Annual Report
2014/15

FCA
Smaller Business Practitioner Panel

Chairman’s foreword

Over the past year the impact of regulation continued to be an important element of the business environment, and the effect on smaller firms in particular continues to be significant. We have been planning for expected changes such as the implementation of the Mortgage Market Review and have also had to find the resources to deal with important new initiatives, such as the changes to the pensions rules in the 2014 Budget.

The Smaller Business Panel continues to provide constructive input to the FCA's work and our job is to raise the issues that are specific to smaller firms. Our first area of focus this year has been proportionality of regulation, by encouraging the FCA to always consider that small firms might be unintentionally overburdened with responsibilities.

We also focussed on the theme of regulatory certainty. This year has seen the FCA under closer scrutiny than ever, following the events surrounding the launch of the business plan in April 2014. The Panel, along with the other FCA Practitioner Panels, provided input to the Davis Review and the Treasury Committee. We now look forward to engaging with the FCA as it rolls out its new markets and sector-focused work, as announced in December 2014.

Smaller firms differ in the way they communicate with the regulator. Many do not have dedicated resources dealing with regulatory information in the way that larger firms have. We have raised the issue of appropriate communication, looking at tone, frequency and content. We have encouraged the FCA to use more targeted communications, as well as encouraging the use of publications such as Regulation Roundup and Positive Compliance workshops.

We have worked with the FCA on its post-implementation work following the Retail Distribution Review. Both the FCA and the Panel identified that more work needs to be done on clarifying the status of advisers, and we have provided suggestions as to how adviser disclosure documentation might be improved. We look forward to seeing this developed further.

Substantial FCA resources have been utilised to take on the regulation of consumer credit. The vast majority of consumer credit firms are small businesses, and as such fall within the Panel's remit. At this early stage our work has focused on engaging with the authorisations team to clarify some areas where there has been confusion and uncertainty in the industry. In future we expect to spend more of our time on the consumer credit area.

Importantly, the Panel can only meet its objectives if it has access to the right information at the right time. We were concerned that the findings of the Davis Review might restrict the content or timing of information we receive. This would make it difficult to provide timely and constructive input. We continue to believe that the Panel's statutory status, and all the members' commitment to confidentiality, provides sufficient justification for appropriate access to information.

I would like to take this opportunity to thank my predecessor as Chair, Andrew Turberville Smith, for his many years of service to the Panel. I look forward to working with my colleagues and with the FCA's teams over the next year as we deal with the next challenges of regulation, both anticipated and unanticipated.

Clinton Askew
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, and works alongside the Practitioner Panel, Markets Practitioner Panel and the Consumer Panel. The main aim of the SBPP is to apply the experience and strengths of smaller firms to influence and improve UK financial services regulation through representing the views, interests and concerns of smaller regulated firms to the FCA.

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Overview of Key Themes and Priorities

The Panel identified three key themes for our approach to the FCA's proposals during the year. These themes are proportionality, regulatory certainty and communication and engagement with firms.

Our theme of **proportionality** was reinforced by the FCA's commitment in its 2015-16 Business Plan that it will take a proportionate, judgement-based approach to regulation, assessing the risk a firm poses to its objectives and focusing its resources on the higher-risk firms.

To support our theme of **regulatory certainty**, we pointed out that the FCA has a strategic objective to make sure that markets work well. This can only be helped by the FCA being clear on its expectations and the consumer outcomes it is aiming to achieve. The FCA's new strategy, as launched in December 2014, contains a commitment to the development of a common view of markets and sectors, providing firms and stakeholders with more consistency about what it thinks on these issues and what they can expect from it. This should contribute to greater regulatory certainty.

With the number of smaller firms regulated by the FCA, and the resultant supervision model of minimal direct contact, an **effective communication and engagement** with smaller firms is vital to ensure that the FCA's messages and expectations are clearly delivered and understood. The SBPP has commented in particular on communications strategy, the importance of aligning internal and external communications, and the significance of an appropriate tone of voice.

