

**Journey to the FCA:
Response by the Financial Services Consumer Panel**

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Foreword

Our assessment, after extensive engagement with the FSA executive and the policy teams, is that most, if not all, of the major challenges facing the new conduct regulator have been identified and moves are being made to address them. In most areas we think the Journey to the FCA document sets out an appropriately ambitious agenda. But the strong rhetoric must be matched by strong action and the FCA must ensure that it has sufficient resources at the appropriate level, and with the necessary skills and expertise, to deliver what it has promised.

We fully support the new mandate for the FCA, as well as the new powers the FCA will be given and the over-arching commitment to maintain key principles such as transparency and Treating Customers Fairly. The FSA already seems to have taken the FCA's mandate on board in so far as its existing powers allow. In some areas, such as the new product intervention powers, the FCA will inevitably face challenge. It is vital that the FCA faces up to these challenges and maintains its assertive approach. It is also essential that the FCA listens more carefully to consumers and their needs than the FSA has done.

Three areas in particular are worth stressing:

- The FCA must prioritise ruthlessly. An ambitious agenda could overstretch limited regulatory resources and enable opportunistic financial services firms to push the limits of acceptable conduct.
- The FCA should examine the case for an even higher level of penalties that would effectively remove firms' incentive to engage in practices harmful to consumers.
- The FCA should deploy its analytical resources and extensive rule making and enforcement powers vigorously to promote effective competition, to the benefit of consumers.

As I said last year, the evolution of the culture and ethos of an organisation takes time and is perhaps the most difficult type of change to achieve.

Nevertheless from day one the organisation must start as it means to go on – with consumer interests at its core.

Adam Phillips
Chair, Financial Services Consumer Panel

14 December 2012

Executive summary

We are pleased to take this opportunity to respond to the FSA publication “Journey to the FCA” which sets out in more detail than ever before how the FCA aims to achieve its objectives.

We support the overall approach set out in the document, although we do have a number of questions and concerns about some aspects of the feasibility of the FCA’s plans. We have summarised the key points from our response below and we have also answered the three non-firm facing questions contained in Annex to the Journey to the FCA document. For ease of reference the Panel’s response to the Journey to the FCA document is structured along the same lines as the document itself.

Competition

The FCA should deploy its analytical resources and extensive rule making and enforcement powers vigorously to promote effective competition. Competition is not a panacea, but good consumer outcomes can be achieved by a combination of competition and the alignment of firms’ incentives with consumers’ interests. Value for money for consumers should be a consideration for the FCA, both in competition terms and in the context of Treating Customers Fairly.

Access

The new requirement for the FCA to have regard to access issues is a welcome development, and one which we are keen to see the FCA exploring soon, particularly in conjunction with its competition role. We think the FCA could learn a great deal from other regulators who have analogous responsibilities.

Product governance and intervention

While much of the media focus to date has been on the FCA’s temporary product intervention rules, the FCA will have a ‘cradle to the grave’ product governance responsibility that would include design, development and marketing – plus any subsequent product shift, such as a much broader target market for niche products. This is an area where the FCA needs to be confident and to act at an early stage where necessary. There should be no need for consumers to have suffered detriment before the FCA steps in to protect their interests.

Treating Customers Fairly

It is reassuring to know that the six retail consumer outcomes in the Treating Customers Fairly (TCF) initiative will be an integral part of the normal focus of the FCA and “part of our approach and our language.” But the FCA needs to be much tougher in this area. We would like TCF relaunched, with the FCA articulating clearly what firms will have to deliver in terms of good consumer

outcomes. Non-compliance by firms and individuals must be dealt with swiftly, robustly and publicly.

Risk-based analysis and risk assessment

We support a risk-based supervisory approach. It is entirely logical that the FCA focuses its resources on firms and sectors where there is greatest risk to consumers or broader market integrity, and thus greatest risk to its objectives.

