

Annual Report

2022/23

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FCA

Smaller Business
Practitioner Panel

Smaller Business Practitioner Panel 2022-23

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Chair's foreword

This has been my first full year as Chair of the Panel, and it has been a particularly challenging year for the firms that we represent, as difficult macroeconomic conditions were coupled with a significant degree of regulatory change. Our sector has demonstrated a huge degree of resilience in continuing to support their customers whilst managing significant changes in their own businesses.

I am grateful to the FCA staff for the quality of their engagement and willingness to adapt approaches based on our feedback. A great example has been the work on the Consumer Duty where the FCA team have adjusted their approach and invested significant time in meeting firms at “Live and Local” events and in providing enhanced guidance. Throughout the year we have also engaged closely with the FCA to monitor developments as the cost-of-living crisis has unfolded, and we expect this work to continue over the next year.

We remain concerned at the functioning of the Professional Indemnity Insurance market, both in terms of pricing and availability of cover, and the risk that this represents to the viability of some smaller firms, and we continue to engage with the FCA and the insurance industry on the subject along with our colleagues on the Consumer Panel.

The practices of claims management companies in raising spurious and vexatious claims against firms, and in inappropriate marketing of their services, remains a material issue. This is challenging to address given that many

of the worst offending firms operate outside the FCA's regulatory perimeter. We see a real risk of regulatory arbitrage developing. The Panel has continued to stress the importance of the regulatory family working together to ensure a consistent approach to regulation in this area, and to jointly address the challenge of consumer education to support consumers to make claims directly where appropriate.

Looking forward we are pleased to see proposals to update the Consumer Credit Act to reflect today's environment and will work closely with the FCA as those proposals develop.

Following the successful implementation of the Consumer Duty, we expect to see an at least equivalent volume of change deriving from the Future Regulatory Framework, and we look forward to working with the FCA to ensure that proposed changes are proportionate to the capacity of firms to absorb them.

Finally, I would like to thank Richard Lloyd for his tenure as Interim Chair of the FCA from April 2022 until Ashley Alder's appointment as the new FCA Chair formally began on 20 February 2023. We very much appreciated Richard's willingness to engage openly with the Panel and we look forward to building a productive working relationship with Ashley over the upcoming year.

Andy Mielczarek
Chair, FCA Smaller Business
Practitioner Panel

1

Introduction

The Smaller Business Practitioner Panel is one of four statutory panels for the FCA, working alongside the Practitioner Panel, Markets Practitioner Panel and the Financial Services Consumer Panel. The Panel 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.

The Panel supports the FCA in its work to improve diversity, and in its objective of seeking diversity in all its forms to be represented across the Smaller Business Practitioner Panel itself.

Over the year the Panel addressed the impact of regulation on smaller firms, focusing on:

1. Helping the FCA develop its understanding of **how smaller businesses contribute positively to a strong, competitive market.**
2. Supporting the development of **good communications and examples of good/bad practice for smaller firms.**
3. Supporting the FCA's priorities and **ensuring future regulation is clear, transparent, and fit for purpose.**
4. Helping the FCA understand the **cost of regulation for smaller firms and the need for proportionality.**

In January the Panel identified 4 priority areas of work for 2023-24:

1. Implementation of the Consumer Duty
2. Responding to the impact of major external shocks
3. Sustainability of smaller firms
4. Engaging with the Future Regulatory Framework

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How smaller
businesses contribute
positively to a strong,
competitive market

2.1. Cost-of-living crisis

In its approach to the cost-of-living crisis the FCA has been employing supervisory and communications tools and working with consumer organisations, debt advice and key stakeholders to make its expectations clear, prepare for possible interventions, and provide communications and guidance to support consumers to make good decisions. 'Dear CEO' letters issued to industry have also set out the FCA's expectations of the lending and payments sectors including the need for forbearance.