For 2014-15 we set ourselves five key priority areas on which we would focus our attention:

Effective financial advice and RDR post implementation

FCA thematic reviews

FCA awareness of risks

FCA data collection and usage

FCA new responsibilities

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Effective financial advice and RDR post implementation

The majority of regulated smaller firms (before the addition of Consumer Credit firms to FCA responsibilities) are involved in financial advice. It is an area of the regulatory approach which affects a large proportion of smaller firms and therefore has been a key area of interest for this Panel.

Retail Distribution Review (RDR) follow up

Since the RDR came into effect on 1 January 2013, the FCA has been monitoring its implementation and published its first post-implementation review of the adviser landscape at the end of 2014.

The initial findings of the RDR Post-Implementation Review are encouraging. We believe that raising the level of adviser qualifications and clarity of charging structures were positive outcomes. We believe that further improvements could be made by taking the external economic context into account when considering the drivers for change in the sector. We have also suggested making more explicit use of baseline figures when considering the changes in numbers of advisers and amounts saved.

Adviser disclosure

The FCA is looking at improving the way regulatory information is presented to the consumer.

We highlighted to the FCA our concerns about the definition of independent advice, and we pushed for confirmation that the definition rests at firm rather than individual level. We urged the FCA to clarify as soon as possible, to discourage more advisers from abandoning the independent label, and welcomed a clarification statement in the Regulation Round Up of September 2014.

Another area which still needs work is consumer understanding of the types of advice being offered. The labels 'independent' and 'restricted' mean very little to the average consumer and are not helpful in guiding their financial choices. We consider a binary labelling system which divides advisers into two pots is helpful neither to consumers, advisers nor regulators. We have been in discussion with the FCA to discuss an alternative disclosure regime which relies less on the labelling of the adviser and more on the disclosure of information about their services. The FCA plans to incorporate the ideas into its work on Smarter Consumer Communications.

Guidance Guarantee

In the 2014 Budget the Government announced extensive changes to the pensions system, allowing consumers more flexibility in accessing their pension savings. At the same time it was announced that everyone affected would be entitled to free, impartial guidance on their options. HM Treasury is responsible for the delivery of the guidance, but the FCA is responsible for setting the standards for its delivery.

We raised concerns with the FCA about a number of aspects of the delivery of the Guidance Guarantee. We emphasised the need for HM Treasury and the FCA to agree clear criteria for measuring success and outcomes. We posed questions about how much reliance advisers would be able to put on the information gained through any guidance process, as well as who would be responsible for evaluating and paying compensation if there were complaints from consumers about the Guidance Guarantee process in due course. We remain concerned that it will be difficult for guidance to remain at the generic level for long, and that as soon as consumers have any relatively common complexities, such as multiple pots or specific investment preferences, there will need to be a handoff to regulated advice, and we emphasised the need for the FCA to monitor the handoff process.

Money Advice Service Review

The Government launched an independent review, chaired by Christine Farnish, into the operation of the Money Advice Service (MAS). The review reported in March 2015.

We strongly agreed with the Review's statement that 'being fully accountable for its actions helps strengthen an organisation's legitimacy' and we believe that this is an area where there is scope for the Money Advice Service (MAS) to do better. The Panel believes MAS should not only be accountable to the public, but also to the industry which funds it. The Service's business plan and budget for the year ahead are subject to approval by the FCA and there is a requirement to consult with the statutory Panels, including the Smaller Business Panel, on the annual business plan. But other than this, MAS is not directly accountable to the industry, and there is therefore a mismatch between the source of the funds and the achievement of its objectives.

Consultation on the draft financial capability strategy for the UK

The Money Advice Service, the statutory body for financial capability, issued its draft strategy for consultation in September 2014.

