

Annual Report

2018/19



FCA

Practitioner Panel



Chair's foreword

Last year I observed that the uncertainty around the UK's withdrawal from the EU had not diminished, and at the time of writing it remains unclear if, when, and on what terms the withdrawal will occur. There are, however, signs that both the industry and the regulators are thinking beyond the immediate practicalities of Brexit to consider what a good, well-functioning industry should be like in any case and how regulation and legislation could support this.

The Panel is actively engaging with the FCA and with Parliament to encourage them to look at the tension between the long-term needs of consumers, and the products serving those needs, and the approach of government and industry, which are accountable to voters and stakeholders on a much shorter-term cycle. Legislation and regulation which change multiple times during the lifecycle of a product with a duration of many decades do not serve either the customer or the industry well. Likewise, environmental, social and governance issues should be considered over the long term, rather than with a short-term perspective.

At the start of the year the Panel chose to focus on five priorities in its work with the FCA. In considering EU withdrawal we have supported the regulator's pragmatic approach and encouraged it to work closely with firms regardless of the outcome of negotiations in order to support regulatory continuity.

Looking at the relationship of the regulator to the industry we have

encouraged the FCA to identify rigorously sources of harm in order to prioritise its work in the most resource-effective way and to consider the overall impact of its interventions as well as the impact of individual initiatives. The publication of the FCA's approach documents was welcome, and the Panel has particularly encouraged the development of success metrics and external reviews of its activity.

The Panel has discussed the implications of having an appropriate culture within firms, and the related topics of whether firms should have a duty of care towards their customers and the issue of fairness in pricing. It continues to discuss where the regulator can make the most impact in supporting firms which wish to do the right thing and in developing an appropriate regulatory environment for them to do so.

Key elements of our work on technological innovation and data this year have included operational resilience and cyber security and the potential regulation of cryptoassets. We have advised the FCA on how best to communicate with firms on these issues and highlighted the risks involved in the cryptoassets market.

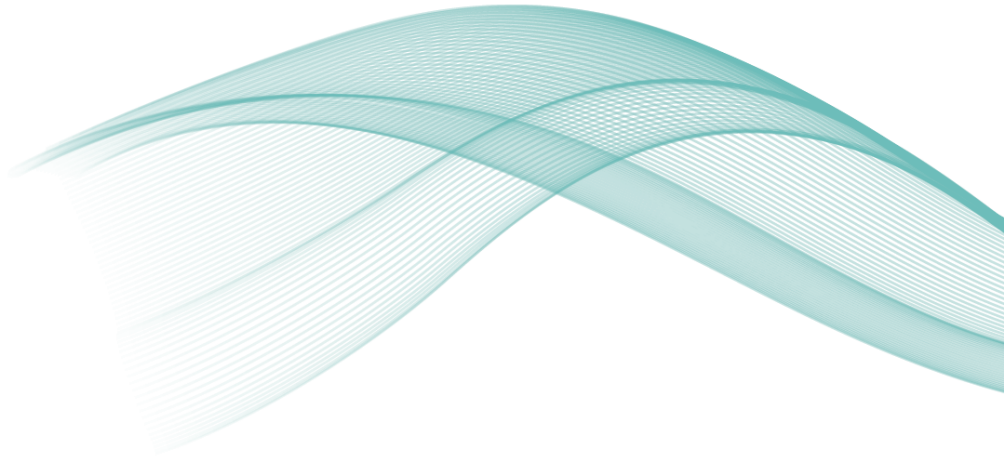
We continue to emphasise the need to take a holistic view of retirement saving which extends beyond pension products and includes some aspects of social policy issues at government level as it is the Panel's view that it is important to consider broader consumer needs rather than a narrow product-based focus.

I will be stepping down as Panel Chair in July at the end of my two year term and would like to take this opportunity to thank the Panel members for participating in the Panel's work with enthusiasm to support and challenge the regulator during this period of exceptional uncertainty. I would also like to thank the FCA for their continuing active work with the Panel and I look forward to seeing how the regulatory landscape evolves to meet the challenges ahead.

Anne Richards

Chair, FCA Practitioner Panel

July 2019



1

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 monthly 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.

2

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Panel priorities

2.1 EU withdrawal

The FCA provides technical advice to the Government and is working with firms to understand their plans to ensure there is a robust regulatory system in place on the day the UK leaves the EU. It has published a range of information over the last year, including instruments and guidance that would apply in the event the UK leaves the EU without a deal or an implementation period.

