

# Annual Report

2016/17



FCA

Smaller Business  
Practitioner Panel

The background features several overlapping, wavy lines in a lighter shade of blue, creating a sense of movement and depth. These lines are positioned above the main text.

# Chairman's foreword

Last year the previous Panel Chair, Clinton Askew, commented in his foreword that the financial services industry was operating in an environment of formidable regulatory and legislative change. As we are all aware, this year has seen not a levelling off, but a step change in uncertainty as the industry attempts to anticipate and plan for the implications of Brexit and the political and environmental upheaval this has caused. As I write this foreword, the UK Government and the EU are about to begin negotiations and we look forward to hearing clarification of the implications for financial services firms in general and smaller firms in particular.

Clarity of regulation was one of our key themes over the past year, along with cost-effectiveness and value for money, communication and engagement with flexible portfolio firms (those firms, generally smaller firms, which do not have dedicated FCA supervisors) and proportionality.

We appreciate that clarity of regulation around Brexit is not entirely within the FCA's control, but have encouraged it to continue to communicate with smaller firms, clearly and regularly, around what they need, and need not, do in the period while negotiations continue. We welcomed Andrew Bailey as the new FCA Chief Executive this year and he has been regularly engaged with the Panel. His arrival prompted a major project to articulate the FCA's Mission, and we consider this has been helpful in clarifying to firms what it can expect from the regulator.

We have for some time highlighted the issue of regulatory overload, particularly on smaller firms. We have been encouraging the FCA to identify the totality of regulation on individual firms, as well as the resource required to implement individual projects, and have made some suggestions as to how this can be measured. Although firms understand they must comply with the regulator, in smaller firms this may mean that there is little resource available to do more than the minimum required. This can impact discretionary activity such as responding to consultations, resulting in the voice of smaller firms being lost. We have urged the FCA to be mindful of this in its communications strategy and to be more innovative in the way it collects input.

There are several key areas where we see the FCA as having a role in communicating with firms and acting as a knowledge centre. The ever-increasing threat to cyber security is one of the most important of these areas, as we recognise the FCA's expertise and its access to information. We also consider it has a role in helping banks to standardise communications around the implementation of ring-fencing their retail banking operations in order to minimise opportunities for fraud and other consumer detriment.

The Panel has continued to be involved in the Working Groups set up to implement the Financial Advice Market Review and we are encouraging all participating bodies to ensure the momentum behind this project is not lost as we consider valuable work has been done towards achieving the objectives.

Next year we intend to focus on similar priorities, and under the same broad headings to consider four themes. We will monitor the implementation of FAMR recommendations under the general theme of financial and investment advice, helping improve affordability and accessibility. We will consider cyber crime, with a focus on improving protection for smaller firms and their customers. Under a broad heading of indebtedness we will consider affordability and distribution practices. The extension of the senior managers' regime will also be a priority, ensuring requirements are proportionate and fully understood by the industry.

I would like to take this opportunity to thank all the Panel members for their work this year. In particular, I would like to thank my predecessor as Panel Chair Clinton Askew, for his leadership of the Panel over the past two years, and his valuable input to the Panel for more than seven years in total.

The Panel is proud of what it has achieved in the past and looks forward to supporting the FCA in its understanding of smaller businesses as we take on the challenges of the future.

**Craig Errington**  
Chairman, FCA Smaller Business  
Practitioner Panel

# 1

## 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 improve UK financial services regulation through representing to the FCA the views, interests and concerns of smaller regulated firms.

# 2

## Key Themes

In its work, the Panel's primary objective has been to consider the impact of FCA regulation, particularly on smaller firms. Under that overall objective, it has this year focused on the priorities of clarity of regulation, cost-effectiveness and value for money, communication and engagement with flexible portfolio firms, and proportionality.

## Clarity of regulation

### FCA Mission

*Andrew Bailey took over as FCA Chief Executive in July 2016 and set in motion the process of articulating the FCA's Mission.*

We support the FCA's Mission project, and its aim to set out clearly how the FCA will go about achieving its statutory objectives.

In our response to the Mission consultation we made a point that we wanted to clarify that the generation of reasonable profit is an essential element of functioning markets, particularly in attracting new entrants, and that facilitating this is an important part of the FCA's remit. We supported the FCA's involvement in regulating consumer credit, which we consider has resulted in a step change in the attitude of the industry to regulation. This is very welcome and has raised standards even within such a short period since the FCA took on responsibility for the sector. We also made specific points about communication with smaller firms, technology and innovation, vulnerable consumers and environmental, social and governance (ESG) issues.