The ongoing cost-of-living crisis and macro-economic environment has been a prominent area of focus for the Panel throughout the year, focussing both on the impact on smaller businesses and firm viability, and the potential impact on consumer choice and access to products and services. The Panel engaged regularly with the FCA to share its observations and feedback on what it was seeing and hearing 'on the ground', and to receive updates on FCA actions. The Panel expressed particular concern about the potential for consumers in crisis to reach for high-risk products such as cryptoassets and emphasised the importance of communications and signposting to debt advice. Market turmoil in September 2022 placed increased pressure on smaller firms managing their own risks and cashflows alongside exercising their regulatory responsibilities to their customers, and the Panel emphasised the importance of being mindful of the challenging

environment and the need for clear and considered communications to industry. The Panel will continue to monitor developments and engage closely with the FCA to support the regulator to take pro-active, proportionate and targeted action to mitigate the impact of the crisis.

2.2 Claims management companies

In 2022 the FCA announced new rules to protect consumers against excessive charges by claims management companies (CMCs), followed by new rules to stop claims management phoenixing (whereby an individual connected with a wound-up firm can benefit from the former firm's poor conduct by carrying on claims management activities against it). The FCA has continued to engage closely with the Solicitors Regulation Authority (SRA) to address the problem of increasing numbers of legal practitioners carrying out claims management services and a corresponding rise in claims submitted to the Financial Services Compensation Scheme (FSCS).

The Panel has continued to raise concerns regarding the growth of unscrupulous practices by some CMCs, whereby firms are able to flood the system with large numbers of unmeritorious claims, taking up the time and resources of smaller businesses in targeted sectors and charging excessive fees to the detriment of consumers. The Panel is encouraged that the

FCA's proactive supervisory strategy to improve the quality of CMC services has seen notable success in the last year. However, inappropriate CMC activity continues to be a significant problem, with rule changes creating the conditions for growth in regulatory arbitrage, where firms can seek authorisation under the SRA to avoid the FCA fee cap.

The Panel welcomed the opportunity to discuss its concerns with the Financial Ombudsman Service (FOS) and the FSCS and highlighted the issue in its response to the FOS discussion paper on Creating a Funding Model for the Future. It is important that the regulatory family work together to discourage spurious claims, and in this context, we welcome the recent publication by the SRA of a consultation on fees, which we hope will lead to consistency of approach for firms which fall under SRA jurisdiction. Alongside this, the Panel welcomes that there is wide recognition that further work is needed on joined-up communications by the regulatory family to educate consumers about their redress options and empower them to make direct claims where this would be in their best interests.

2.3. Access to advice for pensions and investments

The Panel has discussed with the FCA concerns that rising costs in the advice market for pensions and investments will result in further contraction in the availability of advice to consumers. At a time when consumers are under considerable and increasing financial pressure they are becoming less and less able to access affordable advice, and so more liable to make ill-advised investments or purchase the wrong protection products. Smaller advice firms need to be selective about the clients they take on in order to be financially viable, larger advice firms are setting higher thresholds for business, and the development of automated advice has not yet progressed to a stage where it can fill the gaps. Specialist protection advisers are equally impacted by increasing costs of regulation, and there is risk that experienced principals in the advice market could opt to bring forward their retirement, and a need to address the talent pipeline. Work to provide clarity on the advice/guidance boundary is needed as soon as possible to help address some of these issues and the Panel looks forward to engaging with the FCA on this in the upcoming year.

2.4. Big tech entry into financial services

In October 2022 the FCA released a discussion paper on the potential competition impacts of big tech entry and expansion into retail financial services, seeking views on opportunities and risks.

In addition to recognising the advantages big tech entry could offer including the potential for streamlined services and greater consumer engagement, the Panel's response to the discussion paper highlighted the importance of ensuring a level playing field and fair competition for existing incumbents and smaller businesses. Oversimplification and automation also poses a risk, noting that in some cases it is more appropriate that consumers seek advice on which insurance and protection products would best suit their need.

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Good communications
and examples of
good/bad practice
for smaller firms

3.1 Supporting implementation of the Consumer Duty

In July 2022 the FCA published its final rules and guidance for a new Consumer Duty setting higher and clearer standards for consumer protection across financial services and requiring financial services to put their customers' needs first.

