listing Authority for securities issuers raising capital on UK markets.

Before we took on our responsibilities, we published [Journey to the FCA](#) in October 2012 to give a more detailed explanation of how the FCA would work. We asked you to tell us what you thought about our plans, with specific questions on competition and how we gather and receive information.

#### *What you told us*

We received 52 written responses from 21 regulated firms, 19 industry bodies and service providers, seven consumer organisations, three individuals, one political party and one think tank.

We also went out on the road to capture your thoughts, holding roundtable events across the country, where we met around 1,400 regulated firms. We then discussed the FCA with consumer organisations, trade associations and other stakeholders.

Here, we summarise what we have heard and let you know what we intend to do in response. Where no response was required from us, we have just included the feedback by itself. We also show you where you can find more detailed information about your questions.

The sections follow the seven chapters of [Journey to the FCA](#).

### *Main themes from the feedback*

Respondents broadly support our aims and approaches, and believe the move to more forward-looking regulation, with consumers at its heart, is a positive one.

Four main themes emerged:

- All respondents would like to know more about our new approach and powers, especially how we see ourselves working in practice.
- All respondents are in favour of greater accountability and transparency from the FCA, and our commitment to better engagement. They also want to see us demonstrating this as soon as possible.
- The industry welcomes our commitment to a balanced approach, which promotes competition while looking after the interests of consumers. However, it would also like to see safeguards and careful use of the FCA's new powers.
- Consumer representatives welcome our increased focus on consumers, but believe this is just the first step for the FCA to ensure better consumer outcomes.

### *Our initial response*

While we hope our recent publications (see below) give a useful overview of how we work, our stakeholders will experience the practical changes that we outlined in *Journey to the FCA*, mainly through our daily interactions with them in the years ahead.

We aim for everyone who deals with us to see a positive difference in how conduct regulation works in the UK. We also aim to deliver our objectives in an open and accountable way.

### *Recent useful publications*

[The FCA's approach to advancing its objectives](#) (July 2013) – how we intend to pursue our three objectives, explaining what firms and consumers can expect from us. We also discuss our new competition mandate.

[The FCA Risk Outlook](#) – how we assess market conditions and identify future risks.

[The FCA Business Plan](#) – how we are managing risks in our first year and how we will use our resources effectively to meet our objectives.

[FCA Handbook changes](#) – includes updates on disclosure wording, warning notices and approved persons.

## Our priorities for our first year<sup>1</sup>

Since the FCA was launched in April 2013 – and benefitting from the feedback we have received from various stakeholders and respondents to *Journey to the FCA* – we have been able to identify and develop our key areas of focus. These include:

- **A stronger focus on consumers.** One of our main goals is to help ensure that firms place consumer interests at the heart of their planning, for example, through our work on product governance and incentive structures in firms.
- **Continuing to tackle market abuse,** including taking strong enforcement action to deter future misconduct. Clean markets are essential for the integrity of the UK financial system.
- **Promoting effective competition in financial services markets.** We have established a competition department to ensure we meet our new competition objective and duty.
- **Continuing to address misconduct,** such as what happened with the London Interbank Offered Rate (LIBOR), payment protection insurance and hedging products.
- **Carrying forward major policy initiatives** such as the Mortgage Market Review, the changes to retail investment advice, and extensive engagement with Europe on future policy.

### *Other initiatives*

Unlike the FSA, we will look closely at wholesale conduct, and have developed a new approach to the supervision of trading platforms.

We are also committed to holding senior management of regulated firms to account, and are considering the findings of the Parliamentary Committee of Banking Standards.

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<sup>1</sup> CEO Martin Wheatley's [speech](#) at the Association of British Insurers' conference reflects on the first 100 days of the FCA and gives our current position on a number of issues across the financial sector.

## Your questions, our answers

### Chapter 1: The creation of the FCA: Spotlight on some of our new powers

#### *Product governance and intervention*

*We set out our approach to product governance supervision and product intervention.*

Many welcomed our approach of tackling issues earlier by focusing on firms' product governance, although many respondents felt that we need a better understanding of the industry and business models. Firms would also like more information on the FCA's intended approach to intervention in all areas.

#### *Governance*

*We said we would focus more on firms' product governance.*

Intermediaries support our greater emphasis on product governance, hoping this will lead to fewer inappropriate products being brought to market. However, many respondents ask us to be clearer about our expectations of intermediaries, or those who are active in wholesale markets.

Consumer organisations support our scrutiny of wholesale products, and suggest that a governance-based approach should also look forward, for example, at ongoing investment governance by asset managers.

#### *Our response:*

We have been actively involved in discussions at the European level, regarding the development of this approach, and are doing further supervision work to gather evidence on patterns of weaknesses in how products are brought to market.

Our expectations around the governance of all products are set out in our existing *Treating Customers Fairly [guidance](#)*, and *The Responsibilities of Product Providers and Distributors for the Fair Treatment of Customers [guidance](#)*.

#### *Value for money*

*We said we would go further than the FSA in challenging providers on the value for money of their products and charging.*

Firms want to hear more about how we plan to assess value for money in our new approach, and caution against the FCA becoming a price regulator.

Some consumer organisations want us to look more closely at pricing and charging, especially where this is unclear or hidden.

Our response:

Our approach to product intervention on price and value-for-money grounds is set out in our [feedback statement](#), where we said that ‘it is essential for the regulator to ensure that such measures are used only when appropriate and when there is clear evidence of risk to consumers’.

Our focus will be to ensure that competition in markets becomes increasingly effective, as that is the best way to ensure that consumers can get the products they want at a fair price.

In our [policy statement](#) on Temporary Product Intervention Rules (TPIR), we stated that while we would consider making TPIRs on value-for-money grounds where we see it as appropriate, this would not necessarily mean setting prices or charges.

