

FCA Small Business, Enterprise and Employment Act 2015

Annual report 2020/21

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1 Introduction

We have a strategic objective to ensure that financial markets work well. We serve the public interest by improving how markets and firms work to benefit those that use them – consumers and businesses.

The Financial Services and Markets Act 2000 (FSMA) requires us to report to Parliament on our overall performance at least annually, through our Annual Report. We published the 2020/21 Annual Report on 15 July 2021.

Our obligations under the Small Business, Enterprise and Employment Act 2015 (the Act), as amended by the Enterprise Act 2016 (the Enterprise Act), mean we provide additional transparency about what our regulation costs businesses.

Under the Act, we have a statutory duty to publish a range of information. We are required to report on statutory provisions that we make that impose/amend a requirement, restriction or condition, set/amend standards, give/amend guidance for business, or relate to securing compliance with, or enforcement of, these requirements, standards and guidance. The Act classifies these activities as 'Regulatory Provisions' (RPs). The information we are required to publish is:

- a. a list of qualifying regulatory provisions (QRPs) that came into effect or ceased to have effect during the relevant period
- b. impact assessments (IA) verified by the independent Regulatory Policy Committee (RPC) for those QRPs
- c. a summary of non-qualifying regulatory provisions (ie those regulatory provisions that fall within exclusions applying under the Act) which came into effect or ceased to have effect during the relevant period

This report covers the period 17 December 2020 to 16 December 2021.

Qualifying Regulatory Provisions (QRPs) and Non-Qualifying regulatory provisions (NQRPs)

There are 2 categories of regulatory provisions (RPs): Qualifying Regulatory Provisions (QRPs) and Non-Qualifying Regulatory Provisions (NQRPs). We are required to publish an Impact Assessment (IA) for each QRP. These set out our assessment of the costs imposed on business by our regulatory provisions. This assessment is made using a specified methodology and must be validated by the RPC. Where we amend a regulatory provision, and this creates benefits for business, we assess this using the same methodology.

Most of the requirements we make fall within the scope of the Act. We treat these as qualifying regulatory provisions unless a requirement falls under one of the exclusion categories or the regulatory provision falls within one of the statutory exemptions in the written ministerial statement by the Secretary of State for Business, Energy and Industrial Strategy (BEIS). This allows us to have certainty about the exclusion categories for the following 5 years (unless an early General Election is called). Usually, BEIS releases a new statement during the first year of a new parliament and

it remains in place for the full term of the Parliament. Where a category of exclusion applies, the requirement is classified as NQRP. The Government has set a net target of zero savings to business and voluntary or community bodies from qualifying measures that come into force or cease to be in force during this Parliament.

Cost benefit analysis (CBAs)

As well as the IAs we produce as part of the Act, we also undertake CBAs. FSMA, as amended by the Financial Services Act 2012, requires us to publish a CBA of our proposed rules, subject to certain exceptions and exemptions. CBAs provide a broader perspective than Enterprise Act IAs. They analyse a broader range of costs and benefits, for example to consumers and society, in addition to the cost to business. Our CBAs also look at all direct and indirect effects of our interventions, where IAs focus only on the initial and direct impact on businesses.

2 Executive summary

Our reporting under the Act provides an estimate of the costs to business that our regulation creates. This is captured by our QRPs. During this reporting period using the Government's specified methodology, our estimates suggest that our QRPs have created a cost of £3.4bn over the prescribed 5-year period, as validated by the RPC. Of this £3.4bn, £2.4bn is a result of our action to protect vulnerable customers.

Protecting vulnerable consumers is a key priority for us. Customers in vulnerable circumstances may be at greater risk of harm, particularly if things go wrong. So the level of care that is appropriate for these consumers may be different from that for others.

We want to see the fair treatment of vulnerable customers embedded as part of a healthy culture throughout firms, and throughout the whole customer journey. We want consumers to receive consistently fair treatment across the sectors we regulate. To clarify our expectations of firms and drive this change, we undertook a 2-stage consultation in 2019 (GC19/3) and 2020 (GC20/3). In 2021, we published Finalised Guidance on the Fair Treatment of Vulnerable Customers (FG21/1).

