Financial Conduct Authority

Our future Mission

www.fca.org.uk/mission

October 2016

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Contents

1	Foreword from Andrew Bailey	2
2	Executive summary	4
3	Introduction	9
4	Ensuring markets function well	11
5	Meeting our objectives	16
6	Regulation and public policy	22
7	Protecting consumers	26
8	Vulnerable consumers	30
9	The role of disclosure in consumers' choices	32
10	When will we intervene?	35
11	Competition and market design	37
12	Supervising firms	40
13	Our approach to enforcement	44
14	Looking ahead	46
15	List of abbreviations	48

Annex

1	List of questions	49

1. Foreword

from Andrew Bailey, Chief Executive

My overwhelming first impression after nearly four months as Chief Executive of the FCA is of the importance of the public policy objectives that have been entrusted to us by Parliament. The scale and scope of the FCA's activities is impressive, as is the scale of the landscape on which it operates. A simple measure is that the FCA regulates around 56,000 firms operating in the UK undertaking a wide range of financial activities. This underlines just how important financial services are to any modern economy, and particularly the UK with its large and sophisticated wholesale markets operating alongside important retail financial activities.

The FCA is responsible for financial conduct regulation in the UK. I have often observed that, sadly, we have suffered from two financial crises in the last decade. The first in terms of the timing of its peak was prudential in nature, affecting the safety and soundness of major banks and investment firms and calling into question our financial stability at the level of the whole system. The second crisis has involved the conduct of business by financial firms. Four of the more prominent headings for this conduct crisis are: retail products, most notably Payment Protection Insurance; wholesale market products, most notably LIBOR and the FX market scandals; the sale of products to corporates, such as Interest Rate Hedging Products; and areas of financial crime, involving money laundering and the breach of financial sanctions. This is a very sorry history, and the future needs to be radically different from the past. We owe this to the public who are the consumers of financial services.

The FCA was created in 2013 in the heat of the conduct crisis. It is a dedicated conduct regulator, part of the twin peaks approach adopted by the UK. I have been a strong supporter of twin peaks for a long time, and it is a great pleasure to have had the opportunity to lead the institutions responsible for both of the peaks in the UK. Forming and developing these institutions has been, and is, for me the best sort of public policy challenge imaginable.

This Mission document is a very important part of that challenge, to create a clear understanding of the FCA's remit and ensure that it is well communicated and understood. The FCA has clear objectives set by Parliament, principally to ensure that relevant markets function well. This is a helpfully broad objective which allows us the scope to deal with many issues, but its breadth emphasises that we must provide clear explanations of how we interpret our objectives. The Mission is designed to do this, with input from as many parties as possible. We have written this document as an account of what we do and how we think about the challenges we face. It is deliberately not exhaustive but we hope it will contribute to and foster debate on our role.

Establishing and embedding a clear mission is critical to our success, both as a regulator and to UK financial services as a whole.

The same goes for the tools that we use to pursue our objectives, which is the focus of the second part of the document. The FCA has more tools at its disposal than many financial conduct regulators around the world. One important reason for this is that we have important competition powers, something that is unusual for a financial regulator but that we think fits well with our role. We are though very aware that it is important to explain how these tools are used and how they fit together. We hope that the Mission will do that.

I should also point out that this is not a document about Brexit. In fact, that is the only time the word appears in the document. This is because we believe that the issues we are setting out in the Mission are at the heart of financial conduct regulation whatever we do next.

The Mission is not a long document. We could have written much more, but we have tried to keep it short and focused on the important questions that we see. It is striking to me at least that financial conduct regulation is not supported by a particularly large body of academic and other thinking. We hope that the Mission might contribute to provoking more thinking.

Above all, please provide us with your thoughts and feedback. We have set out some questions in the document to focus the process, but if you can think of better questions I encourage you to ask and answer them. Over the next three months while we are consulting on the Mission we will be holding a number of events, and we are open to suggestions for more to do. We want this to be a very open process. Out of it, we hope that we can set out a clear path ahead for financial conduct regulation in the UK.

Andrew Bailey
Chief Executive
October 2016

2.
Executive summary

Our role is adapting to meet the changing face of financial services in the UK. Consumers' needs are becoming more diverse and complex, yet they are increasingly required to take more personal responsibility for their financial decisions. Technology is creating new opportunities, both for the types of services firms can provide and how they provide them. And the number of firms and individuals which now come within our regulatory remit continues to grow.

We have an overriding strategic objective set by Parliament to ensure that relevant markets[1] function well. In addition we have three operational objectives with which to deliver our strategic objective; to protect consumers, protect the integrity of UK markets and enhance competition.

We need to ensure we are a proportionate and effective regulator as financial services adapt to meet new needs in new ways. This is a good opportunity to define the way in which we make our regulatory choices. This document clarifies our thinking about the way we regulate and how we decide our priorities against a number of critical areas. We want your views on our approach.

Ensuring markets function well

It is not possible, or desirable, to create markets and firms which never fail. To do so would involve a cost of regulation which would substantially exceed the benefits, and even then provide no guarantee. Our approach is to create a framework of rules to govern the operation of markets and then apply a combination of forward-looking judgement in our supervision and backward-looking judgement in our enforcement actions, where we suspect rules have been breached. Since there is no guarantee against failure, we plan extensively to ensure that, when they occur, failures are orderly and do not undermine our statutory objectives. And we support our supervisory and enforcement work with a strong commitment to our competition objective and the tools we use to pursue it. Our preference is to use our competition policy tools where our actions will improve functioning of markets as a whole.

What we regulate

Our remit for taking action for the firms and activities we regulate is clear. However, in practice, the lines between regulated and unregulated activities have become blurred in recent years. Many of the problems we have seen in the market, from the crash of 2008 onwards, have been caused by regulated firms undertaking activities which are outside our 'regulatory perimeter' (ie activities that we do not regulate).

Our objectives, to varying degrees, give us powers to intervene in many of these activities. But we have limited resources and must prioritise using them where we can have the biggest impact. We will prioritise intervening outside the perimeter when we believe our objectives are threatened, if we believe an unregulated activity:

- is illegal or fraudulent
- has the potential to undermine confidence in the UK financial system

1 "relevant markets" are defined in FSMA section 1F as covering the financial markets generally, and the markets for services regulated under FSMA and regulations covering payment services and electronic money.

- is closely linked to, or may affect, a regulated activity
- calls into question the suitability of the firm

The boundaries between financial conduct regulation and other areas of public policy

There are a range of factors which affect consumers, particularly vulnerable consumers, which lie outside our regulatory remit. We have to establish where financial conduct regulation has a role to play in overcoming these kinds of challenges and where our role ends and that of broader public policymaking takes over.

Protecting consumers

Today's world is one where individuals are expected to take more responsibility for their decisions, with pensions being an obvious example. These decisions are often more complex, reflecting the uncertainty of future developments.

We believe that a market where consumers never make poor choices is not feasible. Our focus is on ensuring the appropriate degree of protection for consumers. What is appropriate will depend to a large extent on the capability of the consumer and the complexity of the product or service. We also believe we should take steps to make clearer to consumers the degree of protection we can, and cannot, give them.

Consumer redress

As we know from experience, there are times when the harm caused to consumers through inappropriate provision of financial services should be compensated through the provision of financial redress. This redress can take a number of forms, depending on the facts of the case.

We believe the financial conduct regulator, alongside the Financial Ombudsman Service and the Financial Services Compensation Scheme, has a role in ensuring consumers can receive redress through cheaper and quicker routes than the courts. We also believe these routes are important for market confidence.

We will use the following criteria to help inform our decisions about whether or not to effect redress:

- how quickly and urgently the redress is needed
- the number of consumers affected
- if the activity that led to the harm occurs inside or outside our regulatory perimeter

We will also communicate more consistently and regularly with firms and consumers about redress schemes, so they know what to expect.

Protecting vulnerable consumers

People can become vulnerable at any time. This vulnerability can be exacerbated where the provision of financial services does not adapt to their needs.

The risk of substantial consumer harm is significantly greater for particular consumer groups in some markets. When we decide whether to take regulatory action, we focus on the potential harm of a particular product, firm or market and the capabilities of consumers using them.

We believe we have a specific role to protect vulnerable consumers and that low income exacerbates any individual vulnerability. This will mean we give some consumer groups, in some markets, higher levels of protection than others.

However, given that new vulnerabilities arise in groups which may not have previously been seen as vulnerable, such as retirees at risk of financial scams following the introduction of the pension freedoms, we will always keep who we view as 'vulnerable' under review.

Defining harm

The issues we deal with are highly complex and harm from financial services can take different forms. Harm is equally important in both retail and wholesale markets. Our approach to tackling harm is based on the impact it has; either in terms of the numbers affected or the severity of the harm likely to be caused.