We continue to believe that, in certain circumstances, interventions over value-for-money may be useful to minimise harm to consumers.

However, we would normally seek to achieve sustainable solutions through promoting competition, which in turn would benefit consumers.

In terms of price regulation, we would not normally expect to set price controls in the same way as utility regulators do like Ofgem. However, we will be very interested in pricing and margins as an investigative part of our competition mandate, and will regularly collect this information in market studies and other work.

#### *Power to make temporary product intervention rules*

*We have the power to make temporary intervention rules relating to financial services products without prior consultation.*

Firms told us they would like more detail on how rule-making on our temporary product intervention power would work in practice and transparency around its use. They are also concerned that the threat of intervention could lead to risk aversion from firms and harm innovation. They point out that the desire to act quickly should not be at the expense of due process and careful consideration.

The industry wonders how long it would take us to review our actions. They also express concern that our interventions might have adverse consequences.

Consumer representatives welcome our emphasis on early action and point out that there is no need for consumers to have suffered harm before we step in to protect their interests.

Our response:

We will consider the use of temporary product intervention rules (TPIRs) where we identify a significant threat to consumers that requires us to act quickly. Our judgement about when

to use TPIRs will be based on the need to protect consumers from the type of products that could cause harm.

While we acknowledge industry concerns about how TPIRs would be used in practice, we cannot speculate at this time about exactly when we may use them. Each instance will be judged on a case-by-case basis. However, following feedback from stakeholders, we have some [examples](#) of factors we would consider when judging whether to use TPIRs (see section *Contextual considerations for product intervention rules*).

The desire to act quickly will not be at the expense of due process and careful consideration.

To ensure there is adequate transparency over our decision-making, we will publish our reasons for intervention when we make a TPIR and discuss the use of TPIRs in our annual report.

Our [policy statement](#) on TPIRs in March 2013 gives further details about the process we will use when we make product intervention rules without consultation.

#### *Pre-approval*

*We explained that we had largely discounted pre-approving products while recognising there may be specific circumstances where pre-approval is appropriate.*

Some firms are unsure of the level of our involvement in pre-approval of products, while product providers are largely against any kind of pre-approval, thinking it better for us to focus on product governance. Instead, they encourage discussion about new ideas and product launches with FCA supervisors.

Intermediaries feel that pre-approval would be helpful for them.

Our response:

We have no plans to adopt a general pre-approval approach. We do authorise some products, such as undertakings for collective investment in transferable securities (UCITS) funds but, while a market-wide pre-approval option might help to control risks and mitigate consumer harm, we question whether it is practicable, efficient or desirable to do so. We consider that the responsibility for ensuring appropriate product design should remain with firms.

We do, however, recognise and support initiatives such as the industry-led Simple Products Steering Group, which published its [final report](#) in March 2013. The report recommends the introduction of a set of simple products standards and a small suite of simple savings and protection insurance products. We support an approach where firms choose to have their products independently accredited by a body such as the British Standards Institution.

Where we find recurring problems with a product type or in a specific firm we may decide that we do need to intervene by reviewing products before their launch. If so, our decision to become involved will be based on factors relevant to the specific case. For example, we may take action if we consider that the benefits of controlling the supply of a particular type of product to the market, or of reviewing the actions of a particular firm, may outweigh the costs involved.

As we highlighted in *Journey to the FCA*, we will be more willing to engage with the industry and trade bodies at an earlier stage.

### *Financial promotions*

*We will have a new power to ban financial promotions that break our rules and publish details of the ban. While we can publish details of financial promotions that we have taken action against, we are not under a duty to do so.*

Many firms support us publishing details of unsuitable financial promotions as this helps them understand what is not acceptable. The industry also welcomes firms' right to make representations before the ban is confirmed and we publish the notice. They would also like to know more about how exactly this process will work, for example, what the requirements are for social media promotions.

Consumer organisations would like us to take a closer look at how financial promotions are used to target vulnerable customers, such as through cold calling or text messages. Some suggest that we should take more action against the firm as a whole rather than just against the promotion itself.

### Our response:

The banning power will not replace our other supervisory tools and enforcement powers, which will remain in place. There is already a process to deal with repeated breaches of our rules.

The FSA set out [guidance](#) for firms' use of social media in an industry update in 2010. This guidance essentially states that financial promotions rules apply whatever medium is used. We have no current plans to issue any further guidance on this, but will continue to communicate with the industry to keep ourselves informed of industry practice and to make our expectations as clear as possible.

Find out [more](#) how about we will use the banning power and the process we will follow.

### *Warning notices*

*We may provide information about enforcement action that we are considering by publishing details of warning notices we have issued.*

The industry is concerned about the risks of reputational damage to those who might later be found not to be in breach of FCA rules. They would like us to be clearer about how the process will work in practice.

One consumer group welcomes the new publication power, saying it would have several consumer benefits.

Our response:

Since publishing the *Journey to the FCA*, we consulted on and confirmed the process we will follow when deciding whether to publish details of warning notices. This is in Chapter 3 of the FCA's Decision Procedure and Penalties manual (DEPP), part of the [FCA's Handbook](#). Decisions to publish information about a warning notice will be taken by our Regulatory Decisions Committee (RDC), which is independent of our enforcement investigation team.

Following a further [consultation](#) from March to June 2013, we are currently considering whether to amend our approach to publishing information about warning notices. We expect to publish our final policy later this year.

### *Super-complaints*

*Super-complaints provide a fast-tracked route for designated consumer bodies to complain to the FCA about features of a market for financial services in the UK that may be significantly damaging the interests of consumers.*

Respondents point out that historically this process has worked well at the Office of Fair Trading (OFT).

Consumer organisations believe this will help them act on behalf of all consumers, including those who might not be able to complain or who may not understand that their rights have been infringed. They also support that there is no limit on the number of super-complaints and for making the process workable by not demanding too much information. Some consumer organisations want to be on the list of organisations designated by the Treasury to make super-complaints, asking that this list is kept sufficiently broad.

