

Annual Report

2019/20



FCA

Practitioner Panel



Chair's foreword

This is my first annual report since taking over as Chair from Anne Richards in August 2019, and I would like to take this opportunity to thank Anne for the energy and enthusiasm she put into the Panel as it supported and challenged the FCA in both its day-to-day work and its strategic development. We also said goodbye to Andrew Bailey this year as he moved back to the Bank of England. Andrew always willingly involved himself with the Panel and we enjoyed many constructive conversations with him. We wish him well in his challenging new role. As interim Chief Executive Chris Woolard has stepped up to deal with an extraordinary set of circumstances and the Panel is grateful for his leadership of the FCA during the current turbulent period.

The annual report covers the work of the Panel from April 2019 to March 2020. This is likely to be looked upon in future as the last period before the world changed fundamentally in order to respond to the coronavirus crisis. We tackled a number of topics over the year within our key priorities of the future of regulation, use of data and technology and the balance of responsibilities between consumers and firms.

The industry, the regulator, and the world in general have had to adapt at previously unimaginable speed to mitigate the effects of the crisis. Issues which were previously considered top priorities, such as the future of regulation, the impact of Brexit, and the implications of climate change,

were temporarily put on hold as firms, regulators and government struggled to keep basic services running in a situation which substantially tested operational resilience up to and in some cases beyond their worst-case scenarios. It is testament to the industry and the FCA that systems substantially continued to function, services, although stretched, continued to operate, and although highly volatile, markets continued to function.

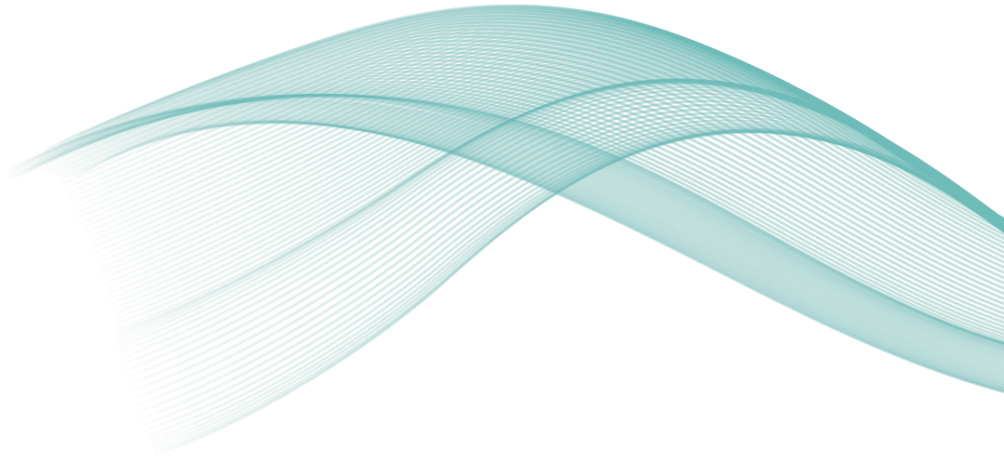
The FCA worked at pace to put in place new regulation to deal with the unexpected stresses on firms and consumers, whilst itself facing significant operational challenges. From a Panel perspective, we set up new processes to ensure that we were able to communicate quickly and effectively with FCA senior management as the situation unfolded, sharing the experience of the industry and its practitioners.

Looking at the coming year we encourage the FCA to focus on what its top priorities are, and to communicate these clearly. The experience of firms over the last few months is that they have had to prioritise, and reprioritise, to ensure that stretched resources are used to best effect. We would counsel an approach for the FCA which combines addressing areas of greatest potential consumer harm with opportunities where regulation can be shaped to enable rapid recovery. We all face significant social and economic disruption over the next year, and

beyond, and the Panel stands ready to support the FCA in its efforts in addressing these challenges.

Tulsi Naidu

Chair, FCA Practitioner Panel



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Introduction

The FCA Practitioner Panel is a statutory panel for the Financial Conduct Authority (FCA). It is one of a number of panels which the FCA is required to establish by the Financial Services and Markets Act. Alongside the Smaller Business and Markets Practitioner Panels it represents the interests of practitioners and provides advice to the FCA on the extent to which its policies and practices are consistent with its general duties.

The Panel meets on a regular basis to provide senior-level industry input into the FCA's policy and regulatory development, with membership selected to reflect the major sectors of the UK financial services industry. It focuses predominantly on issues with a strategic cross-sectoral impact, and provides advice and feedback directly to the FCA Board and Executive.