The Panel has engaged with the FCA on preparations for Brexit. It has highlighted that the FCA has an important role in maintaining regulatory continuity and that consistency of global standards is a key part of this. Issues raised included the lack of reciprocity on passporting between UK and EU national regulators, the need to start contingency planning earlier rather than later, and the likelihood of substantial disruption in the event of a no-deal exit. It welcomed the FCA's clarification that it was willing to waive or modify some requirements to allow for a smooth transition to the post-exit regulatory regime. The Panel's view is that it is helpful for the FCA to be in 'problem-solving' mode as the Brexit situation develops, and has urged it to work closely with firms from day one to address any potential disruption.

2.2 Relationship with regulator FCA prioritisation

The Panel is consulted on the FCA's planning process and invited to provide input.

In discussions with the FCA the Panel has raised the prioritisation process of the regulator and how it chooses to target its resources most effectively. It has recommended that in developing its plans the FCA should look back at previous issues, such as PPI, to identify the sources of harm with forensic rigour, using this to prioritise and then work with the industry to prevent future harm. Its view is also that the structure of regulation is broadly appropriate, and that the FCA should use the tools already available to it, such as the Senior Managers and Certification Regime, rather than intervene specifically in pricing and product design.

FCA Approach

When the FCA published its Mission in 2017 it committed to being more open and transparent about how it regulates and why it makes its decisions in the manner that it does. As part of this it committed to publish a range of documents that explains its approach to regulation in more depth. Over the past year it has published documents on its approach to supervision, enforcement, consumers, competition and authorisation.

The Panel welcomed both the Mission and the approach documents which led from it. It responded to the Supervision and Enforcement consultations jointly. It welcomed the FCA's articulation of its decision-making framework in the Mission document and was pleased to see it being carried through to the

approach to supervision. It commented that it would be helpful if there was a more explicit communication of the FCA's success metrics both for supervision and enforcement, and particularly in the case of enforcement, measurement of the benefits achieved by intervention. In the area of competition the Panel stressed the need to prioritise market studies to ensure it concentrates on the areas of greatest public harm and clearly adds public value.

Evaluation of FCA work

In December 2018 the FCA set out its framework for measuring the impact of its past interventions using ex post impact evaluations. It incorporated views received from stakeholders after the publication of its discussion paper in April 2018.

The significant number of consultations undertaken by the FCA over the last year has been noted by the Panel, many of which addressed substantial topics such as the FCA's approach to regulation, the Asset Management Market Study and several consultations in the area of pensions. In addition, there were a number of sizeable data requests including those relating to the Investment Platforms Market Study and the Strategic Review Of Retail Banking Business Models. Responding to these requests continued to be a resource-intensive exercise for firms facing a number of challenges, not least those relating to Brexit. It therefore welcomed the discussion paper on the ex post impact evaluation framework.

In its response to the Discussion Paper the Panel supported the principle of evaluating the success of regulatory interventions, on the grounds that it should enable the regulator to learn and focus on those types of interventions that really make a difference to customers and market integrity and move away from those that do not have positive impact. It also encouraged the FCA to go further than looking at individual initiatives and also consider the totality of its interventions. Firms will be simultaneously dealing with many projects (for example, the changes to consumer-facing documentation required by MiFID II, PRIIPs and the Insurance Distribution Directive) and the cumulative impact is key to their ability to respond. It also recommended that the process would benefit from external oversight and challenge. In its final statement the FCA committed to either commissioning reviews externally or, where carried out by FCA staff, ensuring they are peer reviewed by external experts.

Mortgages Market Study

In March 2019 the FCA published its final response to its market study into the mortgage market, focusing on first-charge residential mortgages, and in particular consumers' ability to make effective choices given the tools available, and commercial arrangements between firms leading to possible conflicts of interest.

The findings of the review, which found high levels of consumer engagement and few concerns with the commercial

arrangements already in place, were welcomed by the Panel, especially as these had followed on from previous findings in the responsible lending and suitability areas. Given the pressures on FCA resources it encouraged the FCA to focus only on areas where there is clearly harm. In conjunction with the market study, the FCA announced further work specifically addressing the harms around the issue of mortgage prisoners.

Investment Platforms Market Study

The FCA published the Investment Platforms Market Study Final Report in March 2019 along with a package of measures to help consumers who invest through investment platforms more easily find and switch to the right one for them.