Larger firms and their trade bodies are not in principle against super-complaints but ask us to keep the requirements for them robust. They also would like to keep open existing channels between the FCA, consumer organisations and the industry, so that issues can continue to be worked out informally.

Our response:

We published [guidance](#) on how super-complaints should be made to the FCA, setting out:

- what a super-complaint is and the process for making one
- what information should be included in super-complaints and the evidence we are likely to need to assess them
- how we intend to handle super-complaints, including what action we may take in response to a complaint and how we intend to manage the publicity surrounding them.

Find out [more](#) about how consumer organisations are designated by the Treasury to bring a super-complaint. The initial round of designations is now closed but consumer bodies may be able to apply in the future.

### *Consumer credit*

*The FCA will take over consumer credit regulation from the Office of Fair Trading (OFT) in 2014.*

The consumer credit industry is concerned about how our approach may affect the consumer credit market, the type of consumer credit regulation the industry believes would work well, and the need for a careful transition from the OFT.

Consumer organisations and many firms believe that the FCA needs to introduce a more robust consumer credit regime. They are also interested in how this works in other countries and whether we could learn from them. Several firms from other parts of the industry express concern about payday lenders.

One trade association for firms says the rules for secured and unsecured lending should be more closely aligned, although we did not need to look at this issue until we were more established.

#### **Our response:**

We set out our proposed approach to consumer credit regulation in a [consultation paper](#) in March 2013. We aim to introduce a strong and flexible regime that is tailored to address the risks that face consumers without placing undue burdens on firms.

We are raising awareness of the changes among those it will affect and will publish more detailed proposals in September 2013.

### *Competition*

*We have an operational objective to promote effective competition in the interests of consumers. We also have a duty to carry out our rule-making, policy and guidance functions*

*in a way that promotes competition in the interests of consumers (in so far as this is compatible with advancing our other objectives).*

All respondents broadly support our new objective and duty on competition. Most stakeholders believe our initial thinking seems reasonable, but want more detail on our approach. Larger firms in particular would like to hear more about what our approach to competition will mean for them in their day-to-day business.

#### *FCA approach to competition issues*

The industry would like us build on the OFT's way of working on competition. Some have concerns about how we will develop our expertise, and when and how intervention might take place. Many agree that our process for intervention on competition needs to be as clear and transparent as possible.

Consumer organisations say that we must focus our efforts on promoting meaningful competition and that good outcomes can be achieved by a combination of competition and alignment of firms' interests with those of consumers. They suggest we should pay particular attention to how competition works for different types of consumer, and how competition may fail vulnerable consumers. They think that it might be necessary to set higher minimum standards in areas where competition is unlikely to promote good consumer outcomes due to consumers' lack of expertise.

Although consumer organisations believe we have highlighted some of the main issues, such as information asymmetry, they also believe care needs to be taken when talking about weaknesses in consumer behaviour. Some consumer organisations express doubt as to whether fundamental market problems, which may be long term and deeply entrenched, can be resolved by 'more competition'. One group urges us not to view competition and regulation as two separate considerations that need to be balanced one against the other, but rather as two complementary levers that reinforce one another.

#### *Innovation and growth*

The industry is in favour of the statements made in *Journey to the FCA* about our desire to support innovation and growth.

Consumer organisations warn that our aims here should not permit the industry's interests to prevail over those of consumers.

#### *How competition fits with the rest of the FCA approach*

Several firms ask how we will balance our mandate on competition and innovation with plans for earlier intervention and tighter supervision. Large firms in particular would like us to favour a solution that frees up the competitive process (and so potentially addresses the root cause of adverse consumer outcomes) rather than one that only deals with consumer

protection measures (and so only deals with the symptoms of a perceived lack of competition in the interests of consumers). Large banks also warn against caps on market share, saying the key to greater levels of shopping around are consumer engagement, ease of switching and transparency. Many think that our job is to set an appropriate context for the competitive process rather than to direct it.

Consumer organisations welcome our focus on competition, but say this should be viewed as complementary to consumer protection approaches, rather than as an alternative. They would like to see us use our powers and resources to promote competition where this is effective in advancing consumer interests, but point out that widening consumer choice does not necessarily result in better consumer outcomes.

### *Value for money, prices and competition*

Some in the industry are concerned about our intention to place greater emphasis on outcomes for consumers in terms of value, which respondents say is subjective, and pricing, which they say should be left to the market. They suggest we should work to make market-wide interventions to improve competition overall rather than try to set prices for individual firms.

Consumer organisations say we should look at the value for money of products and services, and if competition measures do not succeed in driving better consumer outcomes, then we need to consider other approaches including, for example, price caps.

### Our response:

The competition objective and duty together give us a strong mandate to promote effective competition in the interests of consumers. We have taken significant steps to pursue this mandate:

- We have established a dedicated competition department and recruited well-qualified and respected personnel to lead and staff this function.
- We have published [guidance](#) that sets out our substantive and procedural approach to addressing competition issues.
- We have launched our first market study, looking at competition in sales of add-on general insurance products. We expect to publish our results by early 2014.
- We are undertaking a review of competition-related risks in financial services markets and in early autumn 2013 we will be announcing in which markets we will be launching market studies.

We realise there is a lot of interest in how we will carry forward this important area of our work. We will continue to provide more information about where we are focusing our attention and how we will assess and address competition concerns over the coming months.

## *FCA and Office of Fair Trading*

*While we have a role to promote competition, the OFT (or future Competition and Markets Authority) will continue to police competition in financial services markets (for example, through its powers in relation to cartels, abuse of dominance, mergers, and market investigations).*

Many respondents would like to know more about how we will work with the OFT – particularly given the OFT’s continued interest in financial services – and how our organisations will avoid overlapping.