### Brexit

The result of the European referendum and the subsequent triggering of article 50 has resulted in significant additional uncertainty for financial services firms and for the economy in general. We have focused in our work with the FCA on its role in communicating with firms, and in particular to reiterate its initial message that firms must continue to abide by existing EU law and continue with implementation plans for future legislation. We have encouraged the FCA to consider the perspective of firms that may not have resources to monitor in detail the changes that are happening in the international and domestic post-referendum environment. Such firms will value visible and timely alerts from the regulator of any actions they need to take.

In the longer term, we believe that any revision of the FCA rulebook is an opportunity to consider what good regulation looks like and to identify possible improvements to efficiency and effectiveness while ensuring that the UK remains competitive within the international environment.

### Second Payment Services Directive (PSD2)

*The Second Payment Services Directive, which must be implemented by 13th January 2018, will bring into scope new types of payment services, and aims to enhance customer protection and security and extend the reach of the Directive.*

We raised our concerns about clarity of responsibility under the changes which will be brought in under PSD2, including a bank's responsibility to refund fraudulent payments from bank accounts. We highlighted that it is less clear when a third party becomes involved, having been given permission by the account holder to access their account to make payments, whose responsibility it is if their systems are hacked. We appreciated the challenge for the regulators but stressed that it is one which needs to be addressed.

### Solar Panels

We have alerted the FCA and the FOS to issues relating to credit provision for the purchase of solar panels, a large and growing market. Issues in this area include both the way vulnerable customers are being treated and subsequent inconsistency of FOS decisions.

### Cost effectiveness and value for money

#### Regulatory overload

A common theme throughout the year has been regulatory overload on firms. Smaller firms understand that they must comply with regulatory requirements. The number and frequency of data requests, for example, can be significant, and we urge the FCA to carry out more rigorous cost benefit analysis, taking into account the cumulative effect of multiple regulatory initiatives, as well as looking at individual projects. Otherwise, there is a real danger that carrying out mandatory activities will stretch the compliance resources of smaller firms,

and they will have no resource left for discretionary activity such as responding to consultations. In this way, the voice of smaller firms is even less likely to be heard, and the FCA will receive a misleading impression of the views of the industry.

### Communication and engagement with flexible portfolio firms

#### Cyber security

The issue of cyber security is a key one for smaller firms, especially with the increasing tendency of insurance firms limiting the amount they will pay out for cyber-related claims. However, they do not have the same technical expertise that larger firms can afford. We have highlighted how the FCA can help, as a knowledge centre or to facilitate better and more efficient cyber security processes, and provided advice on communication to smaller firms.

#### Ring-fencing

*Throughout 2017 and 2018, large UK banks will ring-fence some of their banking services from other parts of the bank. Ring-fencing must be in place by 1 January 2019.*

The extent of the project to ring fence retail banking activities and its implications is not widely understood among smaller firms. We are concerned about the potential for fraud and confusion if smaller firms and consumers are contacted by the banks involved or persons claiming to represent those banks. Although we agree with the FCA that the responsibility for carrying out the project lies with the large banks,



we are pleased to see that the FCA has acknowledged it has a responsibility for encouraging consistency of messaging and communication standards across the industry.

## Proportionality

### Extension of Senior Managers and Certification Regime (SMCR)

*Rules on individual accountability were introduced from March 2016 based on the Parliamentary Commission for Banking Standards' recommendations to improve professional standards and culture within the UK banking industry. Work is underway to extend the Senior Managers and Certification Regime to all FSMA authorised firms by 2018.*

We have discussed the extension of the SMCR, and in particular we look forward to further clarity on how this will be implemented, including a proportionate response to smaller firms, which will generally have much simpler structures and lines of accountability. We believe that successful implementation should include clear articulation of decisions by Enforcement and the Regulatory Decisions Committee which would help to set a precedent for future firm behaviour to support the objectives of the SMCR.