The Panel's view of the market study was that it was a robust piece of work which drew a fair set of conclusions, acknowledging that although overall the market is working well for most consumers the industry still has some work to do in some areas. It particularly welcomed the fact that the study looks to simplify the market for consumers rather than adding a further layer of regulation, which it considers is an approach which could usefully be extended to other areas such as pensions.

Trade Associations

In its terms of reference the Panel undertakes, when appropriate opportunities arise, to report informally on its work to practitioners and trade bodies.

In July 2018 the Practitioner Panel, Smaller Business Practitioner Panel and Markets Practitioner Panel Chairs hosted a meeting of representatives from trade associations across the different financial services sectors to update them on the Panels' work and their priorities and hear about their concerns. They also discussed what good regulation would look like in a post-Brexit environment and prioritisation of the regulator's work.

2.3 Culture

The Senior Managers and Certification Regime (SM&CR)

Following work early in 2018 on the issue of culture the FCA has continued its engagement with the financial services community, working with thought leaders including members of all the Panels, to explore the themes and questions raised in its consultation work and to share examples of good practice. A key element of the FCA's work on culture is the implementation of the Senior Managers and Certification Regime (SM&CR).

Panel members have participated in the FCA's work on culture, including attending a series of dinners to address the area of culture within financial services. At the Panel meetings topics addressed have included reforms of incentive structures to achieve a longer-term approach to reward, how culture can vary in firms of different sizes, as well as different governance structures and business models.

The clarification of accountability as a result of the introduction of the first phase of the SM&CR was welcome, but the Panel warned that it could lead to a siloed approach in organisations based on allocation of responsibilities, which is the reverse of the culture the FCA is seeking to create. The Panel urged the FCA to review what was achieved in the first phase, what worked, and how this can be reflected in the second phase.

The regulation of claims management companies by the FCA is welcomed by the Panel and it supports the regulator's general approach, but has raised its concern that such firms will not be subject to the SM&CR until December 2019, after the August deadline for PPI compensation claims. It has urged the FCA to make clear during this interim period the standards which will be expected from regulated firms.

In its feedback the Panel has suggested that the fact the FCA has applied the SM&CR to its own organisation is something which could usefully be publicised more widely.

Duty of care

In July 2018 the FCA published a discussion paper on the potential merits of, and alternatives to, a duty of care for financial services firms towards their customers.

The Panel has been working with the Smaller Business Practitioner Panel and the Financial Services Consumer Panel on a way forward on a duty of care which works for consumers,

practitioners across the industry, and the regulator. A number of cross-Panel workshops have taken place, discussing how regulators can encourage firms to 'do the right thing' in terms of fairness, without running the risk of becoming uncompetitive as the first mover to act. The Panels are continuing to engage with the FCA as this project continues.

Pricing

The FCA has undertaken several pieces of work over the past year which focus on the issue of pricing, including work on price discrimination in the cash savings market, fair pricing in financial services, high cost credit and its strategic review of retail banking business models.

In its discussions with the FCA the Panel's key message is that the FCA should start from a point of 'what is the right exchange of value' between the customer and the firm, taking into account all the costs and benefits of the product over time, to establish what is a fair price. It has pointed out there is an important crossover both with the FCA's projects on vulnerability and duty of care, which lie at the heart of the FCA's work. The Panel believes it is not in itself unfair that different customers pay a different price for the same product, but more work needs to be done on articulating the degree of differential value and what is and is not acceptable.

In its response to the FCA's discussion paper on fair pricing, the Panel acknowledged there are pricing

practices within the industry which are not fair, and that this needs to be addressed. It has suggested that the FCA can make the most difference in markets which have found themselves in a sub-optimal equilibrium from which they cannot escape, such as current account pricing. In some markets firms may wish to change their pricing strategy and to compete on factors other than price. Without intervention from the regulator they may risk incurring a first mover disadvantage which is not in the interests of any of their stakeholders.

Stewardship

The FCA published a joint discussion paper with the Financial Reporting Council (FRC) about the importance of effective stewardship. It examined what effective stewardship should look like, what the minimum expectations should be for financial services firms that invest for clients and beneficiaries, the standards the UK should aspire to and how these could be achieved.

The Panel's input pointed out the complexity of the industry, and emphasised that the regulatory system should not assume that all firms have, or should have, the same stewardship objectives. Its view is that capital markets must allow for a range of visions for the future of a company, and that it is important to take into account the international dimension for firms operating in different cultures.