Our response:

We have set out how we will work with the OFT in a [Memorandum of Understanding](#) published in April 2013. This includes an agreement to consult each other at an early stage about our plans to avoid our work overlapping and to ensure that the best-placed body examines issues of potential concern in financial services markets. We are committed to sharing information and insights, and consistently working out the best way forward for meeting our statutory roles.

## *Access*

*When considering the effectiveness of competition for the purposes of our competition objective, we may look at several factors, including the ease with which consumers (including those from economically or socially deprived areas) can access financial services. This was a late addition to the Financial Service and Markets Act legislation and so we did not cover this in Journey to the FCA.*

Both industry and consumer representatives would like more detail on our approach.

Our response:

We have emphasised in [The FCA’s approach to advancing its objectives](#) that too little consumption of financial services could indicate a competition concern, and reflect consumers’ problems in accessing financial services, including a lack of awareness or understanding.

In many circumstances, actions that we will take to promote competition would increase consumers’ access to products and services. For example, where competition is increased in a market, firms may reduce their costs, and would pass those cost savings onto consumers by lowering prices. This would increase the affordability of – and hence access to – financial products. More effective competition could also strengthen incentives for existing or new firms to design more innovative products that are tailored to the needs of specific consumers.

We will therefore engage with consumers, consumer representatives and industry to identify areas of concern about too little competition. Where we identify significant issues, we will analyse whether enhanced competition could promote consumption of and access to financial services, and we will intervene to promote such competition.

However, our remit to promote access should also be seen in the context that substantial policy interventions that have a sole focus on enhancing access, and which require significant economic and social policy trade-offs to be made, remain the role of the Government rather than us. This includes actions that would require firms to offer products or services where it would not be their commercial choice to do so. We consider that this was Parliament's intention in not making access a specific objective for the FCA.

## **Chapter 2: Protecting the perimeter**

### ***Authorisations***

*We set out how the authorisations process will work, including how we will work alongside the new Prudential Regulation Authority.*

Dual-regulated firms are pleased that there will be a single point of entry for authorisations in the future.

### ***Senior management responsibility***

Several firms agree with placing more emphasis on senior management in the industry.

Our response:

We are committed to holding senior management of regulated firms to account, and are considering the findings of the Parliamentary Committee of Banking Standards, including the proposed introduction of a new senior persons regime. We will set out our approach to the Parliamentary Committee in September 2013.

### ***Business model threshold condition***

Firms would like to know more about how the business model threshold condition will work in practice, with examples of good and poor practice, and an indication of how firms can demonstrate their compliance.

Our response:

When firms apply for authorisation, they have to explain clearly their assessment of the suitability of the proposed business and highlight potential conduct risk issues to us.

Our supervision teams will consider the business model threshold condition as part of their day-to-day supervision, as well as in more detail through firm-specific or peer group business model and strategy analysis.

We are currently developing factsheets to provide more information for applicants, which we aim to publish in autumn 2013.

### *Mortgage approved persons*

Mortgage trade bodies and firms would like to know if we still plan to introduce the Mortgage Market Review approved persons regime for mortgage advisers.

Our response:

We regret the delay in introducing the approved persons regime for mortgage advisers, and understand the industry's frustration. We are actively working with industry representatives and support an industry-led solution that achieves the same outcomes.

When we make any changes we will take into account the recommendations from the Parliamentary Commission Banking Standards [report](#) that was published in June 2013. We will publish further details in autumn 2013.

Find out [more](#) about mortgage approved persons.

## **Chapter 3: Ensuring firms continue to meet our standards**

### *Overall approach to supervision*

*We set out how we will introduce forward-looking, judgement-based supervision.*

The industry welcomes our commitment to forward-looking, judgement-based regulation, provided that this approach is handled proportionately and non-retrospectively, and is well targeted, and consistently and effectively delivered.

Firms would like to know what our interpretation of good compliance is, so firms are fully aware of the consequences of their actions. They agree with our risk-based approach, given the scale of the task, although some stakeholders want us to look at the whole of the market, including smaller, niche players. Firms support our focus on senior management in the industry, and allowing firms to conduct their own monitoring and self-attestation processes.<sup>2</sup>

Consumer organisations support our more proactive approach and welcome the commitment to the Treating Customers Fairly initiative. However, they believe the approach needs to be stronger, with clear direction of what firms need to deliver and non-compliance being dealt with swiftly, robustly and publicly. They would like to see both proper testing of firms' contingency plans (so that consumers are not adversely affected by problems like IT

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<sup>2</sup> This is when we ask a firm to rectify something and then someone senior at the firm 'attests' that it has been done.

failures). They are also concerned that we take care to supervise smaller businesses as well as larger firms.

Our response:

We expect firms to take the conduct agenda seriously and ensure that their business models strike the right balance between shareholder returns and keeping their customers and market integrity at the heart of everything they do. This approach should apply to both large and small firms alike.

When conduct falls below our expectations, we will be robust in our response to ensure that consumers are provided with the compensation they are due, where this is applicable.

Find out [more](#) about our approach to supervision. We will outline our latest approach to supervision for firms in autumn 2013.

### *Concerns about the judgement-based approach*

Some in the industry want to know how and where we will use our judgement in regulation. They would also like our supervisors to have a better understanding of a firm's business model and markets. Firms believe that our decision-making should be supported by a robust and transparent internal control system.

Our response:

We agree that our supervisors' understanding of the business models of firms that they supervise is key to making good judgements. To achieve the right level of understanding, we are training staff and hiring or seconding more senior individuals from industry. But we also need firms to explain better how they are considering consumer interests and market integrity in their short, medium and long-term strategies.

We have reviewed all of our supervisory decision-making internal committees to make sure that they will allow us to deliver our regulatory duties and we are satisfied these are fit for purpose.

