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

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By email: gc23-3@fca.org.uk

Dear FCA,

Financial Services Consumer Panel response to FCA GC23/3: Guidance on the anti-greenwashing rule

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation on new guidance on FCA expectations for authorised firms making claims about the sustainability of a product or service.

The Panel strongly supports the objectives of the FCA Guidance on the anti-greenwashing rule, but would encourage the FCA to consider the following when developing proposals:

Consumer trust and confidence

Due to the popularity of sustainability with consumers and its resulting ability to make products and services more attractive, greenwashing has become widespread across many commercial sectors.

In May 2022[1], only 41% of adults, or 21.9 million people, had confidence in the UK financial services industry, and just 36%, or 19 million people agreed that most financial firms are honest and transparent in the way they treat them. Given such issues with lack of consumer trust and confidence in financial services, we feel it is highly important to take preventative measures to tackle greenwashing in the description and marketing of financial products and services.

Consumer understanding

Tackling greenwashing can help improve consumer understanding, facilitate selection of suitable products and generate positive consumer outcomes. As a high proportion of consumers already struggle to understand basic concepts of finance and investing[2], it is crucial that

[1] https://www.fca.org.uk/publication/financial-lives/financial-lives-survey-2022-key-findings.pdf
[2] https://www.oecd.org/daf/fin/financial-education/G20-OECD-INFE-report-adult-financial-literacy-in-G20-countries.pdf

messaging around sustainability does not add to confusion or deter the public from engaging with finance. Addressing greenwashing should also provide a fairer playing field among market participants and reduce risks of reputational damage and litigation costs.

While it is very important that sustainability claims are accurate, the avoidance of greenwashing alone cannot ensure that consumers receive all the information they need in the right format and the right time.

We encourage the FCA to further research, consult and consider as necessary the possibility of developing approved risk warnings that firms can use in consumer facing communications – relating to the investment risks associated with selecting both sustainable and non-sustainable products. The Panel would also encourage the FCA to consider our views on the need for, value and potential delivery of consumer finance education included in our response[3] to the FCA's Call for Input on the Consumer Investments Market.

Consumer research

Consumer research[4] carried out by the FCA focused on consumer reactions to the SDR naming regulations and fund labels. Further consumer research would be valuable to explore how familiar and interested consumers are with other names, terms and information that they may be presented with when considering products that have sustainability features. This will include terms relating to strategies that do not come under the sustainable fund label options – such as ethical funds and those that apply an ESG risk-based strategy.

We also encourage research into consumer worries about sustainability and whether these impact their willingness and ability to engage with finance and make rational decisions. For young people particularly, climate anxiety may affect significant life planning decisions, such as work and parenting choices, whether to purchase a home or save for a pension[5]. We believe that sustainability concerns should be seen as a potential cause of consumer financial vulnerability and that [if not addressed] a cohort of younger investors may permanently detach themselves from the system. Consumer research should aim to connect with the younger generation so that they can both contribute to and benefit from a well-functioning finance industry.

Firms' understanding and behaviour

We believe it is essential that firms better understand their expectations under the anti-greenwashing rule and other existing, associated

[3] https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_consumer_investments_call_for_input_20201215.pdf
[4] https://www.fca.org.uk/publication/external-research/sdr-investment-labels-regime-qualitative-research.pdf
[5] https://www.imperial.ac.uk/news/239251/majority-young-people-distressed-about-climate/

requirements. Given the complex and evolving nature of sustainable finance, policy and regulation, we appreciate some firms may be nervous of undertaking activity in this area. It is a subject on which it is difficult to become and remain expert and where, atypically, finance professionals many be as uninformed as their clients[6]. By providing comprehensive and specific guidance to firms, the FCA will encourage their confident participation in the sustainable finance market. This will improve access for consumers as well as a competitive marketplace.