We take a diagnostic approach. We look at the cause of the harm as well as its impact and use our intervention framework to decide the most proportionate and effective use of our tools to tackle it. This can range from direct action with one firm to a market-wide approach which modifies the way markets are designed to ensure the potential for harm is minimised and less likely to occur in the future.

Transparency and disclosure

Public policy makers have traditionally assumed that people will make the 'right' choice for their needs if they are given as much information as possible. More recently however, behavioural economics has shown that inherent bias can play a greater role in influencing consumers' decisions than rational choice. Our own research has also shown that that too much information can confuse consumers.

We believe we can play a greater role in helping consumers access the right services for their needs by influencing how they make decisions. This can include changing the way firms present choices to consumers and 'nudging' them towards decisions that are more appropriate for them.

We will consider placing greater restrictions on a market where we feel that nudges and other ways of presenting consumers with information are not working. But we will use some measures cautiously, as these interventions can limit the choices for consumers and reduce innovation in the market.

When we will intervene

When we consider intervening to stop potential harm, we will prioritise our decisions against a number of factors. These include the cumulative and individual impact on affected consumers and markets. We will also look at the severity of the misconduct, regardless of the scale of harm. And, again, we will consider both the financial capability of affected consumers and their vulnerability. We are more likely to act if a particular market has a concentration of vulnerable individuals.

We will also ask the following questions:

- would solving the problem help us meet our objectives?
- could using our powers address the problem effectively or would intervention by another authority be more effective?
- does the activity we are intervening in have a broader social benefit and, if so, how might our intervention affect its provision?
- what degree of consumer protection and responsibility might be appropriate in a particular market?

In future, we will be more transparent, both about the interventions we choose to make, and those we decide we will not make because we cannot do so effectively. We will continue to publish our priorities annually in our Business Plan.

Market design

An important purpose of our standard-setting is to influence the conditions for competition to work well. Our market studies are a key diagnostic tool that help us develop interventions to influence market design. They help us identify underlying causes of actual or potential harm and so use our powers to remedy them effectively.

The Competition Act (CA98) gives us investigatory and enforcement powers for breaches of competition law. We can resolve an investigation under CA98 in a number of ways, including accepting commitments about future conduct or issuing a decision that we have, or have not, found grounds for action.

Supervising firms

Our regulations apply to over 56,000 firms under the Financial Services and Markets Act (FSMA) and more than 130,000 approved persons, all of whom must meet statutory conditions to carry on their business or role. We assess whether firms and individuals meet, and continue to meet, these conditions through authorisation and supervision.

However, some firms may find it harder to satisfy themselves that they have met all of these conditions as they have business models which are new and innovative. We have introduced a number of initiatives, such as the New Bank Start Up and Advice Units, to support innovation in the market.

We set the standards by which financial services firms operate. However, it is for firms' boards to ensure they meet them; we cannot be a substitute for firms' governance. The Senior Managers and Certification Regime (SM&CR) supports firms' development of a culture of responsibility to identify the harm developing from their behaviour and take steps to address the risk.

Regulated firms will inevitably fail, especially when markets are competitive. Our approach is to ensure that these firms exit the market in an orderly way, and that the associated disruption and harm to consumers is minimised.

Enforcing our rules

Our approach to using our enforcement powers focuses first on deterrence, both for individuals in the market and fims. However, our enforcement activity also has other aims. These include underlining the value of the rule that may have been breached and building market and public confidence that we will properly identify and deal with wrongdoing.

However, not all breaches result in a formal investigation and public sanction may be not be inevitable or even likely. In these cases, we think there is benefit in our working with firms to agree lessons learned and ways forward, even if the problem did not lead to us using our enforcement powers.

We need to be clearer about the terms we use. For example the term 'referred to Enforcement' is often misunderstood. We will also review our use of 'private warnings'.

Measuring what we do

It is difficult to measure how effectively we meet our objectives, but as an open and transparent regulator it is important we explain how we assess our performance. In the future we will use a three-tier approach to this: measuring our operational efficiency using a value for money framework, measuring the impact of our policy interventions and by measuring the outcomes in markets as a whole.

Next steps

We have asked a number of questions about our approach. We welcome your views on these and any other relevant questions you believe our Mission should address.

We are asking for comments by 26 January 2017.

You can send them to us using the form on our website at:
www.fca.org.uk/mission.

Email: FCAMission@fca.org.uk

3. Introduction

Parliament has given us the strategic objective of ensuring that relevant markets function well. FSMA provides us with the majority of our powers and duties, however other legislation also plays an important role in what we do, eg the Competition Act 1998 and the Enterprise Act 2002. In doing so, Parliament has enabled us to act proactively using a wide variety of tools to improve the way financial markets work. We also have three operational objectives: securing an appropriate degree of protection for consumers, protecting and enhancing the integrity of the UK financial system and promoting competition in the interests of consumers in the markets we regulate.

The UK's financial regulatory system includes the FCA[2], the Prudential Regulation Authority (PRA), the Financial Policy Committee of the Bank of England (FPC), the Payment Systems Regulator (PSR[3]), the Financial Ombudsman Service, the Financial Services Compensation Scheme (FSCS), the Money Advice Service (MAS) and the Pensions Regulator.

The purpose of this publication is to start a discussion to decide the best way for us to pursue our statutory objectives in future. This will help us make many of the fundamental choices that we inevitably face when deciding our priorities and pursuing our objectives across the wide field we regulate.

Our remit is extensive because financial services are an intrinsic part of the fabric of the UK's economic life and embedded in virtually every part of it. They provide 12% of the UK's total economic output. Over two million people work across the UK in financial and related professional services, with two thirds employed outside London.[4]

People log in to 10 million bank accounts every day, withdraw around £16 billion from cashpoints each month, take out over 20 million car insurance policies a year, while 66% of the working population are signed up to a workplace pension. UK fund managers oversee £4.3 trillion in assets, £397 billion was raised by UK companies in issues of shares through the London Stock Exchange and by private equity between 2006 and 2014. Having access to such services is critical for most people in the UK to participate fully in society today. Those who are excluded from doing so simply cannot participate in society in the same way. Therefore, for markets to work well, consumers[5] and investors must also have confidence that they are working well for them.

Today, macroeconomic and demographic changes present new challenges and opportunities for all who provide, use and regulate financial services. An ageing population and new patterns of work mean consumers require different products and new ways of getting them. Technology is transforming how both retail and wholesale consumers buy, sell, invest and trade – creating both huge opportunities and new risks. And there has been a shift away from the state taking a central role towards giving consumers responsibility for their own financial choices; a responsibility not everyone feels equipped for.

2 The UK Listings Authority (UKLA) is part of the FCA. It oversees the obligations of listed issuers and the market abuse regime which, among other things, aims to prevent issuers from making false and misleading announcements. UKLA keeps the premium listing regime under active review to ensure that investors and shareholders can have confidence in the protection it provides and that businesses can get access to capital to enable them to grow.

3 This Mission does not affect the Payments Systems Regulator, which is an independent economic regulator with its own statutory objectives and separate management structure.

4 www.thecityuk.com/assets/2016/Reports-PDF/Key-facts-about-UK-financial-and-related-professional-services-2016.pdf

5 In this paper we use the term 'consumer' to refer to users of the services provided by retail and wholesale markets.

These developments also create new choices and challenges for the FCA. Over the coming years, we will have to consider how best to respond to them. Clarifying our approach now will help ensure our work has the maximum impact, and define what aspects of our existing rules or processes will continue to provide value for money and which ones we should reform.

Regulatory requirements impose costs on firms, which are ultimately passed to consumers. In line with the principles of good regulation, we have to use our judgement to decide where we can best use our resources to improve the outcomes for everyone who uses financial services – and thus the real economy.

Today we also have a greater understanding of how consumers actually interact with markets, and how technology can create new choice and access. These developments can deliver substantial benefits to society. But we know that some consumers may be excluded from these benefits. There is also the potential for consumer harm and market abuse – technological advances, for example, also benefit those who want to abuse the market.

Deciding how to best deliver our objectives – and maximise our impact – is not straightforward. And, as the National Audit Office (NAO) recognised in its paper, 'Performance measurement by regulators', measuring the effectiveness of regulatory actions is challenging. There is no single unit to measure conduct regulation, or simple datasets that enable us to make decisions about how to prioritise. Economic theory on conduct regulation is still in its early stages, and does not reflect our specific objectives, latest developments in data and behavioural science, technological change or the challenges of a more indebted, ageing population.