Find out [more](#) about our approach in *The FCA's approach to advancing its objectives* (p.18) published in July 2013.

### *Firms losing a relationship manager*

Building societies and other firms that expect to lose their relationship manager are concerned about the impact it will have on them. Some firms believe our contact centre

needs to provide an improved service. Firms would also like to see a commitment to communications to firms without a relationship manager.

Our response:

We are training our contact centre staff to ensure they have the right level of knowledge to support firms about to move into flexible portfolio supervision. This transition will take place over the next six to eight months.

We wrote to firms to tell them what this transition means for them and confirmed this in a separate letter in April 2013 to all firms that are currently relationship-managed. Once our sector departments have adopted our new approach for firm-specific supervision we will contact the relevant firms.

### *Thematic work*

Respondents broadly support our commitment to carrying out more thematic work as it will help to highlight issues that may not be picked up in assessments.

Firms would also like to see how we will manage the information we hold about them so new thematic teams understand the businesses they visit. Trade bodies welcome our commitment to sharing findings earlier and engaging more with the industry on thematic work.

Our response:

We aim to maintain our knowledge of each individual business, which will help inform our thematic work. We will also continue to share findings earlier and engage trade bodies and industry, for example, as we have done in our recent annuities thematic work.

Find out [more](#) about our thematic work.

### *FCA/PRA coordination*

Firms that are regulated by both the FCA and PRA are concerned about the burden on them in terms of costs and time and would also like to know more about how this will be dealt with by both regulators.

Our response:

As the FCA and the PRA have different objectives and focused on different areas, inevitably this will take up more of firms' time and possibly cost them more. We will both ensure that any action or area of focus for either regulator is coordinated as much as practicable, so that requests are not duplicated.

We have a [Memorandum of Understanding](#) in place that explains this information-sharing process.

For authorisations, we have invested significant time and effort in making sure the relationship and process with the PRA is as smooth as possible to ensure firms benefit from a coordinated and integrated approach wherever possible.

### *Wholesale conduct*

The industry would like to know more about our new approach to wholesale conduct, with case studies showing practical examples. They warn that we must retain a proportionate approach to wholesale market regulation and client classification.

Consumer organisations welcome our approach to wholesale conduct. One organisation even suggests that our approach to retail markets should be extended to wholesale markets.

Consumer organisations would also like to see that firms providing advice should be presumed to have more knowledge and expertise than their clients and therefore have a responsibility to treat them fairly. They add that charges and services should be transparent and agreed with clients. Where charges are excessive, they believe we should act to constrain returns to shareholders and employees to what would be achieved by firms in effectively competitive markets. They supported the [Kay Review](#) and would like us to follow its agenda.

Our response:

Poor wholesale conduct captures a wide range of activities that undermines trust in market integrity and/or harms competition and which can, in turn, result in harm to both retail and wholesale consumers.

We will adopt a proportionate supervisory approach in this area, reflecting the different degrees of protection offered by our existing client categorisation rules. However, given the risks that poor wholesale conduct poses to our objectives, we will be more assertive in supervision by using existing wholesale conduct rules.

The recent misconduct of banks in relation to the LIBOR-setting process highlights the important link between the actions of individual market participants and the wider impact on the confidence in the integrity of UK markets.

We will also show more interest in where individual firms enter the financial value chain and how they might affect our market integrity objective.

We will use the same supervision framework and processes for wholesale and retail firms, with an appropriate balance between our three pillars of supervision (firm-specific supervision, issues and product-based supervision, and event-driven supervision). As in the retail arena, the focus for wholesale firms is on understanding business models and drivers

of conduct risk. For example, the failure to properly manage the often inherent conflicts of interest in wholesale markets is a root cause of risk to our market integrity, consumer protection and competition objectives.

Further information about our approach to wholesale conduct can be found in [The FCA's approach to advancing its objectives](#) (p.28) published in July 2013 and [FCA Risk Outlook](#) (p.40-41) published in March 2013.

We will continue to engage with industry and consumer organisations and will be publishing our approach to supervision, which will cover both retail and wholesale conduct in autumn 2013.

### *Skilled person reports (section 166 reports)*

*We have new powers to appoint skilled persons directly to report on matters within a firm, with costs of the report being met by that firm. Previously, our power only allowed us to approve a skilled person who was appointed by the firm itself.*

The industry understands the value of these reports, but would like to know more about how and when they will be used. Some are concerned that skilled person reports may become a routine regulatory tool, and that they may be overused, as the reports will be paid for directly by firms. Firms would also like to know more about how skilled persons are chosen, how they are evaluated and how costs for firms are to be kept down.

Our response:

Section 166 reports are a valuable tool for examining particular issues in firms and firms can expect to see continuing use of these reports as part of our supervisory regime.

This new power allows the FCA to directly appoint skilled persons where, for example, a greater degree of control and oversight is needed due to the sensitive nature of the matter concerned. This forms part of the FCA's new supervisory strategy that is designed to support a judgement-based and pre-emptive approach to supervision.

We use this supervisory tool to help meet specific supervisory objectives, particularly as this puts the responsibility on firms to deal with issues themselves. These reports give us independent confirmation that the work has been completed and done to the high standard expected of any regulated firm.

We will not use skilled person reports as a substitute for regulatory judgement, which will continue to be the responsibility of our supervisors. Instead, skilled person reports serve to deliver more factual analysis such as an evaluation of known risks or monitoring of remediation of a risk we have identified.

Find out [more](#) about skilled person reports.

## Chapter 4: Taking action against firms that do not meet our standards

### *Enforcement transparency*

*We said that we will seek to be more transparent about our work and we will publicise, to the extent that it is legally possible, cases where we have intervened but formal action has not been taken.*

Firms would like to know more about how we will plan to publish information in this way and what we hope to achieve through publication.

