

FCA

Practitioner Panel

THE FCA PRACTITIONER PANEL:

**RESPONSE TO FSA DISCUSSION PAPER 13/1
'TRANSPARENCY'**

APRIL 2013

Introduction

The FCA Practitioner Panel welcomes the publication of discussion paper DP13/1, on Transparency. We have engaged with the FSA on this topic on a number of occasions, and appreciated the opportunity to discuss some early thinking with FSA staff.

In general, the Panel believes greater transparency by both firms and the regulator can be a positive development, where the use of this tool leads to the desired regulatory outcomes. We support greater access to information that can assist consumers in making the right choices, but care must be taken that it is information that consumers can engage with in a meaningful way. The FCA's recent work in the sphere of behavioural economics may provide insights to help the organisation determine what information will be genuinely beneficial to the public, and in what format, and what type of data is likely to be mis-understood and cause detriment.

Executive Summary:

- The Panel supports a number of initiatives proposed in the paper, including:
 - Information to enable the public to hold the FCA accountable, including through NAO reviews, and greater information around supervisory and enforcement activities
 - Information that would assist firms to better understand regulatory priorities and areas of focus
- We do however raise concerns around:
 - The proposal to publish insurance claims data. We worry that the publication may have unintended consequences and that the proposed data may be mis-understood
 - We would urge the regulator to stay sensitive to the possibility that greater public insight into redress discussions may not only delay negotiations but also affect firms' willingness and ability to settle
 - The FCA should consider fairness to individual persons/institutions. We have concerns that the proposed publication of warning notice statements appears presumptive of guilt, and that it will work contrary to efforts to improve the reputation of the industry
- In addition, we suggest the FCA consider:
 - The timing and tone around publication of data
 - Regularly reviewing the available information to see if it is still fit for purpose

Detailed response:

How the regulator could be more transparent

The National Audit Office's new powers

The Panel strongly supports the new responsibilities handed to the National Audit Office (NAO), to assess the FCA and its policies for value-for-money.

We engage with the regulator on an annual basis providing feedback on the proposed budget, as well as regular interaction commenting on the likely effectiveness and efficiency of proposed new initiatives. Although our discussions with the regulator have been constructive and helpful, we have previously commented on the importance of assessing the overall impact of regulatory initiatives on the industry, and ensuring that value-for-money of individual initiatives and on-going pieces of work are evaluated on a regular basis. We have already engaged with the NAO regarding how they plan to use their new power, and will continue this dialogue with them going forward.

The FCA's Value for money strategy

We are also supportive of the regulator's intention to develop a value-for-money strategy. We would be happy to feed in our thoughts to the regulator on this strategy at an early stage to help develop thinking.

We are especially pleased to see the regulator mention the use of section 166 reports in the context of value-for-money assessments. The Panel has taken a keen interest in skilled person's reports, and their increased use and cost to the industry. Through our discussions with the FSA, we understand the FCA plans to use such reports more frequently going forward. In our view, such an approach would raise real questions around the specific criteria used to trigger a report, the consistency of application of these criteria, and the general cost effectiveness of a regulatory approach that relies more heavily on out-sourcing certain supervisory functions/expertise.

Transparency around its enforcement activities

We support the intention for the regulator to provide more detailed information around its enforcement activities. We especially welcome the proposal to provide greater clarity around its approach to enforcement and what the FCA is seeking to achieve through these activities. Such information would enable firms to better understand the regulator's priorities and areas of focus. We similarly support the regulator publishing data around the cost and average length of enforcement investigations, to help the public hold the FCA to account and ensure that regulatory resources are being spent efficiently. We would also encourage the FCA to be more open, where possible, to the relevant firm as to the process followed when it faces enforcement action.

However, we have concerns regarding the publication of warning notices. Such publication would work contrary to natural justice, where an individual may be innocent of the

allegations, and hurt efforts to improve trust in the financial services sector. We will submit a separate response to the consultation paper on this topic.

Information around firms, individuals and markets

Authorisations and thematic work

The Panel agrees with the regulator that greater transparency of the authorisations process would be helpful for firms to gain a greater understanding of regulatory expectations, and that this will be helpful in holding the regulator accountable to its statutory and voluntary timescales.

We are also strongly supportive of the regulator developing aggregated results of thematic work. Industry takes a strong interest in such work, and for participating firms the process is often fairly resource and time intensive. It would be helpful to have greater information not just regarding the regulator's future focus, but also aggregated feedback regarding the state of the market following the conclusion of the work.

Redress settlements

The FCA rightly recognises that there are legal constraints in place for the FCA to publish the amount of redress firms pay and the formula/criteria applied going forward. We also note that it is the FCA's intention to publish more details about individual firm redress schemes in the public notice going forward, and that the FCA will expect full openness on such redress information from firms as a condition to the regulator agreeing a settlement in the future. We would urge the regulator to be sensitive to the fact that greater public insight into final redress schemes could have the unintended consequence not just of delaying negotiations and settlements, but also affect firms' willingness and ability to settle as they will have to consider additional reputational implications.

Information the FCA could require firms to release

Proposed publication of claims data

The Panel does not believe that the publication of claims data would necessarily be conducive to achieving the right regulatory outcomes, and worries that such publication could have unintended consequences. For example, we would be concerned to see the media draw conclusions that a certain product is poor value for money purely on the basis of its premium vs. pay-out ratio (which could be due to factors such as the policy insuring against low-probability events). Should the regulator wish to go ahead with the publication of some form of insurance claims data, we would strongly encourage it to tie this work with its insights and on-going work in the field of behavioural economics to learn more about the type and format of data that would achieve its intended outcomes.

Additional considerations

Regular review of available information

We would encourage the FCA to regularly assess the usefulness of the information it provides (across all three categories above) in terms of ensuring that putting that data in the public domain is still leading to the desired outcomes. Such work can indicate whether the general public are interpreting the data in the manner which the regulator expected, or whether greater contextualisation/other data may be required.

Timing of release of regulatory information

We would further ask the regulator to be sensitive as to the timing of the release of certain information, especially where this may not be done regularly, and the tone adopted in the presentation of data. The Panel has had numerous discussions with the regulator on this topic, and have appreciated the regulator's consideration of this in its recent communications. How data is interpreted (especially by the media) is often dependent on the way in which it is presented and the commentary provided by the regulator. The FCA should therefore try to be sensitive as to the language used when commenting on data, and ensure that information is provided with the appropriate contextualisation.

Conclusion

In summary, the Panel is supportive of introducing greater transparency in a number of areas. We believe that further transparency around the regulator's own activities and the state of the market can be helpful both in terms of ensuring regulatory accountability, and in directing firms to focus on the right areas in their work. We have however asked the FCA be mindful around the timing and tone of regulatory information, and suggested that it should consider reviewing the information it releases into the public domain on a regular basis. We have also raised concerns regarding possible unintended consequences around the publication of claims data as well as greater openness of redress discussions and ask the regulator to consider how these could be mitigated.

We have welcomed our discussions with the regulator on this topic to date, and would be happy to provide further feedback on more detailed proposals later in the year.