Our judgements on the priorities for regulatory intervention can mean some users of financial services get better protection than others or that some types of harm are reduced before others. Given the difficulty and importance of deciding our regulatory focus, we think it is important to seek public feedback and promote public understanding of how we make these choices. In future we intend to use the framework provided by our Mission to provide more explanation of the choices we make in pursuing our statutory objectives.

This document asks specific questions on the approach we should take to the way we regulate in the future. We welcome your views and suggestions on these proposals and will publish our final Mission next Spring.

4.
Ensuring markets function well

To help provide a clear understanding of our remit, we need to look at the necessary conditions that enable markets to function well. We also need to consider the economic rationale for conduct regulation in financial services.

Markets

Economic theory generally defines a market as bringing together buyers and sellers to exchange goods and services. By establishing prices that reflect the balance of supply and demand, markets enable society's resources to be allocated efficiently.

In a market economy, firms compete to sell goods and services to consumers and each other. Consumers and users of services are responsible for the decisions they take and firms compete on price and value, also using sophisticated marketing and behavioural techniques. General contract and consumer law requires that goods and services have to be 'as described'. In addition, many UK markets have specific laws or regulations, such as food standards or manufacturing standards. These aim to make markets function well and to protect consumers where pressure from users fails to mitigate harm. Examples include food or cars where a lack of minimum standards can cause significant, real harm.

These requirements also encourage consumer confidence and reduce the need for consumers to test multiple products or services, so enabling markets to function well. Markets must also comply with general competition law, and with additional competition regulations for some markets where consumers have limited choice.

In the real world, markets do not always function efficiently. Market failures happen, often with serious consequences for users and for the real-world economy. The global economy is still struggling with the aftermath of the 2008 financial crisis. User confidence has been further damaged by the mis-selling of Payment Protection Insurance (PPI) and Interest Rate Hedging Products, manipulation in wholesale markets and money laundering and sanctions breaches.

Financial services markets

The markets we regulate are very diverse, from the conduct of the largest international investment banks to the services of a high street mortgage broker to a furniture shop selling a family a new kitchen on credit. Yet we believe that every well-functioning market requires the same conditions: engaged consumers, firms and employees that follow clear minimum standards, and well-judged, timely regulation.

From the demand-side, for a regulated market to be working well, users need to be able to take decisions based on those elements of price, quality and certainty of outcome that really matter to them. They also need to be able to switch, at an appropriate cost, to products and firms that better meet their needs.

On the supply side, a market needs genuine rivalry between firms to provide consumers with better products and services.

Below we highlight some specific features of different markets that we regulate:

- **Retail markets** serve household needs such as credit, insurance and investment products. In addition to private individuals, some small businesses may also be 'consumers' in these markets. Third party advice is widespread in these markets. Key conditions for these markets to work well include consumers being able to make well-informed decisions, based on the price and quality issues that matter to them in the longer term and the availability of redress when things go wrong and which should have been avoided by the provider.

- **Wholesale markets** are usually business-to-business markets. Examples include banks or investment firms which provide loans to large corporates and banks or others which sell hedges to corporates. These markets typically have a producer/consumer relationship but the 'consumer' can be a very sophisticated and informed entity. Third party advice is less common in these markets. Key conditions for them to be working well include, as in all markets resilience to disruption. They also include being accessible to business customers and checks on any potential market power where there are few providers.

- **Capital markets** are not usually looked at through a producer/consumer lens. They bring together a wide range of buyers and sellers of debt and equity capital instruments in a range of different ways. This process often, although not always, happens through intermediaries, where a client relationship will exist. Some participants will be acting as principal and investing their own capital. They may also be acting for clients, creating risks of conflicts of interest. Capital markets operate through a range of infrastructures, including exchanges, clearing houses and information providers and are mainly markets in which institutions, rather than retail investors, participate. Key conditions for them to work well include confidence in the counterparty's ability to complete the transaction and that price discovery is transparent.

Loss is part of well-functioning markets

A well-functioning market is not one where consumers will never lose or regulated firms will never fail. It is not our role to adopt a zero-tolerance approach to this kind of failure. Consumers can lose in well-functioning markets for a range of reasons:

Uncertain costs and returns

In a well-functioning market for savings and investments, the average financial returns an investment can earn will reflect the risks investors take, ie there is potential for actual returns to vary. Users of these markets may lose money on financial products they buy and this possibility of loss is a part of a financial market working well.

Bad debt

Credit inevitably involves both the borrower and the lender accepting risk. There is always uncertainty, circumstances can change and one reason that bad debt can arise is where a loan that was affordable when it was taken out can later become unaffordable.

Firm failure

Regulated firms will fail. This may well involve loss and disruption to their customers. Our approach is to ensure that firms are set up in a way that ensures if they fail, they fail in an orderly way, which minimises disruption for customers and third parties.

Macroeconomic conditions

Conditions in the economy at large can prevent a product or service from meeting societal needs.

Regulating real-world markets

The traditional economic view is that financial services regulation exists to prevent or correct market failures. The causes of such failures include the provider having more information than the consumer ('information asymmetries'), costs that fall on those outside the transaction ('externalities') and broader market power, particularly the abuse of market power.

Complexity and timeframe

Many financial products are complicated and seeking to protect against the possible harmful effects of complexity can create its own complexity. It is inevitable that those who supply products will have more information about them than users and that the amount of information which different consumers themselves have will also vary.

From mortgages to pensions, insurance to credit cards, or derivatives transactions in wholesale markets, the duration of financial services 'transactions' is generally longer than any other service or product a customer will buy. This creates a relationship between firms and their customers over long periods of time. It also gives limited opportunity for consumers to learn from past mistakes and make different choices.

Regulatory response

At a high level, financial conduct regulation aims to prevent or correct information asymmetries by reducing to an acceptable level the problems that can arise through imbalances in access to information, or the ability to understand and process that information.

Conventionally, conduct regulators have tried to do this in two ways. First, by adjusting how markets operate to make market discipline more effective, such as requiring firms to disclose key information to consumers at the point of sale. Secondly, by introducing proxies or alternatives to market discipline, such as mandatory advice or a regulatory supervision/enforcement regime to instil discipline.

Some financial markets have the potential to cause more harm than others and some consumers or market users are more sophisticated than others. A broad distinction is also drawn between wholesale and retail markets. Participants in wholesale markets are thought to be better informed. They are also better resourced to make more informed buying decisions, to undertake continuous monitoring and they experience fewer principal-agent problems. In retail markets, a distinction is made between lower risk products, such as general insurance, and higher-risk investment products with less certain outcomes.

As these features illustrate, there are inherent difficulties in financial conduct regulation. The preferred approach is typically preventative – to stop bad things from happening in the future. This requires the regulator to use forward-looking judgement which is based on a framework of policies and rules, but still recognises the inevitable uncertainty involved. This approach also requires the regulator to pay close attention to how providers can be given the appropriate incentives to do the right thing. And it requires users to exercise their own judgement and to recognise that a world in which there are no bad outcomes is both unlikely and one in which the marginal cost of regulation would exceed the benefit.

Benefits of effective regulation

As well as helping to reduce the impact of information asymmetries between providers and users, effective regulation has wider benefits.

Stability and growth

Recent developments in macroeconomics show us that better regulated financial markets will boost stability and growth in economies and so have an effect on macroeconomic conditions. An example of this is creating an incentive to save, which then enables investment in projects that foster economic growth. Likewise, effective regulation can incentivise financial services firms to monitor managerial performance to increase operational efficiency and reduce financial crime.

Economies of scale

Economies of scale can benefit both markets and the regulator overseeing the market. Financial markets that work well create a large amount of value. A market is created from the interactions of large numbers of people and firms, and the value of the market to society increases with the number of participants. Larger markets can therefore benefit from economies of scale, allowing them to offer a wider range of services at lower prices than small markets.

A financial conduct regulator, as well as trying to avoid bad outcomes by enforcing market discipline and setting clear standards of disclosure, can reduce firms' transaction costs and increase market efficiency. For example, when consumers have confidence that a firm is regulated, this will limit the requirement for them to undertake due diligence into the firm. Standardised transparency requirements can help reduce the costs of transactions in wholesale and capital markets.

An important judgement in financial conduct regulation is where to draw the boundary between activities or risks that are best left to users and those where a regulator's activities can deliver their own economies of scale that provide a public good. For financial products that involve a locking-in over an extended period of time, or are complex, the costs to users of understanding the nature of the product and monitoring its performance over time are high. For these products, it may be more efficient for the regulator to play a larger role to enforce market discipline, rather than for individual users to try to do so unaided.

Market confidence

It can be in providers' interests for regulation to increase confidence in products in the market, so increasing public confidence in the market as a whole. Additionally, if a compensation scheme like FSCS exists to meet the cost of losses of failed firms, then it is in all firms' interest to support clear regulatory standards to avoid firm failures because the costs of failure are borne by surviving firms. Regulation can improve the reputation and standing of markets and suppliers because of its ability to stop unsuitable products or providers from entering the market, or to remove them from the market.