The estimated total one-off and ongoing costs of the Guidance are high. However, we believe the expected monetary and non-monetary benefits of the Guidance are proportionate to the cost to industry, especially when compared against the large number of customers potentially affected. For example, our [Financial Lives 2020 survey](#) shows that in October 2020, 53% of UK adults had one of more characteristics of vulnerability. Benefits for firms could include improvements in customers' trust and confidence, better staff morale and retention, time saved, fewer complaints due to better quality customer service and an increase in customer loyalty and less customer switching. Benefits for consumers could include reduced stress, time saved and less likelihood of individuals losing money, for example, from mis-selling or not switching.

Overall, the Guidance will advance our consumer protection objective as it sets out how firms can comply with their obligations under our Principles for Businesses to treat vulnerable customers fairly. This will have positive impacts on competition as more consumers shop around and buy products that better suit their needs.

The figures we provide by reporting under the Act do not give a complete picture of the costs and benefits of our interventions. Two examples of this are particularly relevant:

i. Wider costs and benefits

We concentrate our resources on markets and firms most likely to create consumer harm, damage market integrity or weaken competition. We consider both costs and benefits and seek to maximise the public value we provide to users of financial services.

The IAs we must complete under the Act give only a partial view of our work. They exclude the benefits our work provides to end users, and the trust this creates in financial markets. Similarly, our work on promoting competition and firm-specific supervision is not covered in this report.

In contrast, our published CBAs aim to capture the total costs and benefits from our interventions. Our CBAs also look at significant direct and indirect effects of our intervention, whereas IAs focus on initial and direct impacts on businesses only.

With these important caveats in mind, this report only explains the costs and benefits created for business by QRPs during this reporting period as required under the Act. We do not report on the benefits our interventions have created for consumers, and more broadly for the standards and reputation of business and markets.

ii. Our use of NQRPs

Most of the work we do within the scope of the Act is recorded as NQRPs. This is because it will fall within 1 of the exclusion categories and is excluded from the requirement to complete an IA. The exclusions most relevant to our work are:

- de minimis threshold
- regulator activities: regulator casework
- pro-competition measures
- European Union and international regulations, decisions and directives including measures incorporating EU law into domestic law under the EU Withdrawal Bill and legislation made for the purpose of implementing the EU Withdrawal Agreement, including implementation of new EU law during the implementation period
- deficiencies in retained EU Law under the European Union (Withdrawal) Act 2018 and other legislation
- regulator activities: policy development
- systemic financial risk
- fines and penalties, and redress and restitution
- regulator activities: information, education and advice
- changes to the organisation and management of the regulator

While reporting under the Act does not require us to quantify the impact of NQRPs, most of the activities provide significant benefits to users of financial services and create costs for businesses. NQRPs during this reporting period include:

- regulator activities: regulator casework
- pro-competition measures
- regulator activities: policy development
- falling under the de minimis threshold
- regulatory provisions under the European Union (Withdrawal) Act 2018 to deal with retained EU law
- measures that have effect for less than 12 months
- civil emergencies
- changes to the organisation and management of the regulator

We summarise the NQRPs introduced during the reporting period later in this report. The number and size of NQRPs makes it disproportionate for us to list them individually.

Coronavirus (Covid-19)

Since the start of the pandemic, we have issued a large amount of guidance to firms on how they should treat and help consumers who faced financial difficulty due to the impact of coronavirus. Initially, this guidance was not captured under the Act last year as it was temporary - in force for less than 12 months - or because it was issued in draft form. The majority of these measures have remained in force for more than 12 months due to the ongoing impact of coronavirus. As these measures were in force in direct response to Covid-19 we classified these under the 'civil emergencies' administrative exclusion.

3 Qualifying Regulatory Provisions (QRPs)

During the reporting period, we have produced 5 QRPS. We summarise these QRPS below and provide further detailed information on each QRP in the IA's published alongside this report. The costs and/or benefits of the QRPs that have been validated by the RPC for this reporting period are in Annex 1.

The IAs will contain links to the relevant Policy Statements (PS) and Consultation Papers (CP) which contain more detailed information from the CBA we conducted for each measure.