In our response to the strategy we suggested that it should be more focused, at least in the short term, on one or two key priorities, rather than stretching limited resources. We also wanted to see more concrete proposals detailing what success measures will be used. The use of appropriate success measures is a common theme amongst our responses.

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FCA Thematic reviews

The Panel has continued to engage with the FCA's thematic reviews and considers this as an important aspect of its work. Its comments on the scope of the Terms of Reference for the Retirement Income Market Study which was subsequently published in June 2014 were taken into account by the FCA when shaping this study. In future the FCA plans to bring together its cross-market thematic and market study work, undertaking fewer, more focused studies.

Firm engagement

We think it might be appropriate for the FCA to consider some further investigation about the lack of engagement amongst some smaller firms with regulatory requirements. There is continuing evidence that some smaller firms are either not getting the message or are just not applying the messages of the regulator. Recent examples of this are the findings of the SIPP operator and RDR adviser services and charges thematic reviews. For example, we were pleased with the FCA's constructive approach to resolving the issues identified from the SIPP operator review. However, these findings continue to demonstrate a potentially wider concern that many operators only took action on their capital position or in correcting their GABRIEL return when specifically approached by the regulator. We have suggested the FCA might like to consider whether more can be done with regard to its approach to communicating its requirements and following up with smaller firms.

Sharing the findings

We have also noted that many of the suggestions for improvements found through thematic reviews are shared amongst supervisors, but there is no mechanism for these to be shared more broadly with the majority of firms which do not have supervisors. We have suggested using the mechanism of the Regulatory Roundup to share information better.

Positive messaging

We welcome more sharing of positive outcomes from the FCA's work, as well as the identification of areas where improvements have to be made. We were pleased to see, for example, the findings of the review into conflicts of interest in the use of in-house investment products, and in particular the finding that senior management were increasingly aware of, and focused on, conflicts of interest.

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FCA awareness of risks

In its strategy announcement in December 2014 the FCA made a commitment to a more strategic approach to risk, as well as developing a common FCA view of markets and key sectors.

We have provided regular input and feedback to the FCA's risk management processes. We have encouraged the FCA to increase firms' access to its thought processes on risk, and have suggested that it should have more ongoing public clarity on its risk strategy, which is not restricted to an annual publication or event. We noted that rather than appearing as a separate document, the FCA's Risk Outlook is now incorporated into its Business Plan.

FCA Communications Strategy

This financial year began with the FCA announcement of its Business Plan which, on 28 March 2014, resulted in unintended consequences for the share prices of the insurance industry. The events were subsequently independently investigated and reported in the Davis Review and the Treasury Select Committee.

Part of the rationale for the FCA's communications strategy has always been to ensure that appropriate messages on regulatory expectations can be delivered direct to regulated firms. The SBPP has supported this.

Nevertheless, the Panel has been less convinced about some elements of the strategy, and particularly has seen risks in the use of national media to deliver regulatory messages to firms.

The Chairman presented the Panel's views to the Treasury Committee in January 2015, stating that the primary communication channel with the thousands of regulated small firms must be with direct factual communications such as Regulatory Roundup and more targeted trade press communications rather than via the national media. The national media can provide some backdrop for the regulatory agenda as it did successfully in the first few months of the FCA's life. However, the main focus of the FCA's communication strategy should be through more direct channels such as the monthly Regulatory Roundup newsletter, webinar and digital strategies for providing additional compliance support and engagement with smaller firms, as well as the use of Positive Compliance Workshops. We believe that such channels will be increasingly important for providing cost effective engagement and information to smaller firms.

The Panel has also continued to encourage the FCA tone of voice to be more positive towards firms and encouraged the use of best practice and examples of positive experiences. Any commitment to a positive tone from the top must also translate down throughout the organisation. Otherwise, there is a danger of an inconsistent approach from different parts of the FCA communicating with smaller firms.

The Panel had some concern after the Davis Review about the FCA's future intentions for sharing of information with the Panels. We believe that the SBPP has provided useful input to the FCA across a broad spectrum of issues as they relate to smaller practitioners, including the unintended consequences of proposed changes, and the Panel's commitment to confidentiality should mean that early access to information is maintained.