Competition and innovation

For a market to work well it must be open to new firms entering, and innovation in terms of the services provided. The role of technology in, for example, reducing some consumers' car insurance premiums by using telematics, or the development of dark pool trading exchanges which give large institutional investors the ability to trade with reduced market impact and lower transaction costs, show how innovation can help markets meet need.

Effective regulation can help create a more competitive and innovative financial services market. We have already begun, and propose to continue, to identify specific areas where our regulations are inhibiting competition. We will take specific action, including a review of our Handbook, to reduce the restrictions our regulations cause without compromising our objectives.

Measuring what we do

Regulators can have a significant influence on firms and markets. Yet markets are complex and the success of any regulatory action will partly depend on the responses of consumers, firms and their staff. Preventing an unsuitable firm entering the market, or explaining to an existing firm why its business model is weak, helps strengthen the effectiveness of financial markets as a whole. While these types of decisions are part of our core regulatory work, because of their commercial sensitivity they are often confidential and remain largely invisible to the outside world.

It is also a challenge for us to measure the success of this aspect of our work – good outcomes are generally delivered through us influencing the actions of regulated firms before things go wrong. However, being able to explain how we are delivering against our objectives is essential to being an open and transparent regulator.

In the future we propose to take a three-tier approach to measuring how we are doing:

- **Operational efficiency.** We measure our operational efficiency by looking at all our internal operations against a value for money (VfM) framework. We use the National Audit Office definition of value for money as 'the optimal use of resources to achieve our intended outcomes'.

- **Impact of our interventions.** We will measure the impact of the interventions we make through our policy changes, supervision of firms, enforcement actions, competition and other market studies and thematic market reviews to help us identify what works. This will also help us look at areas where we are unsuccessful and learn the lessons for future interventions. While this means first of all establishing the short-term, direct impacts our interventions have, we know that indirect effects on the way the markets are working, and unintended consequences, can be as or even more important. So we will also keep those under review.

- **Measuring outcomes in markets.** We measure outcomes in markets by using a wider, more-sector based approach. This involves looking at markets or sectors as a whole to identify common root causes which we can tackle at market-level, alongside our firm-by-firm work. This approach will help us clearly define how we want a sector to improve in the short and long term and how we will measure outcomes. We started this approach during last year's Business Planning process, when we used it to prioritise where we should focus our efforts and how we measure success against each priority. We published both priorities and measures in our Business Plan 2016/17.

Q1: Do you think our definition of a well-functioning market is complete? What other characteristics do you think we should consider?

Q2: Do you think our approach to consumer loss in well-functioning markets is appropriate?

Q3: Do you think we have got the balance right between individual consumer due diligence and the regulator's role in enforcing market discipline?

Q4: Do you think the distinction we make between wholesale and retail markets is right? If not, can you tell us why and what other factors you believe we should consider?

Q5: Do you think the way we measure performance is meaningful? What other criteria do you think are central to measuring our effectiveness?

5.
Meeting our objectives

Operational objectives

We have three operational objectives with which to deliver our strategic objective to ensure that the relevant markets function well. The first is to secure an appropriate degree of protection for consumers; the second is to protect and enhance the integrity of the UK financial system; and the third is to promote effective competition in consumers' interests in the markets we regulate. These operational objectives apply equally to retail and to wholesale markets.

When considering our consumer protection objective, FSMA sets out a broad definition of the term *consumer.*[6] It encompasses any persons who use, have used or may use regulated financial services or have relevant rights or interests in relation to financial instruments.[7] The definition covers a very wide spectrum of people. They range from *retail consumers* who buy financial services for their own use (eg car insurance) to *wholesale consumers* including hedge funds and corporates (non-financial firms, public bodies etc) buying financial products or services. Our market integrity objective applies to the overall UK financial system. We aim to support and empower a healthy financial system, where users trust transparent and open markets, and firms, individuals and the real economy benefit from effective, efficient and reliable markets.

Our third operational objective is to *promote* effective competition in the interests of consumers. We are not charged with trying to make markets perfectly efficient, perfectly competitive or to eliminate profit. Rather, we seek to help markets to develop in ways that increase competition to benefit consumers. When competition is effective, consumers are engaged, active and able to choose between suppliers. This stimulates rivalry between firms to offer better value, better quality, new products and innovative ways of delivering them. Our competition objective is not restricted to delivering remedies that stimulate demand. We also have broad powers to intervene to correct structural issues in the market if these supply-side issues affect any of our objectives. For example, following concerns about competition in the Guaranteed Asset Protection (GAP) insurance market, we introduced a deferral period so that firms cannot introduce and sell GAP insurance to a customer on the same day. We also required these firms to provide customers with information to help them shop around. As a result of our market study in this area, we also introduced a general ban on opt-out selling across financial services.[8]

The competition objective does not cover UK competitiveness (relative to other jurisdictions). This is a duty that was given to our predecessor organisation, the Financial Services Authority (FSA), by FSMA 2000 but was not retained when the FCA was created in 2013. In many ways, promoting competition will enhance competitiveness. Healthy competition encourages productivity and growth, and UK markets will be more attractive if they offer better value and more innovative services. Recent developments in the 'macroconduct[9]' literature have taught us that better regulated financial markets will in turn boost growth and stability, thus affecting macroeconomic conditions and the competitiveness of the economy as a whole.

Through our operational objectives we seek to support and maintain healthy and successful financial markets. Such markets are ones that can demonstrate clear, proportionate and

6 Section 1G of FSMA.

7 www.handbook.fca.org.uk/handbook/glossary/G210.html

8 www.fca.org.uk/publications/market-studies/general-insurance-add-ons-market-study

9 See Ross Levine, "In Defense of Wall Street: The Social Productivity of the Financial System", in: "The Role of Central Banks in Financial Stability: How Has It Changed?", Eds: Douglas Evanoff, Cornelia Holthausen, George Kaufman, and Manfred Kremer, World Scientific Studies in International Economics, 2014, 257-281.

consistently applied standards of market practice, transparency, open access and effective competition. Users should be able to undertake investment, funding, risk transfer and other transactions in a predictable way. For this to happen, markets need to be supported by resilient infrastructure which enables the sourcing of liquidity, facilitates the discovery of competitive prices and ensures the proper allocation of capital and risk.

We inevitably have to make choices when we decide how we will meet our objectives, and there is invariably more than one way to achieve an outcome. We need to think both about the type and scale of potential harm, how urgently any harm needs to be stopped, the capabilities of affected users, how our resources will make the most difference and whether we need to educate or intervene directly – or both. Our actions can have a significant impact on consumers and markets, so we also need to think carefully about the potential unintended consequences of any action we take. Unintended consequences can range from reducing competition, to imposing unnecessary cost, to leaving a whole group of consumers without a service.

We generally aim to advance our objectives using a combination of measures. Our work with debt-management companies is a good example of this. Consumers turn to these firms to help them manage problem debt, and around 400,000 people are currently using debt management plans. However, our review of debt-management firms found examples of high charges and unfair terms and conditions. We are now completing a firm-by-firm assessment of these firms when they apply for authorisation under the FSMA regime[10], and around 100 of them have opted to leave the market. We also make sure that firms' customers are not abandoned when we refuse full authorisation. In March this year, we wrote to 16,000 customers of one debt-management company to tell them we had refused to authorise it and explaining where they could get free, impartial advice about managing their debts. This programme of work is changing an industry which poses a high risk to often vulnerable consumers while ensuring these consumers get the information that can help them. By joining up a number of tools across the FCA, using individual firm analysis, multi-firm reviews and policy analysis we used our resources effectively to achieve a bigger impact on both industry practice and consumers.

In all of our work, we apply the following principles of good regulation:

1. **Efficiency and economy.** The need to use our resources in the most efficient and economical way.

2. **Proportionality.** The principle that any burden or restriction that we impose on a person, firm or activity is proportionate to the benefits we expect as a result. To judge this, we take into account the costs to firms and consumers.

3. **Sustainable growth.** The desirability of sustainable growth in the UK economy in the medium or long term.

4. **Consumer responsibility.** The general principle that consumers should take responsibility for their decisions.

5. **Senior management responsibility.** The responsibility of firm's senior management for compliance with our requirements.

6. **Recognising the differences in the businesses of different regulated persons.**

7. **Openness and disclosure.** The desirability of publishing relevant market information about regulated persons, with appropriate safeguards, or requiring them to do so.

8. **Transparency.** The principle that we should exercise our functions as transparently as possible. It is important that we provide appropriate information about our regulatory decisions and that we are open and accessible with both the firms we regulate and the general public.