Our response:

In March we published a [discussion paper](#) on transparency, which explained that we are considering increasing the transparency of our processes in a number of ways including publishing more about our enforcement processes. We are reviewing the feedback we received on that discussion paper and we will publish a statement later this summer that will explain how we are taking these ideas forward.

### *Enforcement – Regulatory Decisions Committee (RDC)*

Firms welcome our commitment to keep the RDC, which they believe is an important safeguard in our decision-making process.

## Chapter 5: Building our understanding of the markets

### *Policy, Risk and Research*

*The FCA has a new division that brings together research, risk identification and policy making. This division gathers and acts on intelligence, and helps to deliver more proactive regulation.*

The industry supports the creation of the Policy, Risk and Research Division, which will align horizon-scanning for risks with policymaking, and make greater use of evidence-based policymaking. It welcomes the strong commitment to improving the quality of market analysis, and the use of behavioural economics and better regulatory intelligence.

### *Policymaking*

All stakeholders welcome the opportunity to engage earlier with us on policy proposals and our attempt to make the consultation process more accessible.

Several in the industry say that face-to-face engagement should complement rather than replace formal written consultations, which are integral to accountability. Firms support the commitment to reduce the number and frequency of consultations. They urge us to avoid

overuse of guidance consultations in developing the broader rulebook and to avoid dependence on speeches to deliver latest policy thinking, as this messaging to firms is neither transparent nor efficient.

Our response:

We agree that our policy discussions with stakeholders should continue to include written consultations, but we intend to explore new ways of engaging as well. We are also considering our approach to guidance generally and will aim to share our thinking on all these issues in the future.

Find out [more](#) about our policymaking in *The FCA's approach to advancing its objectives* published in July 2013.

### *Better policy coordination*

Firms and trade bodies propose that multiple rule changes that affect the same parts of the industry should be better aligned to avoid costly changes (IT systems, customer documentation, etc). They also suggest that UK and European regulatory policy should be better coordinated.

Our response:

We will look to improve coordination on policy in the UK and in Europe, where appropriate and where we have the power to do so.

## **Chapter 6: Maintaining effective relationships**

### *EU and international*

Respondents support our position on shaping international policy, and our commitment to ensuring the UK's voice is heard at the policy formulation stage in Europe.

#### *Coordination on EU issues*

Industry and consumer organisations believe coordination among the UK authorities is vital on international issues (particularly as the FCA is not represented on a number of committees that the FSA was on before). Industry is also in favour of the International Coordination Committee, but they believe it must be given the support it needs to function well.

Trade bodies would like the FCA to work with them on international engagement and developing policy positions.

Our response:

We agree that the UK authorities must work to deliver effective coordination on EU and international issues and initiatives. We recognise the importance of engagement with relevant stakeholders and will listen to their views.

#### *European Supervisory Authorities (ESAs)*

Firms and consumer organisations would like to see better coordination and closer working with ESAs.

Consumer representatives support an integrated approach to consumer protection, particularly where different UK authorities are engaged in the regulatory process and where fragmentation risks arise. They suggested this could be done by effective coordination between the FCA and PRA to help balance the current disparity between industry and consumer representation at international level.

Our response:

We support the consumer protection mandate of each of the ESAs and intend to maintain our active involvement with them in this area, including promoting an integrated approach to consumer protection where practicable.

#### *Going beyond European requirements*

Some in the industry think we should consider going beyond the EU position in certain policy areas, but believe we should set safeguards around decisions to do this. Firms would like to see a level playing field for UK regulated firms compared with international competitors.

Our response:

The FCA will consider these factors when developing its positions on EU and international issues.

#### *Engagement*

Firms and consumer organisations welcome our intention to engage more effectively with them. However, some believe there is a risk that the FCA may be too London-centric and we will not have a regular source of intelligence at local and regional level.

## *Engagement with firms*

Firms have been very clear that they want to hear more from us informally and face-to-face, and were overwhelmingly positive about the format of the roundtables. They would like us to follow these with more regional events where we can share information with firms.

One consumer body says that the FCA's priority should not be to improve its already extensive links with firms but to address the imbalance of influence that exists between consumers and the industry.

### *Our response:*

We are developing ways to improve our engagement with firms and their representatives, in particular to help firms understand our requirements and so we can discuss policy development and industry issues with them. We think this is an important part of our work, as it will help the industry to understand what we expect from them, and allow them to learn from examples of good and poor practice.

The FCA is much more consumer-focused. We regularly consult with consumer on a variety of topics and to keep up to date with emerging issues. We have spoken recently with consumer representatives on high profile issues, such as the Retail Distribution Review and the maturity of interest-only mortgages. We look forward to building on this in the future.

Find out [more](#) about our engagement with firms in *The FCA's approach to advancing its objectives* (p.24) published in July 2013.

## *Consumer engagement*

Consumer organisations welcome our efforts to improve communication with them, such as through the FCA consumer network and giving them a single point of contact. However, they would like to see a wider cultural change within the FCA, for example, closer contact with a broader range of consumer bodies and civil society organisations that can feed into our regulatory work.

Consumer organisations believe our credibility will rest largely on how we demonstrate our willingness to act on market intelligence and engage with consumer representatives. They believe we need to be more open-minded about how we gather information from consumers and consumer organisations. This will help us gain better information that will help us identify risks earlier.

Some firms think the FCA needs to collaborate more with the Money Advice Service to exchange information about consumer issues.

Our response:

We agree that we will need to build on the FSA's steps to communicate better with consumer organisations. We acknowledge that we need to reach out to many more consumer organisations across the UK and engage with consumer representatives in ways that allow them to share their knowledge, skills and views with us. We will look at new ways of engaging with consumer groups, which are tailored to members' different needs and interests.

We will continue to develop our consumer network and are considering the creation of themed groups to explore areas of mutual interest. We will look for opportunities to consult with consumer organisations at their own events and will work with those that have their own consultation processes, so we can benefit from their established networks.