Accountability

Following on from the recommendations of the Parliamentary Commission on Banking Standards, the FCA has been working on applying more effective standards for holding individuals to account within the industry.

We have engaged with the FCA in its work on accountability, and in particular in relation to the banking sector. We recommended that the FCA takes a differentiated approach to large and smaller firms in applying the Senior Managers Regime, so that the original intention behind the proposed changes is achieved proportionately.

We highlighted that the burden on some small and medium-sized firms to implement the new accountability rules can be substantial, particularly in implementing the new Code of Conduct. Implementation is more than adding a section to an appraisal form, it requires systems and processes to be installed, implemented and evidenced. Smaller firms have no systemic impact on the UK economy and individual members of staff would not, for example, be in a position to influence LIBOR. We have questioned whether the scope of these proposals is in line with the FCA's commitment to proportionality as a principle of good regulation.

SMEs as financial consumers

We considered early thoughts on whether the FCA needs to amend the position of small and medium-sized enterprises as financial consumers. We support, in principle, the application of some consumer safeguards to smaller enterprises, but the FCA should assess the costs and benefits of doing so alongside its burgeoning list of priorities. This might be an area where the industry itself, with appropriate encouragement from the FCA, could re-consider whether business to business lending is in line with broader principles of treating customers fairly.

European Regulation and Legislation

The FCA plays a key role in the UK in implementing domestic and European legislation, as well as international policy. Much of the UK's domestic regulation originates in the EU. In its Business Plan for the next year the FCA acknowledges that active engagement with Europe is essential, and this is a key part of its new strategic approach.

The Panel continues to encourage the FCA to engage early and often at European level, as the implications for smaller firms in particular of poorly conceived or inconsistent regulation can be considerable. It is important for the FCA to recognise the challenging nature of these European requirements for smaller firms which may not have access to large compliance departments.

A further example is the implementation of the Mortgage Credit Directive, which has been undertaken in parallel with the implementation of the Mortgage Market Review (MMR) in the UK. We were pleased to see that the FCA, in conjunction with HM Treasury, was able to negotiate certain flexibilities, particularly in affordability assessments for mortgage applications and the wording of the ESIS information document, in order to improve the coordination process at a practical level.

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FCA Data collection and usage

In its 2014/2015 Business Plan the FCA committed to using the wide range of market intelligence and firm data it gathers as a radar to help identify and prioritise risks to its objectives.

The Panel has welcomed the FCA's pragmatic approach to the collection of data, and appreciates the efforts which are being made to coordinate data collection both within the organisation itself and with the PRA. Members of the Panel, however, continue to have examples of experiences of data collection where it has been difficult or impossible to comply with requests. The FCA needs to take into account the practicalities for firms of complying with data requests, particularly for smaller firms where data management resources may be more limited.

Reporting systems

One specific but significant risk we have raised and which we know the FCA is addressing is that of its own IT systems, and GABRIEL in particular. This is a significant interface for smaller firms, which regularly has technical problems which make it difficult for firms to submit on time and efficiently. System disruption remains a significant risk to the FCA's role as an efficient regulator.

AIFMD reporting

A specific example of data collection problems arose from the timescales for reporting requirements as part of the Alternative Investment Fund Management Directive (AIFMD) implementation process. At a time when there are many systems and reporting changes, submitting Transparency Reports by the deadline was extremely challenging. We appreciate that the AIFMD reporting requirements are a result of a European Regulation and therefore not at the discretion of the FCA. However, there are certain AIFM strategies where it was almost impossible for firms to meet the deadline, because of the nature of the business and not through any lack of commitment to implementing adequate and timely processes. We were encouraged by the FCA's efforts to work with such firms within the restrictions imposed by the Regulation.