10 These firms were previously authorised under the Consumer Credit Act 1974 and regulated by the Office of Fair Trading.

The scope of our regulation

Under FSMA, firms which conduct specific activities set out in the Regulated Activities Order (RAO) are required to get our authorisation. Once authorised, these firms become 'regulated firms'. However, these firms may also carry out activities that do not come directly under our regulation. We have extensive powers for regulated firms carrying on regulated activities, and more limited powers for regulated firms carrying on non-regulated activities.

In recent years, some of the biggest challenges financial services have faced have happened in activities outside the RAO, whether in LIBOR or FX or discovered in our review of treatment of small business customers. While all these issues involved conduct in financial services, and undermined confidence in the UK financial system, they occurred through activities that we did not directly regulate.

Our powers do allow us to act outside the perimeter in some circumstances, and we seek to give greater clarity about when we will do so. The legal basis for our intervention depends on the type of intervention required. Under FSMA we can make rules applying to authorised persons within the perimeter for carrying on activities that are not regulated when we believe it is necessary or expedient for the purpose of advancing one or more of our operational objectives.[11] For example, our General Prudential sourcebook (GENPRU) states that it applies to a 'firm in relation to the whole of its business, except where a particular provision provides for a narrower scope'.[12] FSMA also gives the FCA and the Competition and Markets Authority parallel ('concurrent') powers to investigate breaches of the Competition Act, to conduct market studies and to make market investigation references. Therefore, in relation to these powers, we are not restricted by the regulatory perimeter.

The unregulated activities of a firm can be relevant to whether that firm continues to meet the Threshold Condition of suitability. This requires the firm to be a fit and proper person.[13] Whether this is the case or not may well depend on the firm's behaviour in matters that go beyond the provision of regulated activities, eg a previous conviction of a senior manager for dishonesty that did not involve a regulated activity.

We can also take action in the absence of rules in circumstances where we consider it necessary to advance our operational objectives.

Our market integrity objective applies to the overall UK financial system. This means that, if we believe that a regulated firm's unregulated activity could affect the integrity of the financial system, for example the mis-selling by a firm of a product that the FCA does not regulate, we could seek to make rules or use other FSMA powers.

Our consumer protection objective is more closely tied to regulated activities. Yet it, too, provides scope for us to act when firms' unregulated activities have potential to impact 'consumers' within the meaning of the broad definition in FSMA. For example, the FCA principle of paying due regard to the interests of its customers, and treating the customer fairly, would apply to unregulated generic advice provided as a preparatory step to providing a regulated service. The aim of this approach is to secure an appropriate degree of protection for consumers.

Finally, the SM&CR provides scope for us to make rules governing the conduct of individuals for unregulated activities carried on by the firms for whom they work.[14]

We are more likely to look at activities outside the regulatory perimeter if an unregulated activity:

11 Section 137A(1)(b) FSMA.

12 GENPRU 1.1.3R.

13 Schedule 6 to FSMA and COND 2.5.

14 FSMA, section 64A, distinguishes between the scope of the regulator's jurisdiction according to whether the relevant individual is an approved person or not.

- is illegal or fraudulent
- has the potential to undermine confidence in the UK financial system
- is closely linked to, or may affect, a regulated activity
- calls into question the suitability of the firm

Our primary focus will continue to be on regulated activities. However, given the damage they can cause, we will intervene against unregulated activities on a case by case basis if we consider they pose a threat to our objectives.

Defining harm in financial conduct

We deal with highly complex issues, and have a wide range of powers available to address them. Most of them require us to use a combination of approaches which, together, will address the potential harm or risk of harm we have identified.[15] Often, we will use both market-wide and firm-specific powers.

Harm from financial services can take different forms and is equally important in wholesale and retail markets. These forms include: financial harm (whether direct or indirect), harm to market confidence and the UK economy and non-financial harm such as impacts on consumers' confidence and well-being. We group harm into five types, though these are not mutually exclusive and often overlap.

Type of harm	Relevant FCA operational objective(s)
1. Risk of significant harmful side-effects on wider markets, the UK economy and, wider society eg crime/terrorism	Market integrity
2. Purchases of unsuitable products; customer service/treatment	Consumer protection Effective competition
3. Confidence and participation threatened by market abuse or unreliable performance	Market integrity Consumer protection
4. Prices too high or quality too low	Effective competition
5. Important consumer needs are not met due to gaps in the existing range of products, consumer exclusion, lack of market resilience	Effective competition Consumer protection

We seek to define harm by looking at its impact. For example, we see financial crime as a risk to the wider UK economy and market integrity. We can take a more benign view of some failings because of their different side effects, but in other instances we will take a very serious view of a risk posed (eg a single instance of terrorist financing).

To choose the right response we start with a diagnostic assessment of the type and cause of harm we have identified. We then apply a framework to help decide on the priority and type of intervention needed. We prioritise early detection and interventions before problems cause widespread harm. Finally, we seek to communicate clearly so that all stakeholders can understand the cause of the harm we are trying to address, our interventions and how they will deal with the problem.

Generally, when we identify issues in a firm or market segment we consider making more tailored interventions through our individual supervision or investigatory work with firms. Where we identify market-wide problems, this will lead us to consider possible interventions of

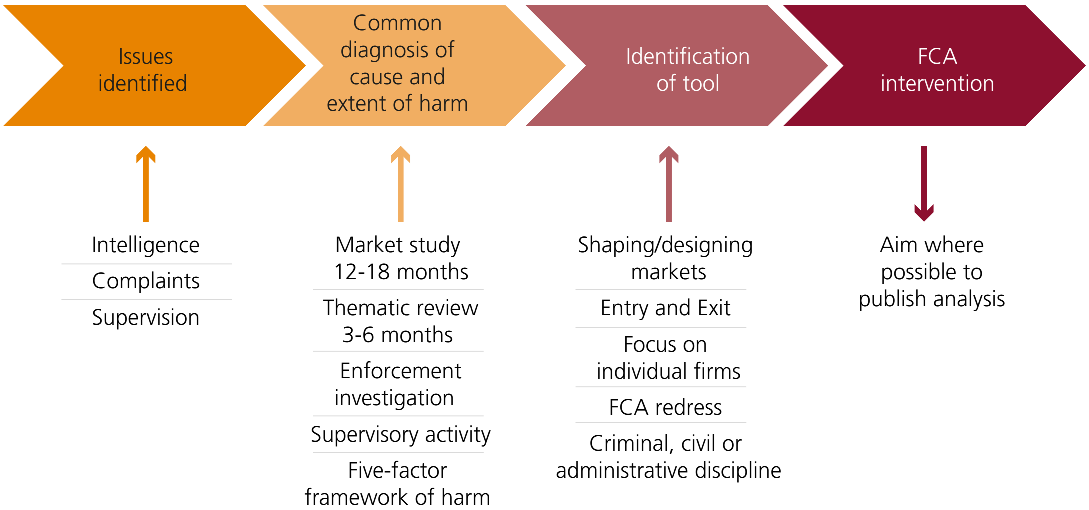
15 Here, we refer to harm within a single firm, risk of market wide harm and market wide harm interchangeably. In practice the diagnostic process would identify much more precisely the scale and spread of the harm identified.

market design, tackling restrictions to entering or leaving the market and redress. We can tailor action in any of these areas to fit with a subsequent focus on individual firm work.

For example, when we took on the regulation of about 50,000 consumer credit firms in April 2014, we decided to use a combination of powers to enact fundamental change in the credit market. We made radical changes in market design: introducing a cap for payday lending[16], restricting the number of times loans could be rolled over and limiting the use of continuous payment authorities. We required high standards for those entering the market with all firms meeting our Threshold Conditions. We also took action against poor behaviour by individual firms, including imposing financial penalties, and required redress to be paid in a number of instances.[17] And, we looked at competition in the credit card market.[18]

Our choice of approach is obviously affected by the nature of the challenge we identify and the vulnerability of the consumers affected. If we think we need to act immediately we will usually work with firms to encourage a change of behaviour. Where complex, targeted solutions are needed, working with firms directly is likely to be more effective than other available approaches. Equally, where we want simultaneous market change rather than individual firm change, we are more likely to use our powers to modify the way markets are designed.

Fig. 1 Our intervention framework



We employ a range of diagnostic tools. Each of them requires different skills and approaches to diagnose the underlying cause of harm and to determine what action to take.

We use six main diagnostic tools:

- **Individual firm analysis** – Our most commonly applied and quickest diagnostic tool is the direct work our supervisors do with individual firms. We ask firms for information about their systems and controls, risk-identification and governance to assess if there is a risk of harm and its cause.