The FCA's strategic statutory objective is ensuring that relevant markets function well. The Panel considers that a well-functioning market considers elements including care, trust, innovation and sustainability and last year set the objective of working together with the FCA to build public confidence in financial services combined with a need to foster active consumer engagement.

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Panel priorities

Within an overarching objective of working together with the FCA to build public confidence in, and engagement with, financial services, the Panel focused on three priorities during the year:

1. Future of regulation – how the FCA and industry can work together
2. Data and technology – harnessing data for the benefit of consumers and focusing on operational resilience
3. Balance of responsibilities – consumer engagement and the boundaries of firm responsibility.

1. Future of Regulation

Considering how the FCA and industry can work together on the future of regulation

The Panel looks at how the future of regulation should develop, covering issues such as what outcomes-based regulation means, both for firms and FCA supervision. Within this, what are the merits of rules versus principles, and what regulatory risks is the FCA prepared to take to get good outcomes? This priority involves looking at whether the FCA is taking a proportionate approach to regulation, the possibilities of unintended consequences, and considerations of how it should approach regulation at the perimeter of its responsibilities. The Panel has also considered during the past year how the FCA's Future of Regulation work interacts with the regulatory regime following withdrawal from the EU. As a part of this priority the Panel discusses with the regulator whether it has an appropriate range of skills to achieve its objectives.

1.1 Developing regulation

FCA prioritisation

In its Business Plan for 2019/20 the FCA stated in its cross-sectoral priorities that technology and innovation, changing consumer needs and new models and services are transforming financial services, and that following its Mission and 'Approach to' documents, and as the UK leaves the EU, it believes that it was time to review how it regulates to ensure it keeps pace.

The Panel has shared its views on the future of regulation with senior representatives of both the FCA and the PRA over the year. It supported the view articulated in Andrew Bailey's speech at Bloomberg in April 2019 that 'outcomes are what matter at the end of the day'. Currently, however, it has observed that it sees much detailed and highly prescriptive policy and supervisory work which results in firms dealing with a plethora of rule changes. It has encouraged the FCA to look well ahead to what it wants the market to look like and the outcomes it wishes to achieve and advised that 'less is more' in the number of principles that result.

It suggested early on in the process that it would be enormously helpful to map out the work, including critical success factors, how the work is organised, and actual and potential linkages with other regulators. The Panel's view is that looking to the future regulators must have regard to elements such as agility, willingness to test and learn, use of data and cost-benefit analysis, as well as the

importance of ensuring that the UK is an attractive destination for inbound investment.

In July 2019 the Panel submitted evidence to the Treasury Committee Inquiry into the Future of Financial Services. At the time, in the circumstances before the Covid-19 crisis, it was a moment when regulators were facing not only challenges but also a unique opportunity to undertake a fundamental review of the way they, and the other financial and legislative authorities, looked at their roles and how they wished to operate, to stand back and look at what a well-functioning industry looks like.

The Panel also engaged with the Financial Ombudsman Service to discuss their high-level views and approach to the future of regulation, what good regulation could look like in the longer term, and how the different members of the regulatory family might be aligned in future. They discussed this in the context of outcomes-based regulation, raising the need for alignment between the Ombudsman's objectives and those of the FCA in order to provide clarity for firms and consumers. The Panel has initiated a dialogue with the Ombudsman and will consider how to continue this without replicating the work of the existing industry steering groups.

1.2 FCA Operations

As part of its engagement with the Panel the FCA discussed its own resourcing, including human resource and technology issues, and during the

year shared work which is underway to improve collaboration within the organisation and present a more coordinated approach to firms, which the Panel welcomed. It recommended that ways of measuring the outcome of this work include metrics of resource spent on dealing with operational issues and incidents, versus development of new ways of working.

1.3 Senior Managers and Certification Regime (SM&CR) and Culture

In December 2019 the FCA extended the Senior Managers and Certification Regime (SM&CR) to around 47,000 firms. The SM&CR already applied to the banking and insurance sectors and the December 2019 extension was seen as a key step to creating a culture across financial services where individuals step forward and take accountability for their own actions and competence.

As the regime was extended the Panel's view was that for firms which had already implemented it had been a constructive exercise in clarifying responsibilities. It stressed, however, that shared accountability within a firm is not necessarily undesirable and that artificially forcing firms to eliminate such structures could result in a lack of collaboration. It highlighted the issue of differing cultures within international groups making coordination with other regulators an important factor.