2.4 Technological innovation and data

Operational Resilience and cyber security

In July 2018, as part of its work on operational resilience, the FCA published a Discussion Paper jointly with the Prudential Regulation Authority (PRA) and the Bank of England about strengthening the operational resilience of financial services firms.

In its response to the Discussion Paper the Panel stressed the need to target firm communication from the regulators at the right level of seniority in order to encourage firms to address cyber security issues. It also highlighted the need for firms to take into account the security of third party suppliers. It has raised the point that in an environment where breaches of cyber security are increasingly frequent, the regulators should encourage firms to plan for this, as well as making efforts to avoid problems in the first place.

Cryptoassets

The FCA has carried out work on cryptoassets, both as part of a broader UK Cryptoasset Taskforce and independently to achieve its own objectives. It has consulted on where different types of cryptoassets might fall in the regulatory perimeter.

In considering the development of cryptoassets the Panel congratulated the FCA for taking a firm stand in its policy and regulatory approach. If, as the work

of the Taskforce has established, there is little potential benefit and significant potential harm to customers in this area, it is important that the regulator is not seen to endorse such products if the UK is to maintain its reputation as a safe and transparent place to do business in financial services. The Panel was, however, encouraged that the FCA nonetheless did not dismiss entirely the usefulness of potentially innovative aspects of distributed ledger technology to the financial service infrastructure.

2.4 Ageing population Pensions

During the past year the FCA has worked on several topics in the area of pensions and retirement saving, including effective competition in non-workplace pensions, improving the quality of pension transfer advice, and a call for input on the FCA's strategic approach to regulating the pensions and retirement income sector.

Last year the Panel emphasised the need to take a holistic view of retirement saving, which went beyond the regulators and included social policy issues at government level. It continued to underline the message this year. It urged both the FCA and the Pensions Regulator to be clear in their strategy what the biggest risks are and link their interventions to these, in order to avoid

minor changes that have little effect. The Panel is particularly concerned at any actions which would reduce access to advice for people making long-term decisions. Any solutions from the regulator must allow advisers to be remunerated for taking on risk which can extend even beyond the life of the client. In its recommendations the Panel has encouraged the FCA not to look at pensions issues through a product lens, but to consider the broader issue of consumer needs relating to later life.

On the subject of pension transfers, the Panel stressed there is currently a fundamental shift underway in the pensions environment as customers move funds from defined benefit schemes into other investments, and that the role of the regulators is to ensure this transfer happens safely. The majority of the advice market is functioning well, and the Panel agrees with the FCA's findings that there is no causal link between contingent charging and poor advice. It has encouraged the regulators to focus on identifying and preventing poor practice amongst a minority of advisers, identifying differences in approach between employer-sponsored schemes and other models, and developing an innovative approach to triage services which refines who does and does not need to take advice, rather than setting an arbitrary threshold.

List of Practitioner Panel members

Anne Richards

Panel Chair
Chief Executive Officer,
Fidelity International

David Bellamy

Formerly Chairman, International
Advisory Board, St. James's Place plc
Member and Deputy Chair until
31 January 2019

Juan Colombás

COO, Lloyds Banking Group
From 1 May 2019

Steven Cooper

Formerly Chief Executive Officer,
Barclaycard Business Solutions,
Barclays PLC
Member until 31 October 2018

Craig Errington

Chair, Smaller Business Practitioner Panel
Group Chief Executive, Wesleyan

Paul Feeney

Chief Executive Officer, Quilter plc

Dame Jayne-Anne Gadhia

Formerly Chief Executive Officer,
Virgin Money UK

Joe Garner

Chief Executive Officer,
Nationwide Building Society

Adrian Grace

Chief Executive Officer, Aegon UK

Christopher Hill

CEO, Hargreaves Lansdown
From 1 May 2019

Les Matheson

CEO, Personal Banking, RBS

Tulsi Naidu

CEO, Zurich UK

Julie Page

CEO, Aon UK Limited
From 1 April 2019

Nikhil Rathi

Chief Executive Officer, LSE plc &
Director of International Development,
LSEG

Michelle Scrimgeour

Chief Executive Officer, Legal and
General Asset Management

Steve Lewis

Formerly Chief Executive Officer,
UK and Western Europe, RSA
Member until 28 February 2019

Steve Treloar

CEO, LV= General Insurance Group
From 1 April 2019

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