- **Multi-firm reviews** – We use individual firm analysis to create benchmarks which we use to diagnose causes of harm across small groups of firms. Benchmarking is used frequently in this way, particularly in fragmented markets.

16 www.fca.org.uk/publications/consultation-papers/cp14-10-proposals-price-cap-high-cost-short-term-credit
17 www.fca.org.uk/news/press-releases/wonga-pay-redress-unfair-debt-collection-practices; www.fca.org.uk/news/press-releases/payday-firm-cfo-lending-pay-34-million-redress
18 www.fca.org.uk/publication/market-studies/ms14-6-3-credit-card-market-study-final-findings-report.pdf

- **Thematic reviews** – We use these to assess a current or emerging risk in an issue or product across a number of firms within a sector or market. These reviews can bring together both the diagnostic process of understanding the cause of the issue and the mix of tools we need to use to tackle it. We may decide to use other tools such as investigations as a result of diagnosis.

- **Investigations** – We use these where we suspect an individual, firm or firms of serious misconduct. We have wide-ranging powers which include requiring firms and individuals to provide us with documents and information, attend interviews and answer our questions.

- **Market studies** – These are the main way we examine whole markets to see how well they are working for consumers. When we launch a market study we publish a document on our website which explains the intentions and scope of the study and our issues of concern. Market studies often bring together our diagnostic processes by working across the FCA to help us identify tools to deliver possible remedies to the causes of harm we identify.

- **Policy work** – Our policies set out a clear vision of what successful markets should look like. We monitor markets, identify risks and then propose regulatory initiatives to mitigate against them, by considering a range of possible interventions. We test proposed policies, internally and externally, to examine their necessity and effectiveness.

We support our diagnostic process with a range of tools we have developed. These include tools that sit alongside our supervisory activities, House Views which we have developed to bring knowledge from across the FCA into a common understanding of the markets we regulate and market intelligence to gather wider information to help us understand external factors at play. Our decisions are supported by a common risk appetite, Cost Benefit Analysis and post-implementation reviews to ensure we continue to use our resources well.

Q6: Do you think our intervention framework is the correct one?

Q7: Do you think the way we interpret our objective to protect and enhance the integrity of the UK financial system is appropriate? Are there other aspects you think we should include?

6.
Regulation and broader public policy – getting the balance right

A combination of factors including an ageing population, changing working patterns, technology and much greater emphasis on consumers' responsibility for their financial choices present new challenges for firms, regulators and consumers.

The UK's population is ageing. The ONS forecasts an increase of over 1 million in the number of people over 65 by 2020 and points out that the over 85's are the UK's fastest growing age group. We have encouraged firms to find ways of meeting the new needs of these consumers. Many firms have responded to our call in innovative ways (for instance, we have seen voice-activated apps developed for those with impaired vision).

We need to establish where conduct regulation has a role to play in overcoming these kinds of challenges and where our role ends and that of broader public policymaking takes over. To do so we need to root our responses in a clear framework to ensure we make decisions that are consistent and which we can clearly account for.

Below we have outlined some of the key issues where we need to be clearer about our role.

Access

We know that financial services are essential for people to fully participate in UK society, from the way that people are paid their wages to the way they pay their utility bills. However, consumers do not have an automatic right to receive products and services and financial services firms do not have an obligation to provide them.

While we have a strategic objective to ensure markets function well, we do not have a specific objective or duty to ensure consumer access or financial inclusion. However, FSMA sets out that, in furthering our competition objective, we may 'have regard to the ease with which consumers who may wish to use those services, including consumers in areas affected by social or economic deprivation, can access them.'

Promoting competition helps expand access to goods and services. Cheaper services will be affordable to more people and reducing barriers to entry enables new firms to plug niche gaps in the market.

The government has decided that, looking more broadly, some services are so important that all consumers should have access to them. These include heating, flood insurance, basic bank accounts and telecoms. In these examples, public policy is that certain groups of customers should cross-subsidise others to ensure everyone has access to these services.

No such decision has been taken for financial services beyond flood insurance and basic bank accounts, and if the question of whether it should be were to arise, we regard this as one for broader public policy.

We will continue to work with firms to make sure they take into account the need to treat customers fairly when they take business decisions that will affect access, such as making changes to after-sales services or stopping services to some groups of customers, for example, the challenges those who have, or had, cancer face in getting insurance.

Price discrimination

Financial service markets can share two features which cause consumers to pay different prices for equivalent products or services, or pay the same price even though the cost to the firm of supplying them differs.

The first common feature is that *consumers are price-sensitive to different degrees*. This might be because some consumers are better able to identify the full range of returns and charges implied by a contract. This is why economists often model markets with both 'sophisticated' and 'naïve' consumers. Or differences in price-sensitivity might arise because of differences in willingness to make the effort to search and switch between suppliers. Or certain consumers may face barriers to switching.

The second common feature is that, increasingly, *firms have the data* to model which groups of consumers, or which individual consumers, will be more price-sensitive. Hence firms are able to charge higher prices to those groups or individuals, or between products, expected to be less price-sensitive. The use of Big Data and user segmentation can allow firms to better tailor offers to active or sophisticated consumers, while the passive or unaware are left behind. Where price-sensitive consumers are paying *prices that are less than the service costs to provide*, they are being *cross-subsidised* from the prices charged to other consumers.

Once cross-subsidies become central to how a market works, firms can become highly focused on ways of extracting more and more profit from trapped or otherwise price-insensitive consumers. Market forces may not change that dynamic. Any current firm or potential entrant that tries to educate consumers to be more price-sensitive, or seeks to change its charging structure or practices, may find that it cannot attract consumers at all. More active or sophisticated consumers may not switch to a new entrant because they negotiate lower prices with their existing firm and are cross-subsidised by less active customers paying higher prices. If an entrant firm declines to make initial offers to attract customers then it will attract neither naive nor sophisticated consumers. And if it educates any naive consumers it does acquire, it will lose them as they will move to firms that do cross subsidise to give lower prices to sophisticated customers.

Such practices raise a challenge for us in terms of the limits of our role. Our statutory objectives can make a clear case for interventions in some markets, such as where we can justify them as increasing competition. Inevitably, this requires a judgement about the acceptable level of price discrimination and cross-subsidy between different groups of consumers and different products or services. Some level of cross-subsidy is inevitable, but beyond a certain point it can have harmful effects that threaten our objectives. In future we will seek to be more transparent when we make judgements of this sort.

Technological change

Technology is transforming financial services, from online banking to algorithmic trading in wholesale markets to the potential for blockchain to change the way companies make and verify transactions. Technology offers significant opportunities to both users and providers of financial services, but also brings the potential for harm.

Given our role of ensuring markets work well, we believe we have a specific role in promoting innovation in the interests of users. This includes using non-traditional regulatory responses, including bringing market participants together to discuss the challenges posed and opening FCA processes to all to allow technological solutions to be developed to meet our concerns.

Long term products

The availability of defined benefit pensions and sales of annuities are declining, the state pension age is rising and consumers have more options when they decide to access their pension savings. Increases in housing costs mean that consumers are spreading the cost of mortgages over a longer period of time, including into retirement. Halifax Bank, for example, showed the proportion of first time mortgages taken out for a period of over 35 years increased from 15% in 2007 to over a quarter in 2015. As a result, growing numbers of consumers have to take very long-term decisions that will affect their financial wellbeing in retirement. This is exacerbating the challenges created by complexity, uncertainty and 'present bias' (the tendency to give greater weight to pay-offs the nearer in time to the present they are) which many consumers face when making financial decisions.

Responses to this already include the introduction in workplace pensions of auto-enrolment to increase savings for retirement and Independent Governance Committees to ensure value for money in workplace pensions.

The appropriate regulation of conduct for long-term financial products is inevitably challenging. This is because it involves judgements on the effects of changing circumstances – for instance, for consumers and in the economy and in society more broadly – and to what extent these should have been foreseen in the design of products. We have issued our statement on fair treatment of long-standing customers in the life insurance sector.[19] Our work on the Mission is an opportunity to assess whether this approach has established clear principles to guide the future.

A 'duty of care'

We benefit from being required to consult on the impact of our work with four statutory panels. The Financial Services Consumer Panel believes that the culture in financial services could be significantly improved if we had a legal duty to make rules specifying what a reasonable duty of care is for financial service providers to their retail customers. In their view, 'consumers can only reasonably be expected to take responsibility for their decisions where firms have exercised a duty of care.'

The scope of the duty on firms, and whether it would extend beyond a duty to use reasonable skill and care in a firm's dealings with its customers, would need to be explored. A result of introducing a 'duty of care' might be to strengthen consumers' ability to take action in the courts if there has been a breach of FCA rules or to increase the use of class actions.