# 3

## Priorities

At the start of the year we set ourselves four key priority areas on which we would focus our attention:

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## Engagement with FCA sector views

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## Input to thematic reviews, market studies and other FCA consultations

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## Consumer credit

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## Financial Advice

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## Engagement with FCA Sector Views

*Last year the FCA announced that it would be bringing together collective intelligence from across the sectors to form a full picture of the markets it regulates and ensure that risks to each of its objectives are considered and assessed alongside each other. The first cycle of this work has now been completed.*

We have worked closely with the FCA on its sector views project over the last year, providing comments on drafts both at sector and overall level. We were pleased that the Panel's views were sought at an early stage to help provide industry input and ensure that the smaller firms' perspective was included. Having seen the valuable and detailed work carried out on the sector views, we encouraged the FCA to make relevant information public, which it has now done in the form of an annual sector views document published for the first time alongside

the 2017/18 Business Plan in April 2017. We believe this work, along with the Mission document, will help firms with their planning and with understanding the regulator's thinking in their sectors. We will continue to work with the FCA as it refreshes this work to keep it current.

## Input to thematic reviews, market studies and other FCA consultations

### Mortgage market

We have considered various aspects of the work of the FCA relating to the mortgage market. We raised the issue of capital requirements for smaller banks and building societies, in the context of competition within the industry, and look forward to seeing the outcome of the Bank of England's work in this area. We have also discussed the area of lending into later life, and highlighted that existing rules can require prohibitive levels of capital loading, making that sector impractical or impossible to serve, and the FCA has agreed to consider this further.

### Asset Management Market Study

*The FCA is currently undertaking a market study into asset management following feedback received as part of the wholesale sector competition review, which raised a number of questions about the asset management value chain. The interim report, including further consultation, was published in November 2016, and the final report is due in the first half of 2017.*

We discussed the work of the FCA's asset management market study at an early stage, and raised various topics including charging structures, investigating different elements of the value chain, profitability and barriers to entry. We have consistently encouraged the FCA to take into account the extent to which firms take on board their customers' preferences on environmental, social and governance issues, and considered this was particularly significant in this work.

### Financial Services Compensation Scheme (FSCS) funding review

*The FCA has consulted on a review of the funding of the FSCS, the UK's statutory compensation scheme of last resort. Firms from across the financial services industry pay levies to fund both the FSCS's operating costs and the compensation it pays out. The results of the consultation are due in autumn 2017.*

We have for some time been raising the point that we believe the funding structure for the FSCS is unfair, and that too many small firms are paying for failures of products they have never sold. We acknowledge that there is no perfect solution to the issue of FSCS funding, but have suggested to the FCA that areas needing to be addressed are better aligned with the underlying risk, using existing risk assessments rather than imposing onerous new requirements, providing more clarity as to which products are and are not covered, and including Professional Indemnity Insurance (PII) as part of the solution.

### Markets in Financial Instruments Directive (MiFID II) – taping

*The FCA has issued a number of consultations on its plans to implement the revised MiFID Directive, which comes into force on 3rd January 2018. In September 2016 it published a consultation which included plans which would have extended the requirement to tape telephone conversations with their clients to many advice firms not currently covered by the rules.*

We worked with the FCA Practitioner Panel to provide a detailed response to the FCA's consultation on taping of calls to comply with the revised MiFID Directive. We were particularly concerned that the cost of implementing mandatory taping of all calls, both financial and in terms of changing the relationship with the customer, outweighed the benefits to consumers or to firms. We were therefore pleased that the FCA is intending to offer firms the option of taping or making written records, which we consider is a workable compromise.

### General Insurance renewals

*From April 2017 firms have been required to provide further clarity to their customers renewing their general insurance policies, including information to help them shop around.*

We supported the work on revising the rules for GI renewals, in particular the FCA's acknowledgement that price is not the only determining factor for a

customer choosing to renew. We would, however, have preferred a longer implementation period to allow firms more time to update their systems.

## Consumer credit

*The FCA has continued to authorise firms for consumer credit business since taking over responsibility for regulating the sector in 2014. The Panel has raised a number of specific issues relating to the sector over the past year.*

### Authorisations

Towards the beginning of the year we looked at the consumer credit authorisation process, raised some issues about the number of applications which were outstanding, as well as the process of communicating with firms making applications, and made suggestions about improving the process. We look forward to seeing more details of the project on the FCA's Approach to Authorisation which was announced in the Mission document.

### Difference in charges

We raised a specific issue about the Difference in Charges model of remuneration which is widely used in the car finance market. We highlighted that it was not only causing consumer detriment, through lack of clarity for customers, but that it was placing firms not using the model at a competitive disadvantage. We encouraged the FCA to work with the industry to ensure that firms were treating their customers fairly in this market.