We will work collaboratively with consumer organisations to create the best chance of collecting and providing data and intelligence. In parallel to this work, we will benefit from the intelligence we gather from our direct contact with over 110,000 consumers per year through our [consumer helpline](#). This insight, along with the data and intelligence from consumer organisations, will assist in identifying emerging issues and trends.

The Money Advice Service is an integral part of the regulatory family. We will work with it to establish how it can help us meet our objectives.

Find out [more](#) about how we will engage with consumers in *The FCA's approach to advancing its objectives* (p.23) published in July 2013.

## **Chapter 7: Accountability, transparency and measuring our success**

*We set out our plans for making the FCA more accountable and transparent*

### *Accountability and transparency*

We receive broad support for our plans to enhance accountability and transparency, which many believe will be critical for our credibility. All stakeholders ask for more on how we will do this, and suggest several ways we could measure and increase our levels of transparency.

### *Industry transparency*

Consumer organisations believe the industry can be made more transparent – whether in terms of uncovering hidden charges in asset management, or in providing clearer information so consumers can make informed decisions.

Our response:

We will always favour transparency unless there are compelling regulatory, legal or other reasons why we should not. We aim to use transparency where we believe it will help consumers make more informed choices, change consumer or firm behaviour in ways that help us achieve our objectives, or where it will help external stakeholders hold us to account. However, we also realise there are at times very good reasons why some things should remain confidential so a balance must be struck.

Equally, in terms of directly changing consumer behaviour, we realise that there is a genuine question to be answered over what information is actually useful for consumers. We will therefore think carefully about what information consumers need and how the information is presented, using insights from behavioural economics.

We published a [discussion paper](#) in March 2013 that sets out our ideas on transparency.

We also published some [responses](#) in May 2013 to the FSA's Discussion Paper on Transparency. We will provide further feedback and set out our next steps in summer 2013.

### *Value for money*

The industry welcomes the commitment to achieving value for money in terms of the fees that we will charge to regulated persons. It hopes this will mean that the costs and benefits of regulatory interventions and spending (such as on IT projects) are considered more carefully.

Our response:

The value we deliver to stakeholders will be a key measure of our performance as a regulator. In line with the National Audit Office guidelines on which we will be audited, we consider value-for-money (defined as the optimal use of resources to achieve intended outcomes) in our decision-making. We are developing a value-for-money framework that we will use across the organisation and which we will publish when it is finalised.

Find out [more](#) in our *Business Plan 2013/2014* (p.12).

### *Fees*

Firms would like better dialogue about how we and other bodies in the regulatory family set fees. Several firms wonder how we would allocate fees and whether the fees could be linked to our risk assessment of firms.

Our response:

We have discussed with our stakeholders the possible alternatives to the current model for recovering the costs of regulation. Our aim is to produce detailed proposals in autumn 2013.

For further information read our [policy statement](#) on fees published in June 2013.

### *FCA Board*

Respondents would like to see more information about how the Board will hold our executives to account, how it will set our strategic direction, and how it can become more transparent. Firms would like to see a wide range of experience on the Board, while consumer representatives believe it should have a significant representation of members who are not part of the financial services industry.

Our response:

The Treasury and Department for Business, Innovation & Skills appoints the non-executive members of the FCA Board, following an open recruitment process. The Board approves our business plan, which sets out our work for the year ahead, as well as our annual report, which reports back on how we have performed. We publish minutes of our Board meetings and hold an annual public meeting.

Find out [more](#) about our Board.

### *Measuring our performance*

Most respondents welcome the proposed measures of success as set out in *Journey to the FCA*, but caution against working on indicators that are subjective, are not based on robust evidence, or which could lead to perverse incentives.

Our response:

We have spoken to stakeholders to understand their views on our statutory objectives and how to measure our performance against them.

Find out [more](#) about how we measure performance in our *Business Plan 2013/2014* (p.11). We will publish our approach to performance measurement later in 2013.

### *Risk tolerance*

Consumer representatives support the new approach to risk tolerance, and encourage us to make sure the risk assessment process is sensitive enough to take account of the potentially disproportionate impact on individual consumers or groups of consumers, who may be

overlooked when measuring risk. Firms would like more information on the risk approach, and the impact this could have in terms of the data that needs to be collected.

Our response:

We are currently working on a segmentation model of individual retail consumers that will set out the characteristics of consumers relevant to the financial markets in which they are active.

We will use this to help inform and prioritise regulatory activity in order to prevent harm to consumers with lower levels of financial resources and capability, or those of greater vulnerability, or where the level of potential harm is highest in relation to their financial resources.

However, we intend to look at more than just these sets of consumer characteristics and will focus on any group of consumers that we consider is being harmed.

### *FCA staff*

All stakeholders welcome the commitment to the new culture among our staff. Firms believe our staff should develop a better understanding of the industry and that we should recruit more experienced staff with industry knowledge.

Consumer organisations agree it will always be necessary to recruit industry expertise but that we should also seek to recruit more widely, such as among economists, consumer and competition specialists, and those with a policymaking or regulatory background. They add that we must be careful to avoid being overly influenced by the industry, or of allowing the view to develop that working for the FCA is just a stepping stone to a career in the industry.

Our response:

We recruit talent from a wide and diverse range of sources (not always financial services) to ensure that we have the most relevant skills, experience and technical knowledge being brought in to support and complement our existing staff.

We follow a consistent selection and assessment methodology in the evaluation of all candidates to ensure the correct individuals are hired to deliver our ongoing objectives. We also offer a comprehensive training programme that helps to develop technical and behavioural skills.