We have argued previously that a duty of care is unnecessary, as the FCA Principles are themselves FCA rules, and they include an obligation on firms to treat customers fairly. This remains our view. However, we recognise that customers cannot currently bring civil claims based on an alleged breach of Principle 6 (the duty to treat customers fairly) alone. Consumers are not currently able to take court action on the basis of the Principles. Similarly, the FCA has no role in setting the rules for class actions. On balance, we do not believe that it is necessary for us to have a duty of care rule, but we welcome your views.

We would also welcome views on whether such a duty could help to define the respective responsibilities of product providers and intermediaries or advisers responsible for the sale of the products.

Q8: Where do you believe the boundary between broader policy and the FCA's regulatory responsibility lies?

19 www.fca.org.uk/publications/thematic-reviews/tr16-2-fair-treatment-long-standing-customers-life-insurance-sector

Q9: **Is our understanding of the benefits and risks of price discrimination and cross subsidy correct? Is our approach to intervention the right one?**

Q10: **Does increased individual responsibility increase the need and scope for a greater and more innovative regulatory response?**

Q11: **Would a Duty of Care help ensure that financial markets function well?**

7. Protecting consumers

When markets fail consumers, the implications can be serious for individual customers, the firms involved and for public trust in financial institutions themselves.

The mis-selling of PPI is one of the starkest examples. It has developed into the biggest single issue of financial mis-selling in UK history. Since PPI complaints began rising in 2007, consumers have made over 17 million complaints to firms. So far, firms have paid out over £24.5 billion in redress. The market for this kind of insurance, which some people may have found valuable, has practically collapsed.

Yet today's consumers are increasingly expected to take responsibility for their own financial decisions, including choosing pension options and providing for care in later life.

FSMA sets out a broad definition of 'consumer'. It includes persons who use, have used or may use regulated financial services and persons who have 'relevant rights or interests in relation to financial instruments'. FSMA requires us to take account of the principle that 'consumers should take responsibility for their actions'. However, it also requires us to 'have regard to the differing degrees of experience and expertise that different consumers may have.'

Meeting our consumer protection objective is not about ensuring a market where consumers never make poor choices, but about ensuring they have an appropriate degree of protection. Both firms and consumers have responsibilities. While a poorly functioning market or behaviour from firms can create harm for consumers, they can also experience harm as a result of their own poor judgement or from external factors beyond their control or that of the supplier.

When we decide what level of consumer protection is appropriate, we do so primarily against two factors. The first is the complexity of different markets or products and the second is the capability of customers to exercise judgements about them. We give consumers greater protection for riskier, more complex products, and we give greater protection to consumers who have less capability.

The balance of responsibility

In many markets, the consumer, provider and producer of goods and services clearly understand their own responsibilities. For example, medical professionals provide advice and prescribe or sell products based on the information consumers have given them about their needs. Consumers, in turn, are expected to follow the instructions they are given on these products. These respective responsibilities are clear cut and never vary.

However, the respective responsibilities of consumers and firms in financial services are more complex. While regulated firms must meet minimum standards, the balance of consumer/firm responsibility will vary depending on the particular product or transaction and how it is sold.

Just as there are no perfect markets in the real world, our approach is to look at the capabilities of actual consumers and their likely responses, rather than those of a theoretical consumer who is aware of all available options and able to assess them perfectly.

We consult publicly on many of our judgements to get feedback based on experience from industry, consumers and consumer bodies. By doing this, we can set our expectations of what an appropriate degree of consumer protection is, and communicate it clearly, both to firms and to consumers. For example, we can communicate clearly that there is no protection for depositors over and above the current £75,000 offered by the FSCS.

Our role in delivering consumer redress

In financial markets, as with any other market, sometimes things go wrong and a consumer feels that a promise has not been kept or they have been unfairly treated. When this happens consumers can claim redress through the courts if the law has been broken or they have suffered a breach of contract. But such claims can take time, be expensive to pursue and involve complex issues of law and fact.[20] Some consumers, particularly the most vulnerable, will not seek redress through the courts as lack of time, money and understanding of the process create large obstacles.

FSMA enables consumers to be given additional protection through simpler and cheaper routes to redress. These alternative routes are also an important source of market confidence and integrity. Consumers are likely to be more willing to engage with financial services if they are confident that they can effectively and quickly challenge unfair treatment and get a remedy. And other firms are likely to have greater confidence that competitors' wrongdoing will be exposed through easy-to-access systems for redress. Consumers, firms and regulators judge how successful these alternative routes are based on their ability to deliver fair outcomes more quickly and cheaply than through the courts. We commonly seek injunctions, prosecute and obtain redress for victims of unregulated businesses through the courts. This has been a major part of our work for many years.

In our view, the financial conduct regulator has a role in ensuring that consumers receive redress, although the nature and extent of the role varies depending on the particular type of redress. The way redress can be provided is varied:

- complaints led, such as PPI and the Financial Ombudsman Service
- specific statutory powers, such as consumer redress schemes under FSMA, for example the Arch cru scheme which related to unsuitable advice given to investors in Arch cru funds
- voluntary schemes which can occur when the actual harm comes from a regulated firm undertaking an activity either inside or outside the regulatory perimeter. Examples of a voluntary redress scheme include Interest Rate Hedging Products and when firms agree to pay redress as part of an enforcement settlement, and
- schemes of arrangement under the Companies Act 2006, where we may also use our statutory powers for arrangements made between a company and its creditors to pay redress**,** such as the scheme set up to deal with mis-selling of card/identity protection by Card Protection Plan

Our role is to bring firms which have breached regulatory requirements to account and to ensure that redress follows, so consumers who have suffered because of this breach are compensated.

Most FCA redress programmes are likely to involve the following key stages:

1. a past business review (PBR), either by the firm or an independent third party, to identify the consumers who might have suffered from the firm's non-compliant conduct and so could be eligible for redress
2. assessing whether redress is required
3. calculating and paying redress

20 Although the small claims court process which deals with cases whose value is £10,000 or less mitigates some of these difficulties.

An FCA redress scheme will typically involve us both setting out the test for whether redress should be paid and the relevant arrangements for calculating and paying it. This may include requiring firms to appoint skilled persons to supervise the scheme. However, individuals can still go to the Financial Ombudsman Service if there is an industry-wide scheme. The Financial Ombudsman Service will decide the complaint based on the scheme's provisions.

Financial Ombudsman Service

In financial services, individual consumers, micro-enterprises, small charities and trusts have the right to complain to the Financial Ombudsman Service if they are unhappy with the way a firm has handled their complaint. Generally, the vast majority of complaints to the Financial Ombudsman Service involve issues that are specific to the individual complainant and do not indicate a wider, systemic problem. There are, however, clear exceptions, such as PPI complaints. Our role is to set the rules that govern *how* complaints are referred to the Financial Ombudsman Service and what kinds of complaint can be referred to it. We do not get involved in substantively deciding the claims because this is an independent and impartial judgement made by the Financial Ombudsman Service.[21]

FCA and redress schemes

We set the rules for how firms must handle complaints. Effective, accessible and trusted internal complaints systems operated by firms themselves are of fundamental importance to treating consumers fairly. These systems, if set up and run efficiently, remove the need for consumers, firms and regulators to use great resources on more formal and binding redress mechanisms. Firms have a responsibility to take complaints seriously and provide appropriate redress when necessary. Our involvement in these schemes can, however, be more direct, such as using our power to approve voluntary schemes of arrangement set up by firms which have demonstrated anti-competitive behaviour.

We can also require firms to identify customers who have suffered detriment and provide compensation when there has been a widespread or regular failure by firms to comply with their regulatory requirements. We have a statutory duty to supervise the firms we authorise and the power to discipline those which do not comply with their regulatory requirements. An appropriate outcome of this kind of supervision, either through a formal enforcement process or as part of more general supervisory duties, may be a requirement for the firm to offer redress.

We are also involved in voluntary redress schemes which do not involve a direct use of our powers to compel firms to provide redress. These schemes come under our Competition Act powers and allow us to seek agreement from firms to pay redress for breaches of competition law that fall outside our regulatory perimeter. We discuss our approach to such perimeter issues in the next section.

We need to be clear about the scope of the redress exercise and our role in the exercise, both with firms and the wider public. We must also ensure our decisions and requirements are consistent and communicated clearly, and that the affected consumers and firms feel that they have been treated fairly throughout.

21 Although there is some nuance on this point. For example, we have rules on how firms should consider PPI complaints and what redress they should pay and the Financial Ombudsman Service is required to take our rules and guidance into account.