### Affordability standards

We discussed the FCA's work on consumer credit affordability standards. This work was very important to the sector and we welcomed guidance in this area as many smaller firms would struggle to produce the analytical work required. We were, however, disappointed at the length of time it took the FCA to produce this work and considered it could have been prioritised more highly.

### High Cost Credit Review

We support the work of the high cost credit review, but have highlighted to the FCA the importance of focusing on what consumers do when they can no longer access loans from payday lenders. There is evidence from the credit union sector that consumers are relying more on family, illegal money lenders or defaulting elsewhere, such as on rent or utilities. We were pleased to hear that the FCA recognises the need to focus on the overall consumer outcomes and not just outcomes in relation to a particular product.

### Direct debit guarantee scheme

We worked with the FCA to raise the issue of systemic risk relating to the structure of the Direct Debit Guarantee Scheme, and were pleased that changes to the rules to address this risk, relating to indemnity claims, counter claims and challenges, have been implemented. We continue to discuss the details with the FCA.

## Financial advice

### Financial Advice Market Review

*The Financial Advice Market Review (FAMR) was launched in August 2015 in light of concerns that the market for financial advice in the UK was not working well for consumers. The Review published its findings in March 2016, including a list of recommendations. A report on progress towards implementing the recommendations was published in April 2017.*

Panel members took part in the Financial Advice Market Review expert panel and in the subsequent Financial Advice Working Group which was given the task of taking three of the recommendations of the Review forward. Three subgroups looked at the development of an employer best practice guide to encourage employers to provide help to their workforce in matters of financial health, a project looking at developing rules of thumb and nudges to encourage financial engagement, and consideration of the terms 'advice' and 'guidance'. We believe valuable work has been done towards achieving all three objectives, and continue to urge the FCA, HM Treasury, trade and professional bodies to work together to ensure that the momentum behind this work, which has been drawn up with a great deal of expertise and tested for effectiveness, is not lost.

We also responded to the HM Treasury review on amending the definition of financial advice, and supported the clarity which that review provided.

### HMT Public Financial Guidance consultation

*HM Treasury has undertaken several consultations on how publicly funded pensions guidance, debt advice and money guidance (including financial capability) could best be structured to help consumers make effective financial decisions.*

We responded to HM Treasury's review of Public Financial Guidance. We were very keen that the objectives of any new body should be tightly drawn, as we believe that this was an area which caused difficulties for the Money Advice Service. We also firmly believe that any body which is funded by the industry should have industry representation in its governance structure. When initial proposals were published for two separate public bodies, one focusing on pensions, we were sceptical about how well that structure would work, and therefore we welcome the subsequent decision to go ahead with one Public Financial Guidance body.

# Members of FCA Smaller Business Practitioner Panel

1 April 2016 – 31 March 2017

## Craig Errington

Group Chief Executive, Wesleyan  
Panel Chairman from 01.04.17

## Clinton Askew

Director, Citywide Financial Partners  
Member until 31.03.17,  
Panel Chairman 01.04.15 to 31.03.17

## James Bawa

Chief Executive, Monmouthshire  
Building Society

## Phil Carey

Chief Executive, Kensington Friendly  
Collecting Society & Managing Partner  
of Careys Credit Services  
Member until 31.10.16

## Nicholas Coghill

Chief Executive Officer,  
City Asset Management plc  
Member from 01.03.17

## Gerald Grimes

Formerly Managing Director,  
Hitachi Capital Consumer Finance

## Richard Haas

Chief Executive Officer, CapeView  
Capital LLP

## Gemma Harle

Managing Director, TenetLime  
Member from 26.09.16

## Robin Keyte

Director, Keyte Ltd

## Simon Lough

Executive Vice President, Heartwood  
Member until 31.05.16

## Peter Minter

Chairman, Moneybarn

## Phillip Monks

Chief Executive, Aldermore Bank plc

## Ashley Rogoff

Founder and Managing Director,  
Ashley Page Insurance Brokers Ltd

## Sue Round

Director of Group Investments  
and Senior Fund Manager,  
EdenTree Investment Management  
Member from 01.03.17

## Marlene Shiels

Chief Executive, Capital Credit Union

## **Smaller Business Practitioner Panel**

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