1.4 The Perimeter

The FCA published its first annual perimeter report in June 2019, clarifying what challenges the regulatory perimeter presents, the actions the FCA is taking to overcome them and whether there are any issues with the perimeter which might require legislative or other changes.

Clarity around the issue of the perimeter has been an area of concern for the Panel, which was pleased to see the first annual report and encouraged the FCA to continue to focus on policing its boundaries effectively.

1.5 Competition and co-ordination with the Competition and Markets Authority

The FCA and the Competition and Markets Authority (CMA) have concurrent powers in the financial services sector, articulated in the form of memorandums of understanding which clarify their respective competition and consumer protection powers.

The issue of aggregators, focusing specifically on price, was raised by the Panel. It encouraged the FCA to take into account the differences in disclosure requirements for aggregators, which are driving decisions in highly price-sensitive markets. This encourages consumers to make decisions based on price alone when they may better be

served by considering non-price factors too. The Panel pointed out that this reinforces the fact that ease of switching does not necessarily help customers achieve better outcomes.

The Panel raised on a number of occasions the issue of regulatory overlap between the FCA and the CMA, particularly concerning the work on overdrafts, where providers spent significant resource on setting up systems in response to the CMA's work, which was overtaken by the rules on unauthorised overdrafts. Greater coordination was encouraged between the two bodies to prevent unnecessary cost and use of resources.

1.6 Specific workstreams

1.6.1 Payment strategy

The payments services sector is developing rapidly. More firms, new products and third-party providers are entering the market, with some firms growing quickly. The FCA wants to ensure consumers and small and medium-sized enterprises can safely access a variety of payments services. It has stated it will work together with the Payment Systems Regulator (PSR), the Government, Bank of England and other regulators, and particularly closely with the PSR to tackle common issues such as access to cash and fraud.

Concerns of the Panel in this area are that customers of some innovative new payment providers may believe they have the same protections afforded by regulated firms, when in fact there may

be little or no protection of customer assets. The Panel does understand that many firms in this sector may have little experience of regulation and may not be deliberately failing in their obligations but has urged the FCA to use the powers available to it to ensure that firms know their responsibilities and communicate clearly with their customers about the products and services they provide.

The Panel also noted the work of the cryptoassets taskforce to develop a taxonomy for describing the sector, and suggested that although it believed the taskforce had made a good start, there needs to be further differentiation within the three broad types of cryptoassets described, as there are quite different assets within the three categories.

1.6.2 General Insurance Pricing Practices

The FCA launched a market study to understand whether pricing practices in home and motor insurance support effective competition and lead to good consumer outcomes. It published an interim report in October 2019 with a range of proposed remedies. The outcomes of the interim report were due to be published in early 2020 but have been delayed by the coronavirus crisis.

The Panel acknowledged the quality of the analysis and comprehensiveness in the interim report of the GI Pricing Practices Market Study into motor and home insurance and welcomed the measured and collaborative approach

to finding solutions. It recommended that the work continues to consider the dynamics of the marketplace, to take into account potential winners and losers, and including all the participants in the value chain but cautioned against easily extrapolating more generally beyond GI pricing to broader financial services.

1.6.3 Credit information

The FCA launched a credit information market study in June 2019. The regulator considers it vital to understand how the credit information market works, whether it does so in the interests of credit information users and consumers, and whether there is scope for improvement. An interim report, due in spring 2020, has been delayed by the coronavirus crisis.

The Panel considered the market study to be a timely piece of work. At the time the Panel considered the work, it highlighted that an important element of how the market will evolve over the next five to ten years will be the treatment of vulnerable customers, and that it would like to see more explicit articulation of the needs of such customers when the interim findings are published. This point is even more relevant in the light of the coronavirus crisis.

1.6.4 Value for money in pensions and Independent Governance Committees (IGCs)

In December 2019 the FCA published final rules to extend the remit of IGCs, with a new duty to consider and report on their firm's policies on environmental, social and governance issues, and to oversee the value for money of investment pathway solutions. This was accompanied by a review of the effectiveness of IGCs which published its findings in June 2020.

The Panel's view, communicated strongly to the FCA, was that it should proceed with caution in adding to the responsibilities of IGCs, which were initially set up to play a specific role. This role is being extended in many different areas, such as supervising firms' ESG policies and the value for money of investment pathways. Whereas each topic may be sensible in its own right, the Panel pointed out that the cumulative impact of the additional tasks risks fundamentally shifting the role of IGCs beyond their existing skills and resources. It creates an alternate governance framework within the firm and adds the costs associated with dual governance which fall to customers.