We welcome the proposed change of approach to risk tolerance, which, if successfully put into effect, would reduce the absolute scale of detriment and the number of consumers at risk. This should also see the regulator intervening more frequently and in instances where small individual financial losses were experienced by a large number of consumers.

We strongly encourage the regulator to develop this new line of thinking. In doing so, the FCA should ensure that the risk assessment process is sensitive enough to take account of the proportionate impact on individual consumers, or groups of consumers, of otherwise low-ticket detriment.

Understanding consumers

If the FCA is to deliver, either directly or through the firms and markets it regulates, better and fairer outcomes for consumers it needs to understand better how consumers think about their financial affairs and how they make decisions. This is about more than information gathering, it is about what makes people tick when it comes to managing their money and dealing with financial firms and requires a far greater level of insight than was apparent at the FSA. This will include a better understanding of the different times and ways that consumers can be vulnerable to detriment.

The establishment of a Consumer Network including organisations such as the Money Advice Service, where new or emerging risks can be highlighted to the regulator, is welcome. We would like to see the FCA poll a wider range of consumer bodies including representatives of small and medium sized non-financial businesses. It is also very important that the FCA demonstrates its willingness to act on such market intelligence and engages, as far as considerations of confidentiality permit, in a two-way dialogue with consumer representatives. The Panel can attest to the frustrations that arise when carefully compiled consumer information seems to fall on deaf ears.

The document refers to the FCA “seeking out” what consumers say about poor behaviour in the marketplace. We think the FCA will need to be more open-minded about the way in which it gathers information from consumers or consumer groups in particular. Information obtained on a more informal basis is not necessarily inaccurate or unreliable.

We also think there is a risk that the FCA might still be too ‘London-centric’ in that it will not have a regular source of intelligence at local and regional level. We would like the FCA to consider opportunities to address this issue.

International issues

Given the extent to which the EU now sets the regulatory agenda in the consumer field, we expect the FCA to engage closely with the development of regulation in the EU, particularly at the level of the EU's supervisory authorities. We also urge the FCA to ensure that an integrated approach to consumer protection is adopted, particularly where different national UK authorities are engaged in the regulatory process and where fragmentation risks arise. In particular, close and effective coordination must be achieved between the PRA and the FCA on consumer protection issues in the EU and internationally, particularly given the disparity between industry and consumer representation at international level.

Relationship with the PRA: regulation of insurance firms

We continue to have concerns about the future regulation of insurance firms and the area of with-profits specifically. Even after the recently tabled Bill amendment the PRA will continue to have prudential responsibility for with-profits firms and in light of the rather complicated arrangements for engagement between the two regulators on with-profits, we are still not persuaded that the FCA will be able to represent policyholder interests effectively.

Annex A to Journey to the FCA: consumer questions

Q: 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 are the reasons for this?

A: Generally, effective competition is hampered where there exist dominant firms, barriers to entry and a significant imbalance in knowledge and experience between consumers and business. Clearly, this is widespread in retail financial services. More competition should help but it is essential that firms' incentives are themselves aligned with consumers' best interests.

Q: 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?

A: The document refers to the FCA engaging earlier, talking to people who will be affected by new policies and listening to their ideas right from the outset. This suggests a far more interactive form of engagement than has been the case with the FSA. The FCA will have to make clear to all its stakeholders how they can engage with the regulator – the document refers to having one main point of contact for consumer groups, so it would be helpful to know more about this. For consumers in particular, engagement is likely to involve discussion by telephone rather than e-mail exchanges.

Q: What can the FCA do to make you more likely to provide such information to us?

A: Provide feedback along with clear evidence that it is giving the information due consideration.