A vital focus for the Panel this year has been providing regular feedback to support the FCA in delivering strong and clear communications regarding expectations of firms implementing the Consumer Duty. The 31 July 2023 deadline for implementation of the duty applying to existing products and services remains challenging, and smaller businesses in particular are reliant on best practice examples to guide them in this work. The Panel has welcomed constructive engagement with the FCA over the year, providing regular feedback on implementation challenges and identified communication gaps, building on its programme of face-to-face events and virtual resources. The Panel's focus on encouraging the identification and sharing of best practice as well as what to avoid will continue into next year, being particularly mindful of sectors that do not have trade association representation and the importance of reaching out to the range and breadth of UK smaller businesses many of which have limited resources.

3.2 Communications on cryptoassets

The FCA is progressing several strands of work on high-risk investments, scams, misleading financial promotions and crypto products.

The Panel supports the work under way to enable consumers to make effective investment decisions and protect vulnerable consumers from harm. It has especially focussed on the risk posed by high-risk investments and the need to define these, making clear the risks involved in purchasing crypto products and the importance of educating consumers, many of whom are at risk of being drawn in to inadvisable purchases via social media channels. The Panel has encouraged the FCA to ensure a coordinated approach is taken to this work and to give greater visibility to the overall strategy for crypto.

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Ensuring future
regulation is clear,
transparent, and fit
for purpose

4.1 Future Regulatory Framework (FRF) Review and Edinburgh Reforms

In December 2022 HM Treasury published its policy statement on Building a smarter financial services framework for the UK which set out the government's approach to repealing and replacing retained EU law on financial services and the vision for UK's regulatory framework. Alongside this, the government published the Edinburgh Reforms, aimed at driving growth and competitiveness in the financial services sector. The FCA is now working to implement the outcomes of the review and implement prioritised reforms taking a staged approach.

The Panel has highlighted the need for the FCA, working with government, to provide a clear steer on priority work to shape the new regulatory framework, particularly in the context of very challenging timescales. The breadth, complexity and importance of these reforms should not be underestimated, however the capacity of smaller businesses to engage in this work is necessarily limited. To help meet this challenge, the Panel has committed to working flexibly and collaboratively with the other FCA independent panels to provide feedback on priority initiatives and help identify areas where there are aligned views. As part of this, it is important that a proportionate approach is taken to manage the impact of regulatory change on smaller businesses.

4.2. Pensions Consumer Journey

In June 2022 the FCA published a feedback statement on a call for input to understand consumer behaviour at key points in the pension saving journey, with the aim of helping engage consumers so they can make informed decisions that lead to better pension saving outcomes.

The Panel was pleased the FCA took on board some of its earlier feedback provided in the call for input, including recognition the consumer journey is highly personalised and non-linear with multiple touchpoints, differentiating between the advised and non-advised consumer experience, and the need for clear and relatable communications to maximise engagement. Throughout the year the Panel has provided input on various policy workstreams related to the pensions consumer duty including proposals for driving value for money in DC pensions, pensions dashboards rules and work on retirement income advice. The Panel has stressed the importance of keeping the pensions advisory community involved in this work as policy is developed and solutions explored.

4.3. Reform of the Consumer Credit Act 1974

In December 2022 the government published a consultation on the modernisation of consumer credit legislation, including proposals to move much of the statute to FCA rules. It sought feedback on proposals aimed at facilitating innovation in the credit sector, increasing accessibility of credit products, and bolstering existing consumer protections.

The Panel expressed its strong support for the objectives of this reform, highlighting the opportunity to update, streamline and bring consistency to the rules in the context of the introduction of the Consumer Duty and other regulatory developments. In its response to the consultation the Panel also emphasised the importance of ensuring the rules are proportionate and deliverable in the context of the limited resource constraints of smaller businesses and the volume of regulatory change under way.