On the subject of IGCs and value for money the Panel warned that there was a risk of either an over-simplistic exercise that creates a tick-box culture focused around price with significant second order effects, or a prolonged complex exercise that adds to the regulatory burden without corresponding benefit. The Panel urged the FCA to clarify

the cost-benefit of the analysis. It also highlighted the significant volume of regulatory work in the pensions arena and the resultant costs of this both in terms of time spent but also reduced bandwidth for the industry and the resultant cost in terms of limited progressive development for customers.

1.6.5 Pension transfer advice

The FCA has carried out work to address weaknesses across the defined benefit (DB) transfer advice market, including steps to reduce conflicts of interest by banning contingent charging, as well as help for advisers who want to do the right thing and provide good quality advice to their customers.

Although the Panel acknowledged that there is potential for conflicts of interest to arise where contingent charging is used, it noted that a cause and effect link had not been established. In its response to the FCA's consultation on charging for transfer advice it considered that removing the option of contingent charging would reduce the range of customers who can be served by firms, as it is one of a range of business models which allow firms to provide services to a range of customers with different needs in a way that benefits both parties. In order to mitigate the risk of conflicts of interest the Panel suggested that firms transacting DB transfer business must be able to evidence that they have appropriate controls in place, such as rigorous triage and advice standards, and that responsibility for these controls be clearly accountable within the Senior Managers and Certification Regime.

2. Data and technology

Harnessing data for the benefit of consumers and focusing on operational resilience

2.1 Operational Resilience

In December 2019 the Bank of England, Prudential Regulation Authority and FCA published a shared policy summary and co-ordinated consultations on new requirements to strengthen operational resilience in the financial services sector. The consultations were extended until October 2020 as a result of the coronavirus crisis.

The FCA's work on operational resilience was supported by the Panel which particularly welcomed the work which has been done to ensure that the policy and supervision areas are working together on this project. It recommended that the regulator could encourage the industry to work together, for example, on a taxonomy of incidents to improve communication and standardise response. It highlighted that although requirements need to be proportionate, the interconnected nature of the industry means the regulator needs to be mindful that incidents in smaller firms can still cause significant issues. In addition, new and small firms can rapidly grow, and it is important that they are not allowed to gain competitive advantage from lower standards of resilience.

2.2 Open Finance

Following the introduction of Open Banking – where consumers and small businesses can give access to their payment account data to third party providers to get new services – the FCA issued a call for input on Open Finance in December 2019. Open Finance would extend open banking principles to give consumers and businesses more control over a wider range of their financial data, such as savings, insurance, mortgages, investments, pensions and consumer credit.

In considering the extension of Open Banking-like access to other areas the Panel commented that the cost of implementation of such a massive transformation project as Open Banking had been substantial whereas the benefits so far had been relatively limited. Acceptance by customers has been limited and therefore cost per customer was high. The Panel's view was that extending this to other sectors would be a long-term project for many firms. Its advice was for a cautious, purposeful approach towards extending the concept led by use cases that offer benefit to customers rather than a systemic extension which risks high upfront costs without corresponding value creation.

2.3 Regulating in a Data-Centric World

The Panel held a 'blue sky' discussion with senior FCA staff on the ethical use of data which covered a range of subjects touching on the role of regulation, firm culture and the development of conduct questions when using customer data.

3. Balance of responsibilities

Consumer engagement and the boundaries of firm responsibility

3.1 Intergenerational differences

During 2019 the FCA launched a discussion with industry, consumers and their representatives, regulators and academics to understand the changing financial needs across generations for UK financial services markets.

The FCA's work on intergenerational differences was strongly supported by the Panel. Its key message was that this issue should not be considered only through a product lens, as it is about people engagement and behaviours; if you can change the engagement of people with financial services, you can change everything. The Panel suggested building on the existing work with a more granular approach which considers variability of income, socio-economic, family circumstances and geographical differences, as these will all have an important impact on behaviour within age cohorts. It also commented that there is likely to be a fundamental shift in consumer needs in future (such as lower savings levels among Generation X, and inheritance later in life), and that innovative concepts such as family linking to achieve desired financial outcomes will help to address these.

3.2 Vulnerability Guidance

In July 2019 the FCA launched a consultation on proposed guidance for firms on the fair treatment of vulnerable customers. Publication of the findings and research has been delayed until later in 2020 by the coronavirus crisis.