Chapter 1: The creation of the FCA: Spotlight on some of the Regulator's new powers

Competition

The FCA should deploy its analytical resources and extensive rule making and enforcement powers vigorously to promote effective competition. Competition is not a panacea, but good consumer outcomes can be achieved by a combination of competition and the alignment of firms' incentives with consumers' interests. There is a danger that staff unused to thinking in competition terms and aware that the FCA lacks structural competition powers concurrent with those of the existing competition authorities will continue to think of the FCA as a minor competition regulator. This would be a mistake, and counter to the thrust of the new legislative regime. Although it will take time to build expertise, the Panel believes the FCA should aim to become a key player promoting effective competition within financial services.

The FCA will have an extensive toolkit at its disposal and we encourage the new regulator to think creatively about how to use its full range of powers to address market issues and improve competition, with the focus being on better long-term outcomes for consumers.

The super-complaints process could bring competition problems to the fore virtually from day one, so the FCA needs to be ready. There is also the recent Government amendment to the Financial Services Bill that will require the FCA to have regard to the ease with which consumers who may wish to use regulated financial services, including consumers in areas affected by social or economic deprivation, can access them. This is a major step forward for consumers and we are keen to learn more soon about how the FCA intends to go about meeting this obligation. We encourage the FCA to draw on the experience of other regulators with a similar responsibility as part of the new regulator's strategic and policy development.

The document refers to competition on quality and price as being vital in financial services as it motivates firms to provide better products and services, helping to deliver innovation and choice. We do not disagree, but the document does not explicitly raise the related question of value for money for consumers of financial services. Value for money for consumers should be a consideration for the FCA, both in competition terms and in the context of Treating Customers Fairly.

We understand that as part of its remit the FCA will need to consider whether improving competition in a particular area could achieve the same results as other regulatory action. The document refers specifically to the possibility of post-implementation reviews showing up "disproportionate" regulation that could be replaced with pro-competition alternatives. But the document provides no detail about how this might be achieved, referring to 'market-wide' interventions and 'packages of measures'. We are wary of increased competition being seen as a panacea for issues that seem too difficult, or perhaps too expensive, to address more specifically.

Product governance and intervention

We strongly support the FCA's approach to product governance and product intervention. There has rightly been a great deal of focus on the development of the FCA's temporary product intervention rules – we look forward to seeing the consultation paper shortly – but as the document points out, the FCA's interest will in practice span the 'cradle to the grave' of a product.

Product governance is an important area, covering initial ideas through development and finally bringing a product to market. The FCA will then need to be alert to strategic changes such as a shift in the target market for a product that could result, perhaps, in what was a perfectly acceptable niche product being made available to the 'mass market.' There will be opportunities for the FCA to identify potential problems in the early stages of development by considering the needs that products are being designed to address, their viability, pricing and target market. We hope that the FCA will not be reluctant to take an active interest in this aspect of a firm's business which should, we hope, be encompassed within business model analysis.

The FCA will have time to consult on any proposal to ban products at an early point in their development, but in cases where a product has been developed or is already being sold when the risks are identified, the temporary product intervention rules should be used. Again the FCA needs to be willing to act at an early stage, with decisions supported by sound judgement and swift but effective balancing of consumer choice and anticipated risk. The temporary intervention rules are an important tool in the consumer protection toolkit. There should be no need for consumers to have suffered detriment before the FCA steps in to protect their interests.

While we were pleased to see from page 14 of the document that the FSA/FCA has not completely ruled out the possibility of product pre-approval, we would not at this stage like to see any requirement on firms to submit pre-launch documentation for product approval by the FCA. In the context of the Sergeant Review of Simple Financial Products¹ however we see a strong argument for a form of kite marking of products that meet a specified set of principles or standards, but this would be a separate process outside the standard regulatory approach.

Chapter 2: Protecting the perimeter

We are supportive of the extensive work that has already been undertaken in the authorisations area, including a review of the conduct requirements that apply to new banks. It is important of course that entry requirements are not set so high as to be anti-competitive, or otherwise detrimental to the interests of consumers. But suitably exacting authorisation requirements are an essential 'first hurdle' for those businesses wishing to enter the financial services market. As with the FCA's approach to product governance and intervention, prevention is better than cure when the stakes are so high.

