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

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09 February 2023

By email: DP5_22@bankofengland.co.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to DP5/22: Artificial Intelligence and Machine Learning

In this letter we set out our response to the issues raised in DP5/22. We have not answered the questions posed in the consultation as our comments focus specifically on how increased used of AI and machine learning will ultimately impact end users, creating new risks and harms for consumers.

In this response we highlight the importance of the following:

1. Strong foundation of consumer protection
2. Focus on consumer outcomes
3. Consistent regulatory approach
4. Good governance
5. Informed and empowered consumers

1. Strong foundation of consumer protection

The Panel is keenly aware of the potential risks of AI and machine learning, and how unethical or improper use of this technology could lead to bias, manipulation, exploitation and financial exclusion that harms consumers. With this in mind, there must be a strong foundation of consumer protection in place to minimise risks and enhance consumer trust <u>before</u> the benefits of AI can be realised successfully.

Consumer confidence and trust is vital to unlocking the potential of AI and this can only be achieved with effective safeguards in place, good

governance, clear accountability and transparent information to enable informed decisions.

2. Focus on consumer outcomes

The only way to minimise the risk of harm is to put consumer outcomes at the centre of service design and delivery, in line with the FCA's Consumer Duty. To increase the likelihood of good outcomes, the Panel believes that the FCA should issue guidance (with examples and case studies) to help firms understand what the Consumer Duty means in the context of AI. When thinking about consumer outcomes the needs and abilities of all consumers must be taken into account, including those with protected characteristics and those in vulnerable circumstances, who may face particular challenges in their interactions with service providers. This includes consumers with visible and/or non-visible disabilities, limiting health conditions and/or cognitive impairment. Firms should check, and be able to prove if asked, that their use of AI does not create favourable or adverse bias and does not discriminate against certain groups.

AI is an integral part of financial services and, as such, we believe that firms should be held to the same standards for use of AI than they would for any other areas of conduct, and that there is no need for a separate regime. Firms should remain fully responsible for the impact of their use of AI on consumers and the outcome it delivers. An outcomes-focussed approach will help to future-proof the regime and reduce the time, expense and reputational damage of firms having to deal with problems later down the line.

3. Consistent regulatory approach

AI is a cross-cutting issue that affects the lives of all consumers, across all markets, sectors, products and services. The Panel believes that a consistent approach across sectors and effective collaboration between regulators is vital to deliver meaningful and consistent consumer protection across rapidly evolving digital markets.

While we support the creation of the Digital Regulation Cooperation Forum (DRCF) to facilitate collaboration, identify challenges and risks, share insight and help firms to deliver best practice we would like to see greater collaboration across sectors in the development of good practice guidance as well as direct consumer stakeholder representation on key decision-making forums. This would enable better understanding of consumer needs and experiences, strengthen the consumer voice and ensure equity of different stakeholder groups in the decision-making process.

Although we recognise the difficulties of defining rapidly evolving technology such as AI, we believe it's valuable to agree a common set of metrics to quantify consumer harm, and to guide the mitigation of risks for consumers. For example, 'what is/isn't manipulation?' and what is/isn't a good outcome?' This allows the technology itself to evolve while regulators stay focused on what matters for consumers.

It is essential that consumers with protected characteristics benefit from Equality Act and its anticipatory duty protections to which they are entitled. We believe that whist the Equality and Human Rights Commission (EHRC) have a Memorandum Of Understanding in place with the FCA, full transparency is required regarding the clarity of both the role of the EHRC and importantly, its way of working with regulators in relation to AI's operational application in financial services and prevention of bias and exclusion.

4. Good governance

Firms must ensure good governance around the use of AI to deliver good outcomes for consumers. Although the Panel recognises the positive aspects of the Senior Managers and Certification Regime (SMCR), we do not believe that the regime as it currently stands is sufficient to ensure effective governance, personal accountability and responsibility. We believe a specific Senior Manager Function should be created in relation to the use of AI throughout its lifecycle (pre-deployment, deployment, recovery and redress) with this extending to relationships with third parties where firms are outsourcing services. In addition, where firms are using AI, the Consumer Duty Champion should be accountable and responsible for Consumer Duty compliance.

Boards must have sufficient expertise and transparency to challenge on use and impacts of AI. As highlighted in section 2 above, good practice guidance would help to improve firms' understanding. To ensure effective oversight, by Boards and regulators, firms must be able to demonstrate, when asked, that their use of AI meets the industry standards. This must include being consistent with responsibilities under Equality Law. With this in mind, firms must keep sufficient record of AI-made decisions (and the data and reasons behind the decision) to allow for future challenge.

5. Informed and empowered consumers

The Panel would like to stress that consumer understanding in this area is particularly challenging as processes operate 'behind the scenes' and consumers cannot see how their personal data is being used or how this is impacting service and decisions offered to them. Consumers in vulnerable circumstances can find it even more difficult to understand information and make decisions in their best interests. This is why it is of

paramount importance that firms provide clear, timely and transparent information to enable consumers to make informed decisions and to exercise their rights and access redress when things go wrong.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel