Annual Report
2020/21

FCA
Smaller Business Practitioner Panel

Chair’s foreword

Last year in my foreword to the annual report I reflected that there would be particular challenges for smaller businesses as the coronavirus crisis moved from the initial phase, and the initial government and regulatory actions, into a recovery phase. While we might have hoped that we would be further into the recovery phase by now, and not still under the continued restrictions that affect our day to day lives, as well as our businesses, the industry and the regulator have in many ways been able to learn from the experience of the last year and to move forward in a positive way. The financial services industry has continued to serve its customers and support the wider economy, despite previously unimagined pandemic-related challenges, for well over a year and smaller firms have often managed this with fewer resources than the larger players in the industry.

The future of regulation has been high on the agenda for the Panel, the FCA, and the UK government this year. Facing the challenges not only of the pandemic, but the future for the UK outside the EU, the FCA has launched a substantial programme of transformation, led by Nikhil Rathi, as he took over as CEO in October. The Panel has engaged with the process from the start, encouraging the FCA to articulate what kind of regulator it wants to be, to make full use of the tools already available to it, and to be clear about where the limits of its regulation lie. We have also encouraged it to think creatively about how to engage with smaller firms to ensure their views are heard, especially at a time when many are operating at full stretch and may not have the resources available to respond to traditional formal consultations. The Panel also engaged with the HM Treasury future regulatory framework review, highlighting what it sees as the value of the statutory Panel structure within that framework.

The pandemic has accelerated a number of issues which we have addressed this year under the heading of fair outcomes for consumers. The shift towards online payments, particularly during the days of most stringent lockdown, while increasing convenience and lowering costs for some consumers and businesses, have also raised concerns about continuing access to cash for those who wish to use it, as well as the potential for fraud and scams, and we support the FCA’s work in these areas. In the area of business interruption insurance the speed at which the FCA achieved clarity through the courts on coverage in specific contracts was very welcome, although there is still work to be done in this area. The Panel has continued to raise serious concerns about the business models of some firms in the claims management sector, and is supportive of the FCA’s ongoing work to address poor practice in this area.

The Panel strongly believes that addressing firm culture is a key mechanism for achieving good outcomes and continues to encourage the FCA to help put in place strong culture and controls to prevent poor practice from happening, rather than addressing it after the fact. This is the key route the Panel sees to reducing the Financial Services Compensation Scheme levy which we, and the FCA, believe has reached unsustainable levels.

We have encouraged the FCA to look hard at the data it holds on firms and to be smart in the way it uses this data, both to extract maximum value from the information it asks firms to provide and to help identify where potential harm lies. We welcomed the creation of a new role of Chief Data, Information and Intelligence Officer as a significant step forward in achieving this.

As always I would like to thank my fellow Panel members for their time and expertise. The HM Treasury review of the future regulatory framework acknowledged that the Panels are a unique and important part of that framework and we continue to engage to help create good outcomes for consumers, for the regulator, and for the industry. We have had excellent engagement with the FCA over the past year, albeit still on a virtual basis as we all continue to deal with the practicalities of coronavirus restrictions. I would like to say a particular thank you to Chris Woolard for his engagement with the Panel during his time as acting CEO, and to Nikhil Rathi for his work in shaping the future of the regulator since his arrival in October.

I look forward to further positive engagement between the FCA and the Panel in the year ahead.

Marlene Shiels
Chair, FCA Smaller Business Practitioner Panel

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Introduction

The Smaller Business Practitioner Panel (SBPP) is one of four statutory Panels for the FCA, working alongside the Practitioner Panel, Markets Practitioner Panel and the Financial Services Consumer Panel. The SBPP aims to apply its experience and knowledge to improve UK financial services regulation through representing to the FCA the views, interests and concerns of smaller regulated firms.

Each year the Panel identifies its key areas of focus and priorities and communicates these to the FCA. During the year the Panel meets regularly with FCA senior staff and representatives of other bodies to engage with the regulatory process and provide advice and feedback. It continues to do so, meeting from April 2020 onwards remotely by teleconference. Over the year the Panel addressed the impact of regulation on smaller firms, focusing on proportionality and cost-effectiveness of regulation, volume and pacing of regulatory measures, communications and engagement and clarity of regulation. Its specific priorities for the year were:

- Future of Regulation
- Fair outcomes for consumers
- Culture and governance
- Innovation and new entrants

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Future of regulation

2.1 Coronavirus (Covid-19)

During the early days of the coronavirus crisis the Panel continued to meet via teleconference, with its agenda focused on supporting the FCA with the immediate crisis issues. In due course its agenda took a more forward-looking approach, focusing more on the unwinding of emergency measures and the challenges of identifying and addressing the longer-term implications of the crisis as it moved to the next phase. It discussed, and agreed, with the FCA that the industry and the regulator should not necessarily attempt to return to the systems and processes in place before the crisis but to learn from the experience and improve the way it operates in the future.

2.2 Brexit and international issues

The Panel was encouraged to hear that regulators and international bodies across the world were sharing their response to the coronavirus crisis and learning from the experience of different countries. Issues of concern to the Panel relating to the Brexit process were that of contract continuity, and regulatory uncertainty more broadly, with some firms facing the dilemma of whether to comply with the law, such as closing bank accounts or cancelling policies, or to act in the interests of good consumer outcomes. The Panel encouraged the FCA to issue further clarity where it could to help firms communicate more effectively with their customers.

2.3 Future Regulatory Framework review and response

HM Treasury's Future Regulatory Framework (FRF) Review was established to determine how the overall approach to regulation of financial services needs to adapt to the UK's new position outside the EU and to ensure the regulatory framework is fit for the future. After focusing on the specific issue of coordination between the UK's regulatory authorities in Phase I of the review, in October 2020 the government moved to Phase II with a consultation by HM Treasury examining the broader regulatory framework for regulation of financial services in the UK.

The Panel specifically focused on the points in the consultation which concern the role of statutory panels in the regulators' policy-making process and in particular the question which asked if there are ways of further improving the regulators' policymaking processes, to ensure that stakeholders are sufficiently involved in those processes. The Panel expressed the view that the FCA Panels are a unique element of the governance process and that generally, Panel members see their participation as a way of 'giving back' to the industry and to the working of the financial services sector. They do this because they value the process and because they believe there is real benefit in challenging, advising and guiding the FCA to make robust decisions that will achieve the desired outcomes. The key message was that there are elements of the relationship which could be addressed in order to work more effectively but the response cautioned that any changes must be carefully considered so as not to inadvertently lose any of the benefits of the current relationship to the regulatory process.

2.4 FCA Chair and Chief Executive engagement

The Panel has regular engagement with the FCA Chair Charles Randell and the FCA Chief Executive (this year both Acting CEO Chris Woolard and latterly CEO Nikhil Rathi).

The Panel's key message for Nikhil Rathi as the incoming Chief Executive, and for the rest of the regulatory family, was to focus on using existing powers to prevent poor behaviour rather than the costly and less effective route of remedying after the fact.

2.5 FCA Transformation

During 2020 the FCA announced a wide-ranging transformation agenda to equip it better for the challenges of the future. Following a restructuring to bring together the Supervision divisions and merge them with Policy and Competition functions, it made a number of appointments to the senior team with a diverse range of private and public sector experience. A key area is how the FCA can properly set (or reset) people's expectations so that they better understand the outcomes it is working towards.

The Panel has encouraged the FCA to keep a dialogue open with the industry throughout its transformation process. As it is for firms, it believes the key to successful transformation will be to look at it through the lens of culture.

2.6 Consumer Credit sector

Evidence of increasing consolidation in the high-cost short-term consumer credit sector was highlighted by the Panel as being likely to reduce competition in the supply of credit to customers, and likely to become an increasing issue as the pressure on household income continued to grow as a result of the coronavirus crisis. The Panel encouraged the FCA to work with the CMA to identify vulnerable firms and take any necessary action.

2.7 Environmental, Social and Governance issues

The FCA is carrying out work in the area of sustainable finance with the objective of helping firms and consumers create an understandable, comparable and transparent market for sustainable finance products. Panel members participated in an ESG roundtable held by the FCA in February 2021.

Post-Brexit the Panel highlighted the opportunity for the UK to take a lead on ESG issues, emphasising the social and governance objectives as well as the often more prominent environmental focus. It welcomed work on laying the groundwork for transparency, but stressed that there are many issues to be addressed such as how data can be quantified from different sources, some of which are not measurable, and its view is that labels and naming conventions in particular need more work.

2.8 The regulatory perimeter

The boundary between what is and is not regulated by the FCA (the regulatory perimeter) is an issue which has been raised a number of times by the Panel. As an example, the Panel was pleased that the FCA is monitoring employer salary advance schemes, although they currently exist on the perimeter. There are implications for firms within the perimeter who operate in the same market and are, rightly, subject to oversight for their lending practices. The Panel's view is that the FCA should take on board lessons learned from the payday loan sector, due to the danger that such loans could contribute to an ongoing spiral of debt, particularly in the current economic climate.

2.9 FCA Communications Strategy

During the past year the FCA has developed its communications to take into account the challenges of the pandemic.

The FCA's adaptations in light of the coronavirus pandemic, such as more use of digital technology and remote access to events, were welcomed by the Panel, and in particular it encouraged the development of an online Live and Local, to continue once pandemic restrictions are lifted. It also reminded the FCA of the need for empathy in the tone of communications when dealing with firms, as well as consumers, in difficult circumstances, especially as the implications of the pandemic develop.

A common theme has emerged in the Panel's interactions with the FCA that the regulator can usefully act by demonstrating good behaviour by being clear and consistent about what good looks like and sharing good practice within the industry, rather than seeking and focusing on poor behaviour once it has occurred. Case studies and templates are examples of help which is valued by smaller firms which may not have the resources available to larger firms to deal with regulatory change. An area which would particularly benefit from this approach would be operational resilience, where best practice can be and is shared between firms, particularly given the steep learning curve experienced as a result of the pandemic.

2.10 Complaints

In 2020 the FCA, Prudential Regulation Authority and the Bank of England launched a joint consultation on the Financial Regulators' Complaints Scheme, asking how the scheme's language could be improved to make it more accessible to consumers and clarifying the policy on making ex-gratia compensatory payments.

In discussing the issue of complaints the Panel was initially concerned that the Complaints team, as the Complaints Commissioner pointed out, was not sufficiently prioritised within the FCA. It was, however, encouraged to hear that this was being addressed, and that the work of the department feeds more directly into the FCA Executive and the Board. The Panel encouraged the FCA to develop a culture where the information received via the complaints scheme is incorporated into its work to learn and move on.

2.11 Professional indemnity insurance (PII)

In its Call for Input on the consumer investments market the FCA recognised that some firms have faced increasing costs and complexity in securing PII cover in recent years and signalled its desire to discuss the type and amount of PII advisers are required to have.

The FCA's acknowledgement of the crisis in this market was welcomed by the Panel, which considers the market to be in disarray. It stressed to the regulator that firms which the FCA would consider to be operating with sound and prudent business models are either unable to access cover or have little or no choice of provider as the numbers of firms offering this cover to financial services businesses continues to decline. The Panel continues to encourage the FCA to take this into account when making policy decisions as it is both a structural and competition issue for the industry.

2.12 Retail Distribution Review and Financial Advice Market Review

Following its Call for Input in May 2019 the FCA published a Final Report in December 2020 that summarized its evaluation of the impact of the Retail Distribution Review (RDR) and the Financial Advice Market Review (FAMR).

The ongoing work on the FAMR review was supported by the Panel, in particular the acknowledgment that any solutions are likely to involve demand side, supply side and regulatory and legislative elements. For example, the Panel encouraged increasing the involvement of employers in helping their staff to make good financial decisions, without necessarily entering the area of regulated advice, and increasing tax incentives such as extending the £500 allowance beyond pensions to include other financial advice (although acknowledging the latter is a matter for the Treasury rather than the FCA).

2.13 Temporary long-term absence

The FCA and PRA consulted on clarifying regulatory expectations for firms when a Senior Manager takes temporary leave for longer than twelve weeks (long-term leave), for example in cases of parental leave, and where the length of absence is not known. It was considered that the rules and guidance were not currently sufficiently clear on whether individuals could retain regulatory approval during long-term leave, or whether firms could hold open approved roles for an individual on leave, and therefore firms may have been approaching temporary absences for Senior Managers differently.

The Panel had raised this as an issue for firms, originally in the context of parental leave, but exacerbated by the pandemic. It was pleased that the FCA had adopted a practical solution to the issue of reporting by adapting the current forms.

2.14 Operational resilience

In 2019 the FCA consulted on proposed changes to how firms approach their operational resilience. Due to the pandemic the consultation period was extended and the Panel added to its response.

The Panel noted that the experience of the current pandemic had been faced by the whole industry, and the whole economy. The resilience of industry during the crisis had so far been reasonably well-proven and lessons had been learned from the lockdown period. The Panel suggested that this provided an opportunity to reshape the FCA's work on Operational Resilience to more of a lessons-learned exercise, and in particular there was scope to reflect where the risks have been enhanced as well as reduced, for example the greater risk of cyber attacks with so many people working from home.

3

Fair outcomes for consumers

3.1 Access to cash

The FCA is part of the Joint Authorities Cash Strategy (JACS) Group, alongside the Bank of England, and Payment Systems Regulator and HM Treasury. The JACS Group is working to safeguard access to cash for those who need it, while supporting digital payments. In July 2020 it published an update on work so far which also set out which regulators oversee the different parts of the cash system.

The issue of access to cash has been highlighted as an important one for the future as the economy emerges from the coronavirus crisis, and the Panel's advice to the FCA is that its strategy should be developed with the work on vulnerable customers as those who rely only on cash can especially be those in the most vulnerable circumstances. It also highlighted the importance of addressing how customers can deposit cash, as well as taking it out, as the different transactions pose different issues which will have different solutions. For example, customers may access cashback at a supermarket checkout but there would be operational issues with depositing cash in this way. It is the Panel's view that the Post Office will continue to have a key role in the cash infrastructure and should be factored into any future strategy.

3.2 Business Interruption (BI) insurance

The FCA sought clarification from the High Court as part of a test case aimed at resolving the contractual uncertainty around the validity of certain BI claims relating to the coronavirus pandemic.

The FCA's decision to seek a court declaration, on an agreed and urgent basis, was supported by the Panel, which considered it outstanding effort on behalf of the FCA to provide clarity as quickly as possible for those involved.

3.3 Claims management companies (CMCs)

The FCA has made a number of regulatory interventions in the claims management company market over the past year, including plans to introduce a cap on fees, to prevent 'phoenixing' (where an individual connected with a wound-up firm reappears in connection with a claims management company), and issuing a 'Dear CEO' letter addressing a range of harms identified failing to undertake sufficient checks and collect relevant information before presenting claims to third parties, resulting in submission of spurious claims.

The Panel has acknowledged that progress has been made in raising standards in the Sector, but continues to raise a number of issues around the behaviour of some claims management companies, which we consider are producing poor outcomes for both consumers and other financial services firms. In particular, Panel members have produced evidence of the substantial number of spurious complaints submitted on behalf of customers who have never had a policy with the firm and do not relate to poor behaviour on behalf of that firm.

3.4 Consumer Investments

Reducing harm in the Consumer Investment market was identified as a business priority in the FCA's 2020/21 Business Plan as some areas of the market were identified as not working well enough for consumers. A call for input in September 2020 looked across the whole market and considered whether there were systemic issues that needed to be fixed.

The Panel responded to the call for input, stating that the key to addressing the issues raised in the paper must be a well-defined, clear regulatory environment where the rules can be easily understood, and the outcomes of transgression are transparent. In the view of the Panel the creation of such a governance culture combined with significant consumer education would enable the shortcomings highlighted in the call for input to be addressed.

More broadly, the Panel believes that firms which are offering a return on an investment should be within the regulatory perimeter and that government should address this urgently. Issues relating to activist retail investors targeting heavily shorted stocks (the GameStop example) have highlighted an extra dimension of consumer behaviour around the use of technology and social media which the Panel considers should be factored into this work.

3.5 GI Pricing practices

The FCA carried out a general insurance pricing practices market study in 2018 which found that the home and motor insurance markets were not working well for all consumers. In September 2020 it published a consultation paper setting out a proposed package of remedies.

The Panel responded to the consultation and was supportive of intervention where harms have been identified. Its view was that the current home and motor insurance market model as it currently stands does not work as well as it should for long-standing customers and that there should not be excessive price differences between new and existing customers. The Panel highlighted that it is important the customer buys the right level of cover for the insurance needed, that decision can never be made on price alone and the cheapest policy may not provide all the cover that the customer requires. It agreed that correcting imbalances in pricing which are perceived to be unfair to loyal policyholders is a good thing, but raised concerns that the FCA may be underestimating the implications of the significant and complex pricing intervention proposed which would affect the pricing of every firm in the market.

3.6 Review into Change and Innovation in the Unsecured Credit Market (The Woolard Review)

In September 2020, the FCA Board asked Christopher Woolard CBE, former Interim Chief Executive, to review change and innovation in the unsecured credit market. The review concentrated on how regulation can better support a healthy unsecured lending market. It took into account the impact of coronavirus on employment security and credit scores, changes in business models and new developments in unsecured lending, including the growth of unregulated products in retail and the workplace. The review reported in February 2021.

The Panel was represented on the review's own advisory panel and responded formally to the review. Its view was that it seems the market works well for some demographics and it will be challenging to ensure that good practice remains, that the supply of credit is available to those who require it, and innovation that doesn't cause consumer detriment is encouraged. However, it stressed that borrowing cannot be taken in isolation and forbearance (when people get into financial difficulties) and rebuilding (credit files) and related activities should not remain out of scope. It also encouraged the review to consider the role of the Financial Ombudsman Service, again to ensure that there is consistency, and that if firms adhere to the regulation, and adopt best practice, they are not penalised.

3.7 Interest rates

During 2020 the Bank of England reduced the base rate to historically low levels.

The Panel raised concerns with the FCA about the expectation of full pass through of the reductions in interest rates to consumers, highlighting that the building society sector was now beyond a point of de minimus in terms of rates and that to pass on rate cuts for borrowers could drive a further significant downward pressure on net interest margins, which for many top 10 building societies was already below 1.00%. The Panel pointed out that in some cases building societies may have six or seven savers to every mortgage customer and if the focus was too closely on the immediate needs of borrowers, this could result in a danger that there would no longer be an incentive to save.

3.8 Vulnerability guidance

In February 2021, following two consultations, the FCA published finalised guidance on the fair treatment of vulnerable customers. The Guidance sets out the actions firms should take to treat vulnerable customers fairly. It also highlights examples of how they can put these actions into practice and includes case studies showing good and bad practice.

The Panel considers the vulnerability guidance to be an important piece of work, and that it was published at a moment when there was an opportunity for a multi-agency approach to supporting people in vulnerable circumstances which may not happen again therefore the FCA should take advantage of this. The key issue as articulated by the Panel was less about putting processes in place to help customers who may be in vulnerable situations (important as they are), but in identifying such customers in the first place, as such situations can be very fluid. The Panel also raised the point that it can be confusing and unhelpful for customers who are treated in a certain way by one firm, which has identified they may be at risk, but not by another, therefore an approach which helps with standardisation is helpful. The tone from the top of the firm is important in this area, therefore it recommended the FCA should make it clear what behaviour it expects from senior managers in this work.

4

Culture and governance

4.1 Culture

The Panel has recommended that the FCA engage with smaller firms to encourage them to share what elements of their culture they are proud of and which are effective in the way they run their businesses, on the basis that messaging in this way is more likely to encourage firms to adopt and develop best practice. The Panel's view is that the vast majority of firms are very proud of their culture and what they do for their customers and therefore recommends an approach which also addresses the specificities of different business models and ownership structures within the many smaller firms in the market.

4.2 FSCS Levy and firm culture

In January 2021 the FSCS released a forecast that its levy for the coming year would for the first time exceed £1bn (later reduced to £833m partly due to the extension of government support schemes, although this still represented an increase of £133m on the previous year).

The Panel noted the substantial increases of the forecast FSCS levy this year, particularly on the Home Finance Intermediation category, when recent increases in costs have not particularly been related to this sector. The Panel believes this is clearly unsustainable and continues to stress that a well-functioning regulatory system should focus more on preventing harm than resolving it after the fact, and has encouraged the work of the FCA to help put in place strong culture and controls to make this happen.

5

Innovation and new entrants

5.1 Collecting data

The Panel discussed the issue of data requests from firms with the regulator. It understands that the FCA (and other stakeholders) require access to up-to-date information in fast-changing circumstances, but with firms being under exceptional pressure during 2020 and beyond the Panel recommended that it should take a more innovative approach, and take more account of the timing of information requests, so that information which is already being generated, such as month-end reports, can be repurposed for use by the regulator, rather than running bespoke reports.

5.2 Payments Landscape Review

In light of rapid technology developments, HM Treasury is leading a Payments Landscape Review and carried out a call for evidence in 2020 setting out the government's aims for payments networks in the UK, making a high-level assessment of how well the present system is delivering against the government's aims and asking questions about the opportunities, gaps and risks that need to be addressed.

The call for evidence and the FCA's role were considered by the Panel. It agreed with the harms identified and areas on which to focus. Its perspective was that currently there is limited opportunity for money to be made in UK payments through transactions and the commercial business case for firms to make money on a sustainable basis is likely to be through data, facilitation, ease of access and brand enhancement. It will therefore be critical to understand firms' motivation to see where the risks sit.

5.3 Open Finance

The FCA issued a call for input to consider the potentially transformative benefits that could come from 'Open Finance' – an extension of open banking-like data sharing and third-party access to a wider range of financial sectors and products.

The Panel can see the benefits of Open Finance but believes this is likely to be a very long-term process due to the costs of implementation. It has encouraged the FCA to look broadly at what good outcomes may be, given that one of the successes of Open Banking so far has been less to do with opening competition and more that smaller firms are using it to improve their administration, such as using the technology for accounting processes.

Members of FCA Smaller Business Practitioner Panel

Marlene Shiels
Panel Chair
Chief Executive
Capital Credit Union

Devesh Ambasna
Principal Partner
AWS Advice
From 1.11.20

Paul Beasley
Chief Executive Officer
Richmond House Wealth Management
Until 31.10.20

Andy Chapman
Chief Executive Officer
The Exeter

Nicholas Coghill
Chief Executive Officer
City Asset Management plc

Gordon Dewar
Managing Director
Salvation Army General Insurance
Corporation (SAGIC)
From 1.10.20

Gerald Grimes
Panel Deputy Chair
Group CEO, Together Money

Gemma Harle
Managing Director, Mortgage and
Financial Planning Network
Quilter Financial Planning

Gerry Mallon
Chief Executive
Tesco Bank
From 1.09.20

David Marlow
Chief Executive
Nottingham Building Society

Julian Parrott
Partner, Ethical Futures
From 1.05.20

David Perry
Managing Director
FSB Insurance Services
From 1.10.20

Sue Round
Deputy Chair
EdenTree Asset Management

Ashley Rogoff
Founder and Managing Director
Ashley Page Insurance Brokers Ltd
Until 31.07.20

Will Self
Chief Executive Officer
Curtis Banks
From 1.10.20

Paul Smith
Chief Executive Officer
Morses Club plc

Lee Streets
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