4.4. Environmental, Social and Governance issues and sustainability strategy

In February 2022 the FCA published a discussion paper on firms' sustainability-related governance, incentives and competencies. This forms part of work to embed the FCA's ESG Strategy for Positive Change and links to the expectation that we have regard to net zero and sustainable finance and supports the Consumer Duty objectives

The Panel supports the ongoing work to deliver the ESG Strategy. Risks from inappropriate disclosure and greenwashing of products are already crystallising so action is required urgently. There is a need to bring the activities of ESG ratings agencies within the regulatory perimeter as a lack of standardisation in this area is leading to a multiplicity of metrics and measures, not all of which are necessarily geared towards good ESG outcomes. From the Panel's perspective it is sensible that larger firms take the lead in driving the ESG governance work, to enable best practice examples to feed through to smaller businesses.

4.5. Approach to regulation for Artificial Intelligence (AI)

In October 2022 a joint discussion paper between the FCA, the Bank of England and the Prudential Regulation Authority sought feedback on the potential benefits and risks related to the use of AI in financial services, the application of the regulatory framework to AI and how policy could best support its adoption.

AI is a rapidly evolving technology which applies beyond UK financial services. The Panel's view is that the introduction of guidance to provide an AI lens to the existing regulatory framework, rather than applying new rules, would be an appropriate and proportionate approach in keeping with the Consumer Duty, and would minimise the need for re-writes as the technology evolves. Alongside this the Senior Managers Certification Regime and existing governance structures within firms provide a sufficient framework for the continued safe and responsible adoption of AI.

4.6. Critical third parties

In July 2022 a joint discussion paper by the FCA and the Bank of England on operational resilience: critical third parties to the UK financial sector sought views on potential ways to manage the systemic risks to our objectives posed by critical third parties.

The Panel welcomes addressing the regulation of critical third parties, as smaller firms in particular are vulnerable to failures in firms to which they have outsourced key activities. A risk of this work could be the inadvertent consequence of concentration within sectors or critical third party firms withdrawing from the market, so care will be needed to ensure access to necessary products and services does not become an issue for smaller businesses.

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The cost of regulation
for smaller firms
and the need for
proportionality

5.1 Professional Indemnity Insurance

Professional Indemnity Insurance (PII) is liability insurance which provides an additional financial resource from which firms can pay third party claims due to a justified loss, generally as a result of professional negligence. A complex mix of influences feeding into actuary projections have impacted the profitability of PII for insurance firms and contributed to a problem of increasing PII premiums and reduced market availability of the product which is impacting many smaller businesses.

Inadequate and expensive PII cover means many smaller businesses, in a variety of sectors, are facing challenges to their ability to continue trading, which in turn impacts on consumer choice. The scarcity and cost of PII has posed particular challenges for firms providing regulated advice which are required to obtain PII cover before they can be authorised by the FCA, as well as posing challenges to firms seeking to renew their cover. The Panel has continued to raise this issue throughout the year, with engagement including a roundtable event with insurance providers and representatives of the Financial Services Consumer Panel and the FCA to gain a better understanding of the underlying cause issues and seeking to identify possible solutions.

The Panel has also discussed the matter with the FSCS, recognising that the existence of PII helps prevent excessive claims on the Scheme. This continues to be a challenging issue which will remain an important area of focus for the Panel in the upcoming year.

5.2. Firm resources and data collection

Given the substantial volume of regulatory change currently under way, the Panel has continued to impress on the FCA the need for a proportionate and considered approach, particularly with respect to data requests of firms. Deadlines for implementation of the Consumer Duty have placed particular pressure on smaller businesses already under pressure due to the macroeconomic environment. In this context, the Panel has called out examples of multiple or substantial data requests made of firms which have short timescales, noting that these place undue pressure on firms at a time when resources are stretched very thinly. It is vital robust cost benefit analysis is applied to each request, that requests are not made where data is already held and active consideration is given to 'retiring' data requests which are not necessary, and as much notice is given to industry as possible. The Panel also suggested the FCA provides more feedback on how the data firms have provided has contributed to regulatory thinking.