The Panel discussed this work ahead of the coronavirus crisis but has since stressed that there will be a sharp increase in the numbers of customers in vulnerable circumstances as a result of the crisis.

Its overarching observation was that it is important for the FCA to articulate what it intends to achieve by a common understanding of vulnerability, and to what extent this is intended to be a trigger to action to avoid egregious behaviour in specific circumstances. It raised concerns that too broad a definition risks including all customers in its remit and the discussion becomes a wider one of treating customers fairly.

The Panel encouraged the FCA to work with other regulators, and other bodies such as local authorities, to share best practice in this area (noting that in some areas it is financial services which is leading the way and treating consumers in vulnerable situations well whereas other bodies can treat customers in arrears far more aggressively). Although there could be some merit in sharing information on customers who may have particular challenges (such as the Priority Services Register used by utility suppliers during the pandemic), this must also be balanced

with the customer's right to privacy. It encouraged the FCA to publish examples of good and bad practice in its guidance.

3.3 New consumer duty

The FCA published a feedback statement in April 2019 on work looking at a new duty of care and possible alternative approaches. The regulator has been considering whether the right balance is currently being achieved between firm and consumer responsibility. A further consultation on joint principles and a new consumer duty is due to be published in the second half of 2020.

The Panel has actively engaged, alongside the Smaller Business Practitioner Panel and the Financial Services Consumer Panel, in the FCA's work to explore the need for, and potential form of, a new consumer duty or duty of care. It is supportive of regulatory development in this arena which reiterates firms' responsibilities towards their customers and reinforces good practice within the industry but has cautioned against an open-ended responsibility on firms without corresponding clarity in regard to the responsibility of consumers, which it believes offers the potential for significant moral hazard. It has also advised the FCA against moving in the direction of underpinning any of its Principles with a private right of action which extends to individuals on the grounds that such a right would undermine the concept of an outcomes-based regime.

3.4 The regulatory landscape for pensions

The FCA's work on regulation in the pension sector included work on non-workplace pensions, where it identified a lack of competitive pressure in the market.

The Panel's view continues to be that there is a need for a cross-party review of the pensions and retirement regime, of which the non-workplace pensions market is one element. It believes the key to a functioning pensions landscape is to provide a coherent and stable regime with which customers can engage, and that it is currently immensely confusing for consumers, who may be simultaneously both workplace and non-workplace customers, to understand the choices available to them.

List of Practitioner Panel members

Tulsi Naidu

Panel Chair
Chief Executive Office, Zurich UK

Anne Richards

Former Panel Chair
Chief Executive, Fidelity International
Until 31.07.19

Les Matheson

Panel Deputy Chair
Chief Executive Officer,
Personal Banking RBS

Juan Colombás

Chief Operating Officer,
Lloyds Banking Group

Craig Errington

Former Chair, Smaller Business
Practitioner Panel
Group Chief Executive,
Wesleyan Assurance Society
Until 31.07.19

Paul Feeney

Chief Executive Officer, Quilter plc

Jayne-Anne Gadhia

Chief Executive Officer Virgin Money UK
(until October 2018)
Until 31.11.19

Joe Garner

Chief Executive Office, Nationwide
Building Society

Adrian Grace

Chief Executive Officer, Aegon UK
Until 23.10.19

Sean Hagerty

Managing Director, Vanguard Europe
From 01.11.19

Christopher Hill

Chief Executive Officer,
Hargreaves Lansdown
From 01.05.19

Susan McInnes

Chief Executive Officer,
Standard Life Assurance Ltd
From 01.05.20

Julie Page

Chief Executive Officer, Aon UK Ltd
From 01.04.19

Nikhil Rathi

Chief Executive Officer,
LSE plc & Director of International
Development, LSEG
Practitioner Panel Member and Chair,
FCA Markets Practitioner Panel
Until 30.06.20

Michelle Scrimgeour

Chief Executive Officer, Legal and
General Investment Management

Marlene Shiels

Smaller Business Practitioner Panel Chair
Chief Executive, Capital Credit Union
From 01.08.19

Steve Treloar

Chief Executive Officer,
LV= General Insurance Group
From 01.04.19

Practitioner Panel

Financial Conduct Authority

12 Endeavour Square

London

E20 1JN

Tel: +44 (0)20 7066 1000

Email: fs-pp@fca.org.uk

Website: www.fca-pp.org.uk

FCA

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