¹ The Interim Report of the Sergeant Review of Simple Financial Products, July 2012, at www.hm-treasury.gov.uk. The Panel's response of 12 October 2012 is at www.fs-cp.org.uk

We look forward to learning more about the new business model threshold condition and how it is to be applied.

Chapter 3: Ensuring firms continue to meet the necessary standards

Treating Customers Fairly

We were reassured by the confirmation in Martin Wheatley's introduction² of the FCA's commitment to the six retail consumer outcomes in the Treating Customers Fairly (TCF) initiative and that they will be "part of the normal focus of the FCA, part of our approach and our language." TCF is a fundamental part of regulation and fairness is a concept that means something to everyone. Actions speak louder than words however. We think that the FCA needs to be far more robust, re-launching TCF with a much higher profile and with a clear link to high standards of corporate behaviour than appears from the document. The FCA will have to enforce compliance with TCF from the outset to make sure the message reaches members of firms' executive and senior management.

We were pleased to see a clear iteration of how the FCA proposes to assess how effectively firms embed the fair treatment of customers into their business. This is an area where supervisors will have to be confident that they can challenge a firm's management at the highest level and make judgements on contentious and emotive issues such as firm culture.

Martin Wheatley also refers³ to firms and consumers taking responsibility for their part in financial transactions. While he acknowledges that "consumers cannot always be expected to have the financial knowledge, information and understanding of complex products and risks to make informed decisions", he goes on to refer to the real benefits that greater transparency can bring. We do not disagree and expect the FCA to be more creative in its approach to transparency as a regulatory tool. Although greater transparency is needed however, transparency alone it is no substitute for fair treatment and can make no difference to consumers who lack the necessary financial expertise to understand the key issues. We hope that the FCA's focus on behavioural analysis and the development of its own insight into consumer behaviour will alert the regulator to the risks of falling into the trap of thinking that information equals protection.

Business model analysis

We support strongly the FCA's focus on the root causes of detriment, rather than dealing only with the symptoms and outcomes. The FCA is right to spend time on business model and strategy analysis and monitoring sustainability. The premise in the document⁴ is an ambitious one however: "we will be looking for firms to base their business model, their culture, and

² Page 8

³ Pages 8 and 9.

⁴ Page 25

how they run their business, on a foundation of fair treatment of customers ...” This has to be underpinned by confident decisions by supervisors about a firm’s strategy and an ability to identify areas whether money is being made because of a spike in product sales as a result of good business practice or because it is an indication of potential mis-selling.

Analysis of this type requires a high level of specialist skill and competence as well as sophisticated software, and that will be expensive to buy in and retain. Clearly, it is important that the FCA’s budget can accommodate this level of commitment and does not inadvertently impose a uniform business model approach, which could undermine healthy competition.

Categorising firms

We support a risk-based supervisory approach underpinned by the sound judgement of supervisors and the FCA executive. It is entirely logical that the FCA focuses its resources on firms and sectors where there is greatest risk to consumers or broader market integrity, and thus greatest risk to its objectives.

We are aware and fully accept that a risk-based approach means that the majority of small firms (categories C3 and C4 as described in the Journey document) will have a relationship with the regulator that is based primarily on the wide range of information made available on the FSA/FCA website, contact with the Contact Centre when specific questions arise, and occasional workshops and thematic visits. We have also been briefed on and support the programme of regional workshops currently underway with small firms, and we agree that useful direct contact is being made in this way. Visits to firms are of course resource-intensive although their value in identifying local or firm-specific issues should not be underestimated.

We would like the FCA to remain mindful of the potential for risks that might not hit the FCA’s radar, growing unchallenged and unnoticed in the years that firms are not routinely visited, or included in on-site thematic work. If firm visits are not possible, we would like to see mitigation in place to address the risk of significant consumer detriment growing unnoticed. This would involve creative use of all methods and media for engaging with small firms to ensure that regulatory requirements are understood and that even the smallest firm has some more frequent contact with the FCA.