### **Other issues you raised**

#### *Claims management companies*

Firms tell us that claims management companies, which help consumers make compensation claims against firms, are affecting many sectors of the industry. They are

concerned with the number of unfounded complaints they receive, some of which originate from requests for personal information to firms. Firms call for tighter regulation of claims managers, although they acknowledge this is not part of our responsibility.

Our response:

The Claims Management Regulator (CMR) is responsible for regulating claims management firms, and we are having ongoing discussions with it about the activity of these firms. We want to ensure that any action we take does not make it more difficult for consumers to resolve disputes they may have with firms we regulate.

We are working with the CMR and the Financial Ombudsman Service to limit the impact of needless complaints being made by claims management companies.

Find out [more](#) about the CMR.

## **Areas for consultation**

### ***Competition questions***

**In which financial services markets do you think competition is working well in the interests of consumers and in which ones is it working poorly? What do you think the reasons are for this?**

Nearly all industry respondents think that competition is working well in their markets, although one firm cites personal current accounts as an area where competition is weak, adding that statistics on switching providers show which markets are working better than others.

Consumer organisations think there are few areas where competition works well for consumers. They see problems with dominant firms, barriers to entry and a significant imbalance in knowledge and experience between consumers and business. Firms also have to meet the needs of shareholders, which some believe will always cause a tension with what may be best for consumers. More competition should help but what consumer organisations think really needs to happen is aligning firms' incentives with their consumers' best interests.

Our response:

We are analysing various indicators to assess the effectiveness of competition across financial services markets. This analysis is being used to inform decisions about which

market studies should be taken forward by our competition department. We will be announcing our priorities for future market studies in autumn 2013.

**Are there markets in which you face material barriers to entry or expansion? What are the barriers? Are there any undue regulatory barriers?**

Some firms think that regulation is a barrier – whether as a result of the unsettled nature of regulatory requirements, regulatory costs, or authorisation requirements. Others, such as some banks, think that barriers to entry are not unreasonably high, but welcome our recent work to review this. Most stakeholders agree that any moves to encourage new entrants should not come at the price of lowering regulatory standards.

Consumer organisations say that we should not just rely on lowering barriers to entry and that we are right to recognise that choice does not necessarily mean effective competition. The FCA must ensure thresholds to enter markets are high enough to deter firms likely to harm consumers from entering the market. Some point to the experience of consumer credit, which shows that low barriers have not always produced increased competition that benefits consumers. Consumer organisations add that we need to be clear that reducing barriers to entry does not mean reducing threshold conditions on business models, suitability and soundness.

The industry says that new technology and resultant consumer demand are helping to lower barriers. Early and forceful regulatory intervention by us could discourage market entry and stifle innovation by existing players. The business model threshold condition at authorisation could also potentially amount to a barrier to entry (despite its wider benefits). The industry adds that when looking at competition, we must consider total regulatory costs that firms have to pay and ensure that other regulatory bodies like the Financial Ombudsman Service and Money Advice Service are operating in a way that keeps their costs under control.

**Our response:**

Regulation may act as a barrier to entry, but some barriers are needed to ensure that consumers are adequately protected and that firms act appropriately. We aim to ensure, however, that our approach is proportionate to the risk and is not unfairly demanding. We also need to ensure that our rules do not discourage innovation or entry from non-traditional players.

We reviewed the requirements for new firms entering the retail banking sector and, in spring 2013, the FSA and Bank of England announced several changes aimed at reducing the time and costs associated with becoming authorised.

Assessing the potential existence and strength of barriers to entry or expansion is part of the wider assessment we are undertaking to evaluate the risks to effective competition in financial services markets.

We also have a duty to promote effective competition when addressing our consumer protection or market integrity objectives. What the competition duty means is that we must look to achieve our desired outcomes using solutions that promote competition regardless of which objective we are pursuing. Consideration of how to apply this in practice will be made on a case-by-case basis.

Find out [more](#) in our recent review of barriers to entry into the banking sector arising from conduct and prudential requirements.

### ***Gathering and receiving information***

#### **How can the FCA make it easier for firms, consumers and organisations to provide information on what is going on in financial services and markets?**

Consumer organisations would like us to make it easy for them to provide information and also want to know how we are acting on it. They also support the changes we made with a new consumer team and the consumer network. However, they propose that we need to be more flexible about how we receive data and what it needs to include. One consumer group supports an approach that brings together at the same time representatives from consumer organisations, industry and other relevant agencies.

Firms would also like to know that the information that they provide is used and acted upon.

Our response:

We aim to become more flexible and smarter in how we gather and receive information from market participants.

We receive information from a variety of sources, ranging from calls to the consumer contact centre through to monitoring social media as well as using our formal powers to require information from firms.

We are actively in contact with consumer organisations and encourage them to pass on any information they may have received.

#### **What can the FCA do to make you more likely to provide such information to us?**

All stakeholders say they would be more likely to send us information if the purpose for sending in the information was clear, and the process for sending it in was straightforward. Some are concerned that when they have sent in information before, they were given no indication about whether action was taken as a result.

Firms suggest there should be an audit of what is currently collected to work out what is actually needed and then use that to inform its future requests. They also ask us to be clearer about what the data requests are for and how they will be used.

Many firms believe we ask for data that we do not ever look at, and in some cases we don't understand. They also believe the FSA did not organise its data properly so one part of the organisation may ask a firm for information that another part of the FSA already held or subscribed to through a third party.

#### Our response:

We have listened to the concerns raised here and have created a Data Strategy which sets out how we want to specify, collect, store and use data. We want all data that we collect to be actionable, integrated and accessible. To help us do this we have set out guiding principles and internal governance to ensure that when we request data from firms we do so in a clear and consistent way.

To support the implementation of the Data Strategy we have created a Data and Analysis department with responsibility for data governance, quality, collection and analysis.

We expect to publish our Data Strategy in autumn 2013 and will be looking to work with the industry and interested parties in its implementation.

**Financial Conduct Authority**