Complaints handling

We have commented on the FCA's ongoing work on complaints handling. We have some concerns about the practicalities of some of the proposals in consultation paper CP14/30, which we believe may result in unintended outcomes. The handling of complaints is an important part of the customer relationship process. It can be, and is, used to identify where improvements can be made and what is important to customers. Any proposals that might result in firms no longer logging minor issues as complaints, or creating a separate process for minor issues, may result in important patterns being missed or systemic issues identified later than they could have been.

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FCA new responsibilities

Consumer Credit Authorisations

From 1 April 2014 the FCA took over the regulation of the consumer credit industry from the Office of Fair Trading. This affected approximately 50,000 consumer credit firms, including payday lenders and debt-management companies who were new to its regulatory regime.

We appreciate the huge task which the FCA has taken on in regulating consumer credit firms over the past year. We have had constructive and useful discussions with the Authorisations team about consumer credit permissions within specific sectors. We have, however, seen evidence of some confusion about exactly which permissions are required, and where the boundary of debt advice is drawn. We have suggested that the FCA could provide more tips and examples for those going through the more complex aspects of the authorisation process, which would help both the firms and the regulator.

Pension Reform

HM Treasury consulted on the implications of the 2014 Budget announcement on pensions.

As well as considering the implications for pensions advice, the Panel responded jointly with the FCA Practitioner Panel on the broader aspects of the reforms in the Treasury consultation 'Freedom and Choice in Pensions'.

Both Panels supported the Government's proposals to create greater choice and flexibility for individuals at retirement, and agreed that an informed, active customer base is key to maintaining an effective market in this area. We stated that if required, guidance should be available to consumers not just at the point of retirement but also during the accumulation phase and as consumers approach retirement. We warned that there may be an impact on longer-term investment in the UK economy if there is a shift away from the purchase of annuities at retirement.

Innovation Hub

In October 2014 the FCA opened its Innovation Hub, which aims to foster competition and growth in financial services by supporting both small and large businesses that are developing products that could genuinely improve services for consumers.

We have been impressed by the work of the Innovation Hub, and the FCA's refreshing approach to innovation. We have congratulated it on being brave and looking at new ways to help firms negotiate the complex world of regulation. We hope that this approach will spread more widely within the organisation.

Members of FCA Smaller Business Practitioner Panel

1 April 2014 – 31 March 2015

Andrew Turberville Smith (Chairman)
Finance Director and Chief Operating Officer, Weatherbys Bank Ltd

Clinton Askew
Director, Citywide Financial Partners

James Bawa
CEO, Teachers' Building Society

Richard (Dick) Carne
Director, Asset Management IFA Ltd
Member until 30.6.14

Ian Dickinson
Head of General Insurance Compliance and Training, Brunsdon LLP
Member until 31.7.14

Craig Errington
Chief Executive, Wesleyan Assurance Society

Peter Evans
Chief Executive, Police Credit Union
Member until 31.7.14

Neil Fung-On
Partner, BDO LLP

Richard Haas
Chief Operating Officer, CapeView Capital LLP

Robin Keyte
Director, Keyte Ltd

Sally Laker
Managing Director, Mortgage Intelligence

Simon Lough
Executive Vice President, Heartwood

Fiona McBain
Chief Executive, Scottish Friendly Assurance

Peter Minter
Managing Director, Moneybarn
Member since 1.4.14

Ashley Rogoff
Managing Director, Ashley Page Insurance Brokers Ltd
Member since 1.8.14

Marlene Shiels
Chief Executive, Capital Credit Union
Member since 1.3.15

Andy Smith
Governance, Risk and Compliance Director, TD Direct Investing
Member until 30.6.14

Smaller Business Practitioner Panel
The FCA Smaller Business Practitioner Panel
25 The North Colonnade
Canary Wharf
London E14 5HS
Tel: +44 (0)20 7066 1000
Website: www.fca-sbpp.org.uk/

FCA
Smaller Business
Practitioner Panel