Wholesale conduct

We agree with the FSA (page 31 of Journey to the FCA) that there is not a clear division between retail and wholesale markets. The impact of misconduct in wholesale markets can cause ripples in the retail market, so we are pleased to see that the FCA will be more assertive and interventionist in the wholesale sector. The FSA cites the Libor-rigging scandal as an example of a wholesale conduct issue that had an impact on trust in the Libor-setting process, but a “limited direct impact on retail relationships.” We think this misses one of the key points - what the scandal says to retail consumers about the senior management and culture of banks: they cannot be trusted.

Greater discipline in the wholesale market should, in our view, help to build a level of confidence in the financial sector as a whole.

Protecting client assets

We have been long-term supporters of the FSA's excellent work to improve levels of protection of client assets by firms and it is particularly important that this work is to continue under the FCA. Retail customers should be entitled to have confidence in the arrangements put in place by financial services firms to protect the money and investments held or managed on their behalf.

Chapter 4: Taking action against firms that do not meet the FCA's standards

Credible deterrence

The FSA's credible deterrence approach is one of the most positive legacies of the FSA's tenure as a regulator and it is important that the FCA meets the commitment set out in the document⁵ to make sure that this remains central to the FCA's approach. As part of this we fully endorse the FCA's aims to bring more enforcement cases; press for tough penalties; pursue criminal prosecutions; prioritise compensation for consumers; and pursue more cases against individuals, holding members of senior management accountable for their actions.

On this last point it is notable that despite banks having to pay billions of pounds in compensation, the FSA has not completed enforcement action against any member of the senior management of any bank for PPI failings. If the FCA lives up to its stated aims there should be no mis-selling on the scale of PPI; but if there is, we would expect the FCA to ensure that individual members of a firm's management were brought to book without delay.

We also encourage the FCA to examine the case for a much higher average level of fines and penalties. It is unclear whether even the more aggressive recent actions taken by the FSA fully remove the incentive of firms who are so minded to engage in swindles and other practices harmful to consumers. Firms' profits from such behaviour combined with a perceived low detection rate might suggest the need for larger penalties and better detection - if the incentives to deceive and treat customers badly are to be offset effectively.⁶

Policing the perimeter

We are fully supportive of the FSA/FCA's work to police the perimeter by taking action against unauthorised business. The most important aspect of this side of enforcement work is that consumers who fall victim to unauthorised businesses do not have access to the Financial Ombudsman Service or the Financial Services Compensation Scheme. The losses they

⁵ Chapter 4

⁶ See, for example, the Panel's response to CP 12/19 on unregulated collective investment schemes, 14 November 2012, <http://www.fs-cp.org.uk/publications/responses/2012.shtml>.

suffer cannot be recovered unless the FSA/FCA acts to freeze assets and ensure restitution. We believe this adds an additional ‘weight’ to the risks posed by unauthorised business during the risk assessment process and consequent allocation of FCA resources.

Chapter 5: Building the FCA’s understanding of the markets

Understanding consumers

If the FCA is to deliver, either directly or through the firms and markets it regulates, better and fairer outcomes for consumers it needs to understand better how consumers think about their financial affairs and how they make decisions. This is about more than information gathering, it is about what makes people tick when it comes to managing their money and dealing with financial firms. We do not underestimate the scale of cultural change that will be required to deepen the regulator’s empathy with consumers.

We were pleased to see that the FCA will be developing its knowledge of behavioural sciences and behavioural economics to help improve its understanding of consumer behaviour and we would like to see this extended to a much broader understanding of the behaviour of markets and firms too. But it is important that the FCA develops its own consumer insights and remains objective in the face of what could be fashionable rather than well-grounded theory. We look forward to seeing the promised paper from the FSA on the existing evidence on consumer behaviour in retail financial markets, and research that tests and evaluates behaviourally informed regulatory interventions⁷.

