



18 February 2021

Dear Sir/Madam,

FCA Practitioner Panel evidence to the Future Regulatory Framework (FRF) Review

The FCA's Practitioner Panel welcomes the review of the future regulatory framework, driven by the challenges of the post-Brexit environment. At the broadest level, the Panel strongly believes that consideration should be given to the overall framework, in particular regarding the regulatory perimeter and the role of individual regulators, with the objective of taking a truly holistic approach to regulation. This would help to address any gaps and overlaps and ensure that all regulators are aligned in their delivery of a regulatory framework that actively contributes to the success and the reputation of the UK financial services industry.

Noting the specific questions of the consultation, the comments provided by the Panel focus mostly on Question 9, *'Do you think there are ways of further improving the regulators' policymaking processes, and in particular, ensuring that stakeholders are sufficiently involved in those processes?'*, reflecting on its own role in these processes. As currently constituted, the Panel's terms of reference state that it is consulted by the FCA on specific high-level issues, and is active in bringing to the attention of the FCA issues which practitioners feel are likely to be of major significance or controversy that relate to the regulator's policies and practices. We believe that this is both an important and appropriate role. We describe in our submission how this relationship currently operates and what outcomes might result from the proposals in the consultation.

1. Current policymaking processes and the input of the Panel

The role of the Panel is perceived by the FCA and by its members as unique and valuable, and both the FCA and Panel members believe it generally works well. The interaction works best when the Panel is consulted early and presenters are at a very senior level, in order to understand the strategic perspective of the FCA's work and match the level of discussion from Panel members. There is particular value in discussing work which cuts across several sectors. The FCA particularly appreciates 'straight talking' from the Panel members, and the members value being able to talk candidly and confidentially with the most senior members of the FCA.

During early 2020 a number of processes were quickly adapted to take into account the Covid-19 crisis, enabling the FCA to consult the Panel more quickly and, equally, for Panel members to feed urgent issues to the regulator. This generally worked well and provided important backup to policymaking, which had to be delivered at pace. It is important that this valuable additional service is not lost in any changes made to the Panel's role.

Based on interactions over the past year, the Panel considers it is important to preserve its role as a 'critical friend' to the FCA, working on a confidential basis.

This does not, however, mean that the status and operation of the Panel system could not be adjusted, or its effectiveness improved, especially given the current changing circumstances and the changed role of the FCA post-Brexit.

2. Adapting the contribution made by the existing statutory panels

Looking at each of the proposals in paragraph 3.47 in turn:

2.1 Whether and how the independent challenge function of the panels might be enhanced

The Panel's value in the regulatory process is to challenge and to raise issues of concern – often articulated as acting in the role of a 'critical friend'. This is an important challenge function. Any increase in the powers of the Panel must take into account the potential for conflicts of interest both for the members of the Panel themselves, who are regulated executive practitioners, and in overlapping with the responsibilities of the FCA Board. The Panel's current terms of reference state that the Panel is independent of the FCA and does not carry out responsibilities on its behalf, and we believe this is the appropriate approach.

The FCA currently has a duty to take the views of the Panel into consideration. We suggest there is scope for this to be developed further to improve the feedback loop between the Panels and the regulator. This would include the three-way relationship between the Panel, the FCA Board and the FCA – currently the Panel reports to the FCA Board following its monthly meetings but this could be enhanced. Regular reporting back from the FCA Board to the Panel, for example, of how the FCA has considered the Panel's inputs, whether or not it agrees with its conclusions, and why, would help the Panel to work more effectively and introduce further transparency into the feedback process.

In addition, the Panel's current terms of reference state that the FCA will provide the Panel with early access to appropriate information for it to fulfil its duties. We believe the Panel works best when it is consulted early and that delivering on this commitment should remain a priority.