PS20/8: Motor Finance discretionary commission models and consumer credit commission disclosure

Our extensive research into the motor finance sector found that discretionary commission models led to higher finance costs for consumers. Having consulted on changes to our rules and guidance in [CP19/28](#), from January 2021 we banned commission models that give motor finance brokers/dealers an incentive to raise customers' finance costs. We expect consumers' financing costs to reduce as a result.

We also made relatively minor changes to our commission disclosure provisions. We believe these changes will make it more likely that firms will give consumers timely information. In turn, this should increase consumers' ability to make more appropriate decisions. These disclosure changes apply across all credit sectors, not just motor finance.

In response to feedback and the ongoing pandemic, we gave firms a further 3 months to implement the discretionary commission model ban and a further 6 months to implement the disclosure changes.

PS20/17: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations

In [CP20/3](#), we explained the need to introduce specific climate-related disclosure requirements for listed issuers to ensure that securities are more accurately priced and help markets work well. We based our disclosure requirements around the recommendations of the Taskforce on Climate-related Financial Disclosures (TCFD), established under the Financial Stability Board (FSB).

We have introduced a TCFD-aligned Listing Rule for UK premium listed commercial companies, with guidance to help issuers make their disclosures. The rule specifically requires in-scope issuers to include a statement in their annual financial reports setting out:

- whether they have made disclosures consistent with the TCFD's recommendations/recommended disclosures in their annual financial report
- where they have not done so, an explanation of why and a description of any steps being taken to be able to make consistent disclosures in the future
- where they have not made their disclosures in their annual financial report, an explanation of why and where they have disclosed

We expect these rules will result in better climate-related disclosures by listed issuers. This should support more informed pricing and asset allocation by asset managers and the UK's transition to a net zero economy. This is our first step in introducing climate-related disclosure

rules in our Handbook, and we are working on expanding this in line with the Government [Roadmap](#) to implement TCFD-aligned disclosures across the economy.

FG21/1: Guidance for firms on the fair treatment of vulnerable customers

Over the past 6 years, we have undertaken significant work to help firms understand the issues and act appropriately to ensure the fair treatment of vulnerable consumers. However, evidence from consumer organisations and our own regulatory work showed that there were still inconsistencies in how firms were treating these consumers. While some firms had made significant progress in how they treat vulnerable customers, other were failing to consider their needs, leading to harm.

We want consumers in vulnerable circumstances to experience outcomes as good as other consumers and receive consistently fair treatment across the sectors we regulate. The Guidance aims to drive improvements in the treatment of these consumers and achieve a practical shift in firms' actions and behaviour to make this happen. It does this by making clear what the standards set by our Principles for Businesses mean for firms, so that firms understand what we expect of them. It sets out that firms should:

- understand the needs of their target market / customer base
- ensure their staff have the right skills and capability to recognise and respond to the needs of vulnerable customers
- respond to customer needs throughout product design, flexible customer service provision and communications
- monitor and assess whether they are meeting and responding to the needs of customers with characteristics of vulnerability and make improvements where this is not happening

PS21/19: Changes to the SCA-RTS and to the guidance in 'Payment Services and Electronic Money – Our Approach' and the Perimeter Guidance Manual

In [CP21/3](#), we proposed changes to open banking and updates to our published guidance in 'Payments and Electronic Money – Our Approach' (the [Approach Document](#), AD) and the Perimeter Guidance Manual. Our proposals, as confirmed in [PS21/2](#) and [PS21/19](#), included:

- creating a new Strong Customer Authentication (SCA) exemption for when customers access their account information through a third-party provider (TPP)
- mandating the use of dedicated interfaces by some account providers to enable TPP access to retail and SME customers' payment accounts
- increasing the single and cumulative transaction thresholds for contactless payments (this was confirmed in [PS21/2](#) in March 2021)
- amending our guidance in the AD for SCA, prudential risk management and safeguarding, onshoring changes following EU-withdrawal and other general updates to areas such as regulatory reporting
- updating our guidance in PERG on certain exclusions from the Payment Services Regulations 2017 and Electronic Money Regulations 2011

The proposals aim to remove the barriers to continued growth, innovation and competition in the payments and e-money sector (including in open banking), while increasing firms' financial resilience and ensuring appropriate consumer protection, including when firms fail. Additionally, we expect that updating our guidance will increase firms' understanding of their regulatory obligations.