Challenges and issues relating to redress

There are a number of challenges and issues for redress schemes on which we would like views:

- **How quickly redress is needed** – We are more likely to undertake a redress exercise if factors such as the vulnerability of consumers make it more important that they can get redress quickly. Just as our work on the vulnerability of some consumers[22] highlighted the importance of supporting access to financial services, it is equally important to ensure they can get a speedy remedy. It is precisely these consumers that are most likely to have suffered both financially and emotionally from the wrongdoing and who will have greatest need for redress that is both simple to access and quick to provide a remedy. We must seek to ensure our redress schemes are set up where possible to deliver redress faster than available through the courts, given the number of consumers involved.

- **Number of affected consumers** – We will be more likely to make arrangements for providing redress if large numbers of consumers have been affected. An example of this is PPI. Prioritising such large arrangements creates challenges in ensuring valid claims are met, communicating the arrangements to all eligible claimants and ensuring appropriate finality and certainty for firms and claimants on when the scheme will end.

- **Activity outside our regulatory remit** – In the past we have sometimes taken enforcement action where harm has come from regulated firms undertaking unregulated activities, given our remit covers firms' behaviour more generally. However, unless a firm agrees, we are unlikely to be able to deliver a redress scheme if the wrong-doing involves activity outside our regulatory perimeter. Instead, our approach has been to seek to ensure that the firm puts an acceptable voluntary scheme of redress in place.

- **Communication** – In past schemes we have had complaints that we have not been clear at the start about how long the redress exercise will take, who it will cover and its basis within our powers. In future we will communicate this information clearly at the outset. Because many financial products are long-term there are challenges in informing as many potential complainants as possible about the scheme. If, for example, a particular product was mis-sold many years ago, a consumer may no longer have the evidence. Ensuring comprehensive, accurate and widespread communication is a role for firms and us, but other organisations, such as consumer organisations, also have an influential role to play.

Treatment of individual complainants

Despite the FCA or firms employing independent reviewers, some complainants still feel that the redress procedure is not transparent enough and does not give them the same level of personal attention they would get from the individual complaint procedure through the Financial Ombudsman Service or courts. We welcome feedback on how we could improve how consumers feel about the redress process without reducing its relative speed and low cost.

Q12: Is our approach to offering consumers greater protection for more complex products the right one?

Q13: Is our regulatory distinction between consumers with greater or lesser capability appropriate?

Q14: Is our approach to redress schemes for issues outside our regulatory perimeter the right one? Would more specific criteria help firms and consumers?

Q15: What more can we do to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention?

22 FCA Occasional Paper 8 (2015)

8.
Vulnerable consumers

People can become vulnerable at any time in their lives, and vulnerability can be temporary, sporadic or permanent. At any one time, there are substantial numbers of vulnerable consumers in the UK. There are currently over 800,000 people living with dementia; and this figure is expected to double over the next 40 years. Every year, one in four adults experience at least one mental health disorder. Three million people struggle with problem debt and over 16 million people have savings of less than £100. Divorce and illness can tip people into homelessness and unemployment, from which it can take years to recover. Wealthy pensioners are more vulnerable to being defrauded by scammers who target retirees.

But, as our Occasional Paper[23] into consumer vulnerability found, vulnerability is not confined purely to a consumer's own situation. It can be both caused and exacerbated by firms' actions or processes. Someone suffering stress because of a bereavement or illness, for example, can be defeated by a complex telephone menu system with a 'computer says no' response if they are unable to talk to a person or a call handler. While some firms have put a considerable amount of resource into prioritising how they treat vulnerable consumers, thus turning the lessons from our Occasional Paper into practice, we know that too many still have rigid systems that exclude vulnerable consumers or worsen their poor financial situation.

Additionally, both our behavioural economics work and research into consumer vulnerability[24] show that we are all susceptible to behavioural bias. No consumer is aware of and able to assess perfectly all available options, and behavioural bias affects how we buy goods and products every day. However, we should not conflate the psychological biases that we all face with either individual levels of financial capability or with circumstances that lead some people to be particularly vulnerable. Behavioural biases can be exacerbated by a consumer's capabilities or circumstances, and vice versa.

Regulating for vulnerable consumers

We have a duty to meet the Public Sector Equality Duty of the Equality Act 2010. We assess each of our processes, policies and actions to ensure we consider the potential impact on consumers who are part of protected diversity groups. These are: age, disability, gender-reassignment, marital or civil partnership status, pregnancy and maternity, race, religion and belief, sex and sexual orientation. We use Equality Impact Assessments as part of this analysis, which enables us to better understand all consumers.

As a regulator, we aim to afford more protection to those with less financial capability. We know that groups with different vulnerabilities may experience particular problems with capability. For example, research[25] shows that low-income groups are more likely to experience a 'scarcity mindset' – where living with scarce resources like money and time fundamentally changes the way that people think. Living with scarcity reduces cognitive capacity for other areas of their lives, leading to lower levels of attention, self-control and long-term planning ability – all of which create poorer outcomes for individuals in this group.

23 www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability

24 www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability and Vulnerability Exposed: The Consumer Experience of Vulnerability in Financial Services (2104) ESRO (commissioned by the FCA)

25 Fell & Hewstone, 'Psychological perspectives on poverty', Joseph Rowntree Foundation 2015, www.jrf.org.uk/report/psychological-perspectives-poverty

Additionally, our research showed that some consumers are especially susceptible to detriment and can find it particularly difficult to take responsibility for decisions about financial services. These include the one in seven adults with low literacy, the 50% with poor numeracy, the 16% of working age adults with a disability and consumers with a chronic or significant illness. Whatever the individual vulnerability, low income is an overarching factor which multiplies all vulnerabilities and leads to greater detriment.

Recognising this, recent legislative and regulatory action on short-term high-cost credit introduced a price cap in one area of high-cost credit (payday lending) and restricted a series of common market practices, such as continuous payment authorities and credit rollovers. In taking this action, we considered the balance between protecting vulnerable consumers from making decisions that may not have been in their own interests, while maintaining market access to consumers who may benefit from such credit.

We know that the risk of substantial consumer harm is significantly greater for particular consumer groups in some markets. When we decide what regulatory action to take, we focus on the potential harm of a particular product, firm or market and the capabilities of consumers using them. This will mean we give some consumer groups, in some markets, higher levels of protection than others.

However, given the diverse causes and effects of vulnerability, we know that wealthy consumers may also be vulnerable to mis-selling of investment products or to financial scams. We currently try to protect this group of consumers through high-profile educational campaigns, run together with partners from consumer groups and financial services. An example of this is our ScamSmart campaign to give retirees the tools to identify and avoid financial scams.

While we prioritise the protection of vulnerable consumers on a low income, our regulatory approach is flexible and we will continue to respond to emerging patterns in consumer vulnerability.

Q16: Is our approach of giving more vulnerable consumers greater levels of protection the right one?

9.
The role of disclosure in consumers' choices

Public policymakers have long assumed that the more information people have, the more likely they are to make appropriate choices. This matters especially in financial services, where consumers are often committing large sums of money or entering into contracts that they will have to stick to, often for some time. It seems particularly important that firms offering financial goods and services give current and potential customers as much information as possible about the relevant terms and conditions.

The numbers of people in the UK making these kinds of choices about general insurance alone show the scale of this issue. In 2015, over 20 million people had contents insurance, 20 million had motor insurance and 17 million had buildings insurance. The UK has the largest insurance and long-term savings industry in Europe. Whether we are taking out loans and credit cards, buying and protecting our homes, saving for retirement or taking out life cover to provide for our dependents, we make choices about financial services at every stage of our lives.

Transparency and disclosure

It is not surprising that regulators have historically focused on the need for firms to provide transparency and disclosure to consumers. This seeks to deal with the challenge of the unequal level of information between users and providers of financial services, known as information asymmetry, to level the playing field. So the need for transparency and disclosure underpin many of our existing rules.

Disclosure also helps reduce moral hazard by clearly differentiating between a firm's responsibility to provide information in an accessible form, and a consumer's responsibility to take decisions based on this clear and accessible information.

And, when it is effective, disclosure also helps consumers apply market discipline. It can make transactions more efficient, reduce the need for consumers to conduct their own research and reduce the likelihood of them subsequently complaining they did not have enough information to make the right choices. In wholesale markets, characterised by more sophisticated and knowledgeable agents and firms, disclosure remains a highly effective and cost-efficient way of improving the way markets work.

Despite this, we know that disclosure and transparency in retail markets can sometimes have only a very limited effect in correcting market failures. This is particularly true for higher risk products or for more vulnerable consumers. Yet disclosure can impose substantial costs on firms. Given these limitations, we believe there is a greater need for us to intervene with alternatives to disclosure and transparency where we believe it is required.

The unpredictability of disclosure

It is now clear that, in real life, consumers do not always respond to disclosure in the way that many policymakers and regulators have assumed.