5.3. Data transformation

In its strategy document for 2022-25, the FCA has committed to reducing and preventing serious harm by harnessing data to assess problems more quickly and so act sooner, aiming to prevent harm from happening in the first place.

In its discussions of data transformation the Panel reflected on the breadth and scale of the FCA's data transformation programme, and expressed concern that the larger transformation components could divert attention from the valuable, more prosaic enhancements and ongoing improvements such as streamlining forms. The Panel encouraged the FCA to retain focus on identifying areas of the business that do not currently work well where straight forward improvements and efficiencies could be made which make a real difference for smaller firms in their daily interactions with the regulator.

The Panel also supports the work under way to transform data collection, particularly the focus on integrated reporting, being clear on data already held and maximising data sharing with other agencies

Members of FCA Smaller Business Practitioner Panel

Andy Mielczarek

Chief Executive
Chetwood Financial Limited
Member from 1.5.22 and Panel Chair
from 1.6.22

Marlene Shiels

Chief Executive
Capital Credit Union Ltd
Panel Chair and member until 30.5.22

Devesh Ambasna

Principal Partner
AWS Advice

Rob Clifford

Chief Executive
Stonebridge Mortgage Solutions
Member from 25.11.22

Nick Coghill

Chief Executive
City Asset Management Plc
Member until 28.2.23

Paul Denton

Chief Executive
Scottish Building Society
Member from 22.8.22

Gordon Dewar

Managing Director
Salvation Army General Insurance
Corporation (SAGIC)

Kevin Forbes

Managing Partner
Strategic Solutions
Member from 31.3.23

Gemma Harle

Managing Director
Mortgage and Financial Planning
Network, Quilter Financial Planning
Member until 30.9.22

Christina Lewis

Head of Financial Services
Compliance & MLRO
Three UK
Member from 1.8.22

Gerry Mallon

Chief Executive
Tesco Bank

David Marlow

Chief Executive
Nottingham Building Society
Member until 30.4.22

Frances McCann

Chief Executive
Scotwest Credit Union Limited
Member from 1.8.22

David Perry

Managing Director
FSB Insurance Service

Mark Rayward

Executive Chairman
Veritas Investment Management
Member from 29.5.23

Sue Round

Deputy Chair of EdenTree Investment
Management
Member until 31.7.22

Will Self

Panel Deputy Chair (from 1.7.22)
Chief Executive – Pensions Division
Marwyn Acquisition Company II Ltd

Lee Streets

Chief Executive
Evolution Funding Ltd

Stuart Tragheim

Chief Executive
Holloway Friendly
Member from 1.6.22

Karen Zachary

Chief Executive
CRUX Asset Management Ltd
Member from 29.5.22

Panel diversity statement

The FCA has agreed to adopt diversity targets for all the FCA's Independent Panels. These targets reflect those introduced by the FCA in April 2022 for the board and executive management of listed companies:

- At least 40% of each Panel are women
- At least one of the senior positions (Chair, Deputy Chair or equivalent) across the Panels is held by a woman
- At least one member of each Panel is from an ethnic minority background

Against these targets, we can report that as of 31 March 2023¹:

- 17% of the Smaller Business Practitioner Panel are women.
- Across all the Independent Panels, the target for at least one senior position to be held by a woman is exceeded.
- 4 out of 5 Independent Panels meet the target that at least one member is from an ethnic minority background

The Panel supports the FCA in its objective of improving diversity in the appointments it makes to all the independent Panels.

Panel Member fees

The fees payable to Panel Members during the year from 1 April 2022 to 31 March 2023 were as follows:

Panel Chair	£22,500
Deputy Chair	£15,000
Other Panel members	£10,000

¹ These figures are based on the data disclosed. Disclosure of diversity information is voluntary. Data is reported across all Panels where disclosure on an individual Panel basis would lead to the release of personally identifiable information.

Smaller Business Practitioner Panel

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FCA

**Smaller Business
Practitioner Panel**