PS20/10: Prohibiting the sale to retail clients of investment products that reference cryptoassets

In July 2019, we published CP19/22 'Prohibiting the sale to retail clients of investment products that reference cryptoassets'. We consulted on rules to ban the marketing, distribution and sale of derivatives and exchange traded notes (ETNs) that reference certain types of cryptoassets to retail consumers. We believe that retail consumers can't reliably assess the value and risks of derivatives (contracts for difference, futures and options) and exchange traded notes (ETNs) that reference certain cryptoassets. This is due to the:

- inherent nature of the underlying assets, which have no reliable basis for valuation
- presence of market abuse and financial crime (including cyberthefts from cryptoasset platforms) in the secondary market for cryptoassets
- extreme volatility in cryptoasset prices movements
- inadequate understanding by retail consumers of cryptoassets and the lack of a clear investment need for investment products referencing them

We think these issues will cause retail consumers harm from sudden and unexpected losses if they invest in these products. Our PS, published October 2020 summarised the feedback we received and set out our final policy position and Handbook rules that came into force on 6 January 2021.

4 Non-qualifying regulatory provisions (NQRPs)

As noted above, there are a number of exclusions which mean our work is considered an NQRP. These exclusions cover interventions that may create significant costs for businesses.

This chapter summarises both our activities which are considered NQRPs and key examples of the exclusions we have applied.

There are 9 regulatory provisions that we have recorded as NQRPs because they are covered by the de minimis rule. This means they have an estimated equivalent annual net direct cost to business of less than £5m. These measures include standalone policy changes, letters to firms, Handbook notices etc. See Annex 2 for a full list of the NQRPs which fall under this exclusion.

Regulatory activities: regulator casework

By number, casework was the most common category of NQRP during the reporting period.

We process applications from firms for authorisation. For example, from 17th Dec 2020 -30th November 2021 we processed 3,306 applications for authorisation from firms. This includes applications which were approved, rejected and withdrawn.

During this period, we also processed 1,558 applications for approval of a change in control, 3,455 cancellations of permission and 343 individual waivers. We also varied 2,183 firms' permissions and processed 10,564 mutual societies' returns and applications.

Once firms are authorised, we undertake a range of supervisory activities. The following captures a small sample of wide-ranging supervisory tools. For example, at end November 2021, we held approximately 2,597 meetings with our larger – fixed-portfolio - firms. While not all of these meetings would have resulted in RPs, the wide definition of guidance under the Act means individual guidance may often have been given.

In addition, as part of our supervision of our largest firms, we proactively intervene at an early stage where appropriate to make sure issues do not unnecessarily escalate. As of end November 2021, we identified 50 new Firm Specific Risks at our larger, fixed portfolio firms. Not all these interactions would have involved giving specific guidance or imposing a requirement however, as above, it is likely many of them would have amounted to RPs under the Act.

Firms and individuals can phone, email and write to our Supervision Hub for individual help and guidance on regulatory processes, application of rules and other regulatory matters. For example, between December 2020 and October 2021, the Supervision Hub took 145,093 phone calls from firms, answered 45,724 emails/web forms/webchats and 1,219 letters. Similarly, we run 'Live & Local' events across the UK, to provide advice and support for investment, general insurance and mortgage firms.

Over the period from 17 December 2020 to 1 December 2021, we closed 30 investigations about firms and opened 41. At the end of the period we had 234 live investigations, of which 167 were at investigation stage and 67 were in litigation (referred to the Regulatory Decisions Committee, Upper Tribunal or Courts).

During the period, as result of enforcement action, we cancelled the permissions of 43 firms, imposed Public Censures on 3 firms and issued 6 fines to firms.

We also refused approval for firms in a further 12 cases for failing to meet threshold conditions.

This year we concluded our first criminal prosecution under the Money Laundering Regulations 2007 (MLR). National Westminster Bank Plc (NatWest) entered guilty pleas at Westminster Magistrates' Court to criminal charges for failing to comply with the requirements in the MLR to conduct appropriate ongoing monitoring commensurate with money laundering risk in connection with a commercial customer relationship and was sentenced on 13 December to a fine totaling £265m.