The FSA/FCA needs to continue talking to consumers and to consumer bodies. The Panel has a long-standing relationship with the FSA based on statute and engagement between us is almost continuous – but our remit is focused on advising the FSA (and in due course the FCA) on its policies and practices as they impact on consumers, rather than for example on taking up individual complaints, so the Panel cannot be aware of all the financial issues affecting consumers or consumer sectors.

Consequently we have supported and followed, with great interest, the early development of the FSA’s Consumer Affairs Team, which has made considerable progress with limited resources.

The establishment of a Consumer Network⁸, including organisations such as Citizens Advice and the Money Advice Service, where new or emerging risks can be highlighted to the regulator, is also welcome. For some years, the Panel has carried out a regular Emerging Risk Exercise that has sought to relay market intelligence about consumer risks to the FSA. Our long-term aim has been to encourage the FSA to set up its own machinery for such a task, and the Consumer Network is a step in this direction.

⁷ Page 45 of Journey to the FCA

⁸ Page 51 of Journey to the FCA

We would like to see the FCA poll a wider range of consumer bodies including representatives of small and medium sized non-financial businesses. It is also very important that the FCA demonstrates its willingness to act on such market intelligence, and engages, as far as considerations of confidentiality permit, in a two-way dialogue with consumer representatives. The Panel can attest to the frustrations that arise when carefully compiled consumer information falls on deaf ears.

We encourage the FSA to look again at the management information it receives from the Consumer Contact Centre, with a view to identifying any areas where it can be developed further. For example, by recognising trends in issues raised by individual consumers that are not already on the FCA's radar, possibly with a view to finding out more on a one-to-one basis; or by proactively raising issues with callers.

We thought that a structured series of secondments for FCA staff to a wide variety of consumer organisations as an integral part of career development could be extremely useful. In this way FCA staff would learn more about individual consumer needs and gain a greater understanding of the way in which consumer organisations are staffed, funded and run, as well as supporting the collection of consumer intelligence. In exchange consumer organisations would have the benefit of a member of staff funded by the FCA who could provide help and insight into how regulation affects consumers, and how the FCA can help.

Policy Risk & Research Division

The operational effectiveness of the new Policy Risk & Research Division of the FCA (the PRR) will be one of the major factors affecting the success of the new regulatory approach. The PRR remit is extensive – in effect, gathering and analysing data from a variety of sources, identifying and assessing consumer risks (potential and actual), driving the entire regulatory decision-making machinery and developing evidence-based policy.

This immediately raises practical questions about the cost of recruiting and retaining people with the right skills mix who are also willing to take up the challenges presented by this new department. If the FCA's stated ambitions for the PRR go way beyond what it can actually afford to put in place, a central plank of the new regulator's strategy will be dangerously weakened. The FSA/FCA must be realistic about what it can actually achieve.

The document says that “for the most significant issues, we will be able to prioritise resources and reallocate them between issues or business areas as necessary.”⁹ This aim will require a fully flexible workforce, yet the very diversity of the FCA's ‘parish’ means that there will be a number of areas where staff with in-depth specialised areas of expertise is needed, and this cannot be acquired overnight. We would like to know more about how the FCA plans to ensure a high level of flexibility and to have some reassurance

⁹ Page 42.

that the FCA will have sufficient resources to buy-in expert knowledge, should it need to.

As part of its overall approach to building understanding of the markets, we would like the FCA to think creatively about the sources of intelligence that are available today, including social media and internet websites. While there may be a lack of formality about this information, when balanced with common sense and experience the intelligence gleaned can still be of great value to the regulator.

The document talks about drawing on a wide pool of knowledge, research resources and opportunities to strengthen the FCA's knowledge. The FCA will also be "seeking out" what consumers say about poor behaviour in the marketplace.