As well as lack of experience or skill with regard to sustainability, some firms may also lack ability and knowledge more generally with regard to marketing and communication. These are not skills that are covered in the formal qualifications required by investment managers and financial planners. Financial services firms come in many shapes and sizes and smaller firms may not have human resource or access to external support in these areas. With the increasing prominence of social media and online interaction (which was accelerated in recent years by the pandemic), some smaller providers may be relatively new entrants into on-line marketing and remote services, as well as to offering sustainability-related products. This makes clear guidance on good practice essential.

The Panel is not convinced that the anti-greenwashing rule and associated guidance

"*will impose a minimal burden on firms, given they broadly reaffirm and help clarify existing requirements and expectations*."

Existing rules relating to financial promotions already require that firms provide clear, fair and not misleading information about their products and services. However, in the context of general financial and investment product information, this largely operates against a backdrop of long-established recognition of the key risks and considerations. There are, for example, set warnings in use across the industry about the risks of investing, of volatility and of capital loss. These are embedded in the compliance processes and verbal and written communications which product manufacturers and distributors deliver to customers. There is strong awareness of the punitive consequences to both firms and individual staff members if these warnings are not used and a complaint is made, or compliance check applied.

This same backdrop does not apply to sustainability claims. We therefore feel that additional support could be provided to bring firms up to speed with what is expected from them. Whether in the form of webinar training, further written guidance or good and poor practice examples, there is a widespread need for finance practitioners to understand what relevant, material and helpful information is relating to sustainability

[6] https://ifamagazine.com/84-of-advisers-report-barriers-to-esg-investing/

claims. Firms need to grasp what consumers want to know, whether consumers correctly understand industry terms and references and how to test claims made by other product providers and the firms they partner with. The industry lacks any formal, established best practice in this area. This, paired with effective communications and strong Enforcement action when things go wrong, should ensure the success of the Guidance.

Enhancing firms' knowledge in this area is likely to greatly reduce the risk of inadvertent or careless greenwashing. It is possible that this is a knowledge gap that the FCA will seek to address via its proposed consultation on the role of distributors (including financial advisers) later this year. However, the Panel believes that any interim training and additional guidance provided to firms will help them be confident in offering sustainable products and deliver positive consumer outcomes.

The Panel believe the delivery of training to finance professionals is a key way to reduce greenwashing and as such, would call on the FCA to mandate training in this area. In some instances, greenwashing is undertaken inadvertently, through ignorance rather than intent. It is necessary to understand what green means across all parties in the finance chain before you can avoid unintended greenwashing. The better practitioners understand what represents greenwashing and what does not, the more immediate the impact of the anti-greenwashing rules can be. Education will reduce inadvertent greenwashing, rather than this having to be removed when it is identified, whether by the regulator, a consumer or a third party.

It will also be highly beneficial in reducing risk of "greenhushing," whereby firms do not communicate about their sustainable products and services for fear of falling foul of greenwashing rules.

<u>Measuring success</u>
We support the measurement of success of anti-greenwashing measures by both the regulator and at individual firm level.

The FCA can measure the channelling of capital into sustainable funds in absolute and relative terms (compared to ethical/ ESG/ sustainable but no label and no sustainable objective). The true picture will only reveal itself over time, as and when SDR rules and principles extend to pension funds, model portfolios and overseas funds. However, this will not reveal if better communication has driven capital flows and there will be various other influences. Consumer surveys are therefore likely to be the best way to assess satisfaction with communications about the sustainable attributes of products and services. Data can be obtained from surveys carried out both by the regulator themselves or by surveys issued by firms (the content of which could be mandated).

We understand that the FCA has implemented a Sandbox Techsprint to develop tech that can help scan the marketplace for incidences of greenwashing and we hope that this will yield results.