2.2 Whether the work of the panels could be made more transparent

Due to the confidentiality agreements signed by Panel members, the FCA is free to discuss sensitive information, or concepts which are at an early stage, in a confidential manner, with experts who have experience across a wide range of sectors at the most senior level. In this way the relationship of the FCA with the Panel differs from that which the FCA has with the trade associations, which it does not seek to duplicate. Panel members are appointed on a personal basis, not as representatives of their firms. The confidential aspect of discussions means both that the FCA is free to use the Panel as a sounding board for early thoughts and that Panel members are free to express their own personal views.

The concept of transparency has more than one interpretation. In terms of public transparency, the Panel publishes an Annual Report and can also publish responses to public consultations if it is minded to do so, and often does. In addition, it carries out, jointly with the FCA, a regular survey of 12,000 regulated firms, in order to measure industry feedback on how the regulator is performing against its objectives. The survey work includes feedback on the FCA's response to the findings of previous surveys.

Although the Panels are only one aspect of the policymaking process, and have no executive powers, the FCA is required to publish, in such a manner as it thinks fit, responses to the

Panel's written representations. Currently, this is done at a high level, by responding publicly to the Panel's Annual Report.

There would be costs and benefits to putting more of the Panel's interactions with the FCA - including those discussions which are currently confidential - in the public domain. Benefits would include providing greater insight into the regulator's decision-making processes and rationale. Costs, however, would include constraining the discussions, and therefore the utility of consulting the Panel, and could risk market uncertainty if early discussions or more sweeping plans for change were shared, which were subsequently revised or even revoked. The Panel believes these costs outweigh the potential benefits, therefore would advise against publishing information about its discussions.

The Panel from time to time invites other representatives of the regulatory family to join its discussions in order to share views. It has agreed in principle to work more closely with the Financial Ombudsman Service, for example, to help inform its strategy, and further work with other such bodies would help to improve transparency between the regulators.

2.3 How the panel memberships are decided, how their remits are set in legislation and how their work is resourced and supported

The FCA Board appoints Panel members, with HM Treasury's approval required for the appointment or dismissal of the Chair. The Panel provides private advice from regulated industry practitioners to help the regulator understand the markets and ensure that interventions land as intended. This is quite different from having oversight over whether to choose a particular regulatory path. If the role of the Panel were to change to one of oversight it might require different Panel composition, rather than drawing from an industry executive practitioner base.

Alternative options might include lay members, or independent experts, to provide a different perspective on how regulation is delivered and enhance transparency and robustness. If, however, the remit of the Panel was changed so that it could only consist of lay members, the outcome would be that current and strategic industry input would be lost. It is not clear how this could be replicated elsewhere in the policymaking process. It is also not clear how such a body would differ from, or overlap with, the FCA Board.

The FCA provides secretariat support to the Panel to enable it to operate effectively. It is also allocated an annual budget from the FCA to fund specific projects which the Panel considers necessary in order for it to fulfil its duties under its terms of reference. It can request approval from the FCA Board for additional funding if required. Any additional projects would be subject to cost-benefit analysis in line with FCA procedures. The Panel believes this provides a good level of support, whilst allowing the capacity to carry out research if appropriate.

2.4 Parliament may wish to consider whether it wishes to give greater weight to the work of the panels in its scrutiny of the regulators, including holding the chairs of the panels to account for their contribution to policy and rule-making by the regulators.

Members of the Panel, including the Chair, are senior executives [often CEO] of regulated firms. They take on a role advising the FCA, amongst many other stakeholders. However, although they provide advice, assigning them accountability for oversight of the policy and rulemaking of the regulator would not be appropriate. As discussed above, there is room for further feedback from the FCA on how it takes the Panel's views into account, but how much of this is in the public domain, including Parliament, must be balanced against the value of confidentiality. We appreciate that there is value in HM Treasury and Parliament understanding

more closely how the Panel operates, and suggest that consideration be given to developing contact in a similar way to the regular interaction which exists between the Panel and other members of the regulatory family.

Yours faithfully,

Paul Feeney
Chair, FCA Practitioner Panel