We have already mentioned ways in which the FCA could make better use of, for example, the existing point of engagement with consumers in the Consumer Contact Centre. We think the PRR (and FCA) will need to be more open-minded about the way in which it gathers information from consumers or consumer groups in particular; as such data may not meet the exacting standards of professional research disciplines. But that does not mean that information gathered on a more informal basis is inherently inaccurate or unreliable. The FCA should not hold back until it has the 'complete picture', but instead be ready to act on the warning signs.

Risk assessment

The FCA's risk-based approach as described in the document is clear and logical and we support this overall strategy. The 1-2-3 process shown on page 42 is entirely sensible, but we would like to see stage 4 added – regular re-assessing and reviewing in the light of further information received or sought.

We are impressed by the radical change proposed to the regulator's risk tolerance for business conduct, which, if successfully put into effect, would reduce the absolute scale of detriment and the number of consumers at risk¹⁰. This approach could also see the regulator intervening more frequently and in instances where small individual financial losses were experienced by a large number of consumers. It is not immediately clear, however, what practical difference this would have made to consumers, had the FSA opted for the new approach at an earlier stage. We strongly encourage the regulator to develop this new line of thinking on its intervention thresholds.

In doing so, the FSA should ensure that the risk assessment process is sensitive enough to take account of the proportionate impact on individual consumers, or groups of consumers, of otherwise low-ticket detriment. For example, the Panel has recently been involved in work on the forced closure of bank accounts by banks who wrongly suspect their customer of illegal activity. An issue such as this, which may not be widespread and is small in

¹⁰ Pages 43 to 44 of the document

relation to the total number of bank accounts held with UK banks, could fail to hit the FCA's risk radar at all. The impact on an individual account holder can however be catastrophic.

The document nods to this point saying that, where choices can be made, protection should be focussed on "vulnerable consumers". We think this is too vague a proposition. The notion of "vulnerability" is multi-faceted, covering a wider range of consumer characteristics.¹¹ We encourage the FCA to consider more carefully how proportionate impacts should bear upon the regulator's decision to intervene.

Chapter 6: Maintaining effective relationships

International

Although the Journey document makes reference to working with EU and other international bodies and sets out how the FCA will be positioned in international discussion, we were surprised that there is no explicit commitment to a more integrated approach to consumer protection in Europe. The split of regulatory representation within Europe, although not entirely new, highlights a potentially fragmented process which could lead to the consumer voice not being heard.

Given the extent to which the EU now sets the regulatory agenda in the consumer field, the FCA needs to engage closely with the development of regulation in the EU, especially at the level of the EU's supervisory authorities. In particular, close and effective coordination must be achieved between the PRA and the FCA so that the UK presents a coherent view that ensures that existing UK protections are safeguarded and developed.

In the EU arena the industry lobby is well-resourced and effective compared with the consumer voice. We would urge the FCA to ensure it articulates the needs and interests of consumers in technical and policy negotiations.

The document rightly acknowledges that there can be complimentary or conflicting international initiatives that are not always synchronised with developments at national level. The senior FCA staff heading the organisation's international work will need a well-supported and sophisticated strategic overview of the shape of international change and be prepared to promote consumer protection measures at the most senior level.

National

At a national level we remain concerned that the FCA might still be too 'London-centric' in that, although it may periodically visit some parts of the UK, it will not have a regular source of intelligence at regional and local level. In this respect we have been interested to see the Agents' Monthly Summaries published by the Bank of England¹² and wondered if a similar

¹¹ A forthcoming Panel paper discusses the concept of vulnerability in detail.

¹² At www.bankofengland.co.uk/publications/agentssummary

structure could be put in place, focused on financial services. We would like the FCA to give this proposal further thought.

It is important too that the FCA keeps in touch with the current debate on Scotland possibly becoming an independent sovereign state and the consequent impact on financial services consumer protection.