More specifically, the Panel supports:

- **The requirement that sustainability references are capable of being substantiated.** We feel this point is essential to consumer confidence, as also indicated in the FCA's own consumer research conducted in conjunction with the final SDR rules published in November 2023[7]. This research indicates that novice investors in particular want to be able to trust that a reliable and expert body (such as the FCA) is overseeing sustainability claims. Proposals should enable consumers to have easy access to information that allows them to find out more, should they wish to do so, as provided for in the SDR disclosure regulations.
- **The emphasis that statements and claims made should be clear and presented in a way that they can be understood**. The Panel is conscious of the fact that sustainability claims may often be made in marketing and online information that is the 'shop window' through which consumers first view sustainable finance products and services and their providers. The clarity and relatability of this information can therefore open or close doors to engagement.
- FCA Financial Lives research[8] shows that consumers who are looking to compare financial products may find this difficult and that taking sustainability considerations into account potentially adds another layer of complexity to this process. **We therefore support the proposal that sustainability statements should facilitate consumer decision-making and the ability to compare products.** There is a need to ensure that consumers interested in sustainability receive adequate information, but also that this does not deter the product research and selection process by swamping the consumer with excessive and cumbersome data.
- **The clarification that all firms have responsibility for the information they provide to consumers**, no matter what their position in the distribution chain. This ensures that all parties involved in the product supply chain apply care to ensure good outcomes for consumers, in line with Consumer Duty principles.
- **The FCA's work with the Competition and Markets Authority (CMA) and Advertising Standards Authority (ASA)** to ensure the proposed anti-greenwashing guidance is consistent with the guidance and requirement of those bodies. Consumers may have

[7] https://www.fca.org.uk/publication/external-research/sdr-investment-labels-regime-qualitative-research.pdf
[8] https://www.fca.org.uk/publication/financial-lives/financial-lives-survey-2022-key-findings.pdf

existing knowledge of the work of these bodies which may make them more confident that the anti-greenwashing rules "have teeth." The CMA guidance on environmental claims can be clearly recognised in the FCA guidance. We believe it is helpful for consumers if similar principles apply to any promotions they might encounter with sustainability claims – from finance to food to fashion. Please note however our later comments on further clarity over how the rules and policies of each organisation interacts.

- The **linking of anti-greenwashing guidance to the Consumer Duty,** which has rightly placed emphasis on the need for delivery of clear, timely and appropriate information to customers. The Consumer Understanding outcome covers all communications that a firm has with a consumer, even before any product or service has been taken up. It is the outcome which potentially opens or closes the door to a relationship which then rests on the other Consumer Duty outcomes and principles.
- The proposal that **firms should test their communications with their target market**, again consistent with Consumer Duty good practice and delivery. Please note the additional comments we make below relating to our belief in the importance of further consumer research by the FCA. We would hope that the FCA will be conducting ongoing sampling, testing and guidance on the communications that firms develop in response to the recently announced SDR fund labels rules.
- **FCA action - The FCA to challenging firms** if they consider they are making claims about their products and services and, if appropriate, take further action.
- **Equality and Diversity.** We agree that all consumer groups, including those with protected characteristics, should benefit from the guidance. However, it is important to continue to monitor this.

Please find the Panel's responses to the questions posed in Annex 1.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex 1 – Response to consultation questions

1. **Does the proposed guidance clarify the anti-greenwashing rule? If not, what more could we do to provide clarity?**

When and how will the rule be applied?
The SDR Policy Statement PS23/16 states that the anti-greenwashing rule applies to any communications about any investments that make environmental and social claims. This would include ethical and ESG funds as well as those with sustainable labels or indeed funds which opt not to apply for a label but still consider sustainability in some form.
However, this is not explicitly clarified within GC23/3.
The Panel feel it should be made clearer to industry practitioners across all relevant roles in what scenarios they need to abide by the rule.
We also feel that clear messaging should be made to ***consumers*** about when the rule will apply to any financial communications they encounter, that it is there to protect them and where they can find out more about that protection.

We feel it will confuse consumers if the anti-greenwashing rule cannot be applied to all financial products, including pensions.

The use of sustainability associated words and phrases
The various meanings applied to the term ESG have been a major issue within the finance industry – whereby a fund manufacturer applies one version of ESG (improvers and sustainable profit focussed), a distributor understands and communicates it as their understanding of ESG (sustainable focus or impact) and a consumer ends up with an uninformed choice and an inappropriate solution.

The anti-greenwashing guidance could therefore use this opportunity to highlight the difference between these terms, informing financial professionals that they need to adjust their language and fund naming practices with immediate effect. The misunderstanding and miscommunication of how ESG funds work is a prevalent form of inaccurately describing the sustainability features of financial products. The content of the guidance and examples could address this point more directly.

Although used less widely, the term "impact" has also been deployed with various degrees of care and appropriateness. This also needs to be addressed now that "sustainable impact" has a more official meaning. The inappropriate use of such terms is a potential harmful form of greenwashing, detrimental to the Consumer Understanding and Products and Services Outcomes and could be more explicitly addressed in this guidance.

We believe there will remain some confusion over the next 12 to 18 months as to the correct classification of various types of sustainable/ ESG/ responsible investment funds. The anti-greenwashing rule will take effect before fund managers have to adopt the SDR sustainable fund labels and disclosure rules.

There will therefore be a period where investment fund providers and distributors are looking to review their communications to guard against greenwashing but are unsure how best to describe the products they are offering going forward. To help cement the position that the regulator has now decided on, we believe the guidance should include example(s) that explore inacceptable and acceptable ways of describing investment funds **pre and post** SDR.

Ensuring consumer awareness and understanding
It needs to be clear what should happen next if a consumer or other party identifies greenwashing in relation to a financial product. Should they pursue this through the FCA, FOS, ASA or the CMA and how? It could be better for the reputation of the finance industry if issues were addressed by its own regulator, rather than an external body. On the other hand, consumers may value clearer independence in a "watchdog."

It should also be clear to the consumer how much oversight and prescriptive rules apply to the sustainability of products and promotions. According to the FCA's research connected to the labels, some consumers presumed the FCA would be awarding the labels and that this made any sustainability claims reliable.

""[Sustainable labels are better] than companies just saying their products are sustainable with no evidence, almost makes it proven and appears more factual."
Care needs to be taken that consumers and financial distributors do not feel that a fund with a Sustainability Label is vouched for by the regulator to the extent that potential for greenwash is not an issue. This might require a caveat or warning on communications referencing the labels that their use does not mean that all associated communications have been individually and independently vetted.

2. **Do you have any comments on the proposed guidance including the examples given?**

The Panel feel in general that the examples given are clear and provide some insight into a number of situations where greenwashing might commonly occur. It could be more helpful if "good practice" examples were also given, as the FCA has provided in previous areas of guidance.

We would encourage the FCA to consider citing some examples of greenwashing in other industries that have been successfully challenged, where these illustrate a similar breach of principles albeit regarding a different type of product. "Real life" examples and comparative analogies can help both consumers and finance professionals to understand and communicate about financial concepts.

While it is impossible for the FCA to anticipate and cover every possible instance of greenwashing, it is important that the seven examples given do not unintentionally create a checklist that limits consumers and industry practitioners' attention to these particular examples.

The regulator could issue a warning against this or provide a more comprehensive list of ways in which greenwashing might occur, intentionally or inadvertently.

3. **Do you agree that the guidance should come into force on 31 May 2024?**

It is unclear from the guidance how the FCA plan to monitor greenwashing and the Panel would welcome engagement with the team where relevant to discuss.

The Panel would encourage the FCA to consider mandating training and education for manufacturers and distributors to ensure they can assimilate any new expectations. This should be delivered to all staff who are involved in communicating information about sustainable investments, data and strategies, whether direct to consumers or between product provider and distributor.

The Panel are keen to see consumer protection measures implemented sooner rather than later and do not advocate delaying the introduction of the anti-greenwashing rule. It will be a valuable tool to empower the FCA and consumers in tackling the most harmful forms of greenwashing and reprimanding the worst actors.