Between December 2020 and December 2021, we have achieved 20 OIREQs. 'Own Initiative Requirements' (OIREQ) are part of the FCA's 'early intervention' programme. These initiatives are designed to eliminate or reduce an ongoing risk to consumers or markets. An OIREQ imposes a restriction on the firms' business activities. We also achieved 3 OIVOPs. An 'Own Initiative Variation of Permission' (OIVOP) under section 55J FSMA enables the FCA to deal with fundamental failings in standards and culture by removing a firm's permissions.

These figures exclude threshold conditions cases, where the firms against which we take enforcement action do not satisfy our minimum standards to retain our authorisation to carry out regulated activities. They also exclude cases against individuals. This gives only some of the background of the work we do where we suspect there has been serious misconduct. For more detailed information on our enforcement action please see our [Annual Report and Accounts](#) and accompanying [enforcement data](#).

We have classified all this work as NQRPs on the basis that it falls within the exclusion for regulator casework. These figures also only relate to Sanctions/Restrictions/Requirements imposed in the reporting period due to enforcement action via published Press Release, statutory Final Notice, First Supervisory or Second Supervisory Notice.

Pro-competition measures

We have an operational objective to promote competition in the interests of consumers, a competition duty and powers to enforce against breaches of competition law. As a result, a number of areas of our work during this reporting period were covered by the pro-competition measures exclusion.

Completed market studies

Market studies are in-depth, evidence-driven investigations, generally taking 12-18 months. Following a market study, we typically make rules or take other action to make the market work better in the future.

Last year we reported that we published the final report of our [General Pricing Practices Market Study](#). Its aim was to understand whether pricing practices in home and motor insurance support effective competition and lead to good consumer outcomes. We proposed

a range of remedies in CP20/19 which focused on pricing, product governance, auto-renewal and reporting requirements. Following the consultation, we confirmed remedies in [PS21/5](#).

Remedies and interventions targeted at promoting competition are covered by the pro-competition exclusion of the Act.

Market studies underway

We were due to publish the interim report from our Credit Information Market Study in Spring 2020 but we paused the study and restarted again in Summer 2021. We now aim to publish the interim report in early 2022 so we are not required to report on this as part of this reporting period.

Other pro-competition measures

In December 2019 we published rules to address an area where the Platforms Market Study identified competition could be improved – making transfers simpler for consumers. Our aim was to make it easier for them to move their assets to a new platform without unnecessarily liquidating their investments. This can potentially expose consumers to adverse market movements and risks crystallising tax charges. The rules came into force in February 2021 after being delayed due to Covid-19. We expect these rules to improve consumers' ability to switch between platforms and enable them to benefit from lower costs and/or a service that better suits their needs.

Regulator activities: policy development

We launched 49 consultations during the reporting period. This includes quarterly consultation papers, guidance consultations, discussion papers and calls for input. Under the exclusion for policy development, we classify these as NQRPs. We report separately on QRPs for final policy rules and guidance made in the same period.

Regulator activities: changes to the organisation and management of the regulator

Our [PS21/16](#): Issuing statutory notices- a new approach to decision makers is an example of how this exclusion applies. It explains changes to our decision making and governance so we can respond more quickly to prevent or stop consumer harm. As this document only provides information to firms and individuals on these changes, we have classified this as non-qualifying.

Civil Emergencies

We have issued a number of measures in response to the Coronavirus pandemic. We have classified these under the 'civil emergencies' administrative exclusion. We will report on these once validated by the RPC.

Annex 1

List of QRPs validated by the RPC

Full title of measure	Date	BIT ¹ Score (€million) burden to business ²
PS20/8: Motor Finance discretionary commission models and consumer credit commission disclosure	January 2021	838.0
FG21/1: Guidance for firms on the fair treatment of vulnerable customers	February 2021	2439.2
PS21/2: Amendments to single and cumulative transaction thresholds for contactless payments	January 2021	166.5
Total		3,443.70

Further detailed information can be found in the IAs that have been published alongside this report for the above measures and these will include links to the relevant policy statements containing the CBAs that were completed.