Relationship with the PRA: regulation of insurance firms

We continue to have concerns about the future regulation of insurance firms and the area of with-profits specifically. We have seen the Memorandum of Understanding between the FCA and PRA on with-profits and are aware of the recently tabled amendment to the Bill, reflecting concerns that the PRA may not have sufficient expertise in consumer interests to regulate appropriately. But as the PRA will continue to have prudential responsibility for with-profits firms and in light of the rather complicated nature of engagement between the two regulators on with-profits issues, we are still not persuaded that the FCA will be able to represent policyholder interests effectively.

Consumer organisations

So far as consumer organisations are concerned, information-gathering cannot be a one-way street. It is important that the FCA commits to responding to the information it receives from consumers and consumer groups. As we have already indicated, our experience has shown that the absence of a response to, or feedback on, information provided to the FSA has been a source of frustration. This in turn has, we suspect, led to a general view among consumer groups and informed consumers that talking to the FSA can be a waste of valuable time. The FSA is of course bound by a number of confidentiality constraints, but if the FCA is to develop more positive relationships with consumers and consumer groups it has to find ways of continuing engagement with stakeholders over time. Unless it does so, our experience suggests that the regulator's initiative to engage with consumers will fail.

Integration

The Journey document refers to the regulatory family of the FCA, the Financial Ombudsman Service, the Financial Services Compensation Scheme and the Money Advice Service. We are aware of the limits of the FCA's statutory oversight role (jointly with the PRA for the FSCS), but we would still like to see the FCA leading an integrated strategic approach where it can.

Chapter 7: Accountability, transparency and measuring the FCA's success

Transparency

We have been encouraged by the FCA's commitment to greater transparency¹³ and would like to see this more transparent approach in place from day one. We think that greater transparency by the regulator about both its own actions and the operations of authorised firms should underpin its overall approach. As we have already said, consumers are likely to be more willing to engage with the new regulator if the discussion is two-way.

Greater publicity around banned financial promotions and disciplinary proceedings will also be helpful in warning consumers (and some firms) about problems in the market.

We would be very disappointed if any amendments were made to the Financial Services Bill to curtail the FCA's freedom to use transparency as a means of consumer protection and education for both consumers and the industry.

We are looking forward to seeing the forthcoming FSA Discussion Paper on transparency that should set the tone for future FCA approach to openness.

Success measures

The outline performance indicators and success measures shown in Chapter 7 of Journey to the FCA all make sense, but of course are still fairly high-level. We are aware that there is a great deal of further work already underway on success and accountability, and in addition the FCA is going to have to demonstrate that, in effect, as a regulator it gives value for money. There is a clear need for objectivity and independence in measuring the FCA's success which should help to raise levels of public confidence in the new regulator.

We are mindful that the FCA will not be the only body that has an impact on many aspects of financial services markets. Changes in the political environment for example can make a difference that is outside the FCA's control. But the effectiveness with which the regulator deals with these changes is an important factor and is one which should be measurable.

No doubt many other stakeholders will also join the Panel in looking to see how well the FCA achieves the aims set out in the Journey document, Business Plan and Risk Outlook. We would not wish to see the FCA failing to deliver by simply promising too much. There is a trade-off to be made between the resources available to the FCA and what can realistically be achieved. The FCA should be open about the issues it has prioritised, and also explain why.

¹³ "We recognise the real benefits that greater transparency – both from firms in the way that they deal with their customers, and from the FCA itself – can bring." Introduction by Martin Wheatley to Journey to the FCA

Transition

Finally, the FSA/FCA cannot afford to take its eye off the ball as it focuses its attention on regulatory change. We have a number of concerns about the ability of any organisation with finite resources in the midst of attempting a seamless transformation that involves, not least, a significant change in culture, to continue to cover all the bases. Work will have to be prioritised even more ruthlessly during this period and there is always a risk that some predatory financial services firms may seize opportunities to test the limits of acceptable conduct.