There are two impact assessments which have not been validated by the RPC for this reporting period and the costs associated with these have not been included in this report. These are PS20/10: Prohibiting the sale to retail clients of investment products that reference cryptoassets and PS20/17: Proposals to enhance climate-related disclosures by listed issuers and clarification of existing disclosure obligations. These impact assessments will be published as soon as they are validated by the RPC and the costs will be included in our 2021/22 Enterprise Act Annual Report.

¹ Business Impact Target in respect of the economic impact on business of regulation which comes into or ceases to be in force for this Parliament, along with related matters as required under section 21 of the Small Business, Enterprise and Employment Act 2015 ("the Act").

² The BIT Score only reflects costs to business; it does not reflect benefits or burdens to consumers. When making regulatory decisions the FCA considers both costs and benefits to businesses, consumers and the wider economy.

Annex 2

List of de minimis NQRP

This section provides a list of the 9 NQRPS which are covered by the de minimis exclusion as they have an estimated cost or benefit of below the de minimis threshold.

PS18/20: Improving the quality of pension transfer advice - feedback on CP18/7 and our final rules and guidance – PTS qualifications

PS20/15: High-risk investments: Marketing speculative illiquid securities (including speculative mini bonds) to retail investors

PS20/16: Updating the Dual-Regulated firms Remuneration Code to reflect CRD V

PS19/23: FCA and PRA changes to mortgage reporting requirements

PS21/22: Primary Markets Effectiveness Review

PS20/14: Delay to the implementation of the European Single Electronic Format (ESEF)

FG21/4: Guidance for Insolvency Practitioners on how to approach regulated firms

PS21/12: Assessing value for money in workplace pension schemes and pathway investments: requirements for IGCs and GAAs

PS21/14: A new authorised fund regime for investing in long term assets

Annex 3

List of Abbreviations

Abbreviation	Description
CBA	Cost Benefit Analysis
IA	Impact Assessment
BIT	Business Impact Target
FSMA	Financial Services and Market Act 2000
NQRP	Non-Qualifying Regulatory Provision
QRP	Qualifying Regulatory Provision
RP	Regulatory Provision
RPC	Regulatory Policy Committee
the Act	Enterprise Act 2016
BEIS	Department for Business, Energy and Industrial Strategy
EU	European Union
FCA	Financial Conduct Authority
UK	United Kingdom
PS	Policy Statement
FG	Finalised Guidance
CP	Consultation Paper
PCA	Personal Current Account
IGC	Independent Governance Committees
GAA	Governance Advisory Arrangements
ESG	Environment, Social and Governance

Annex 4

Glossary

The Act	The Small Business, Enterprise and Employment Act 2015 as amended by the Enterprise Act 2016.
Cost Benefit Analysis (CBA)	We are required to create and publish a cost benefit analysis on certain initiatives under Financial Services and Markets Act (2000). In addition to the cost to business, they also analyse the public value resulting from the intervention.
Impact Assessment	The Act requires us to carry out impact assessments that assess the costs to business.
Non-Qualifying Regulatory Provision (NQR)	Any change the FCA makes that imposes a requirement, sets standards or gives or amends guidance for business or relates to securing compliance with such standards, guidance etc. that falls under one of the exclusion categories listed in a written ministerial statement by Secretary of State for Business, Energy and Industrial Strategy.
Qualifying Regulatory Provision (QRP)	Any change the FCA makes that imposes/amends a requirement, set/amends standards or gives/ amends guidance for business or relates to securing compliance with such standards, guidance etc. unless they fall under one of the exclusion categories listed in a written ministerial statement by Secretary of State for Business, Energy and Industrial Strategy.
Regulatory Policy Committee (RPC)	An independent, advisory, non-departmental public body who rate the quality of evidence and analysis supporting new regulatory and deregulatory proposals, and check the estimates for the equivalent annual net cost to business of new regulations.
Regulatory Provision (RP)	Any change the FCA makes that imposes a requirement, set standards or gives or amends guidance for business or relates to securing compliance with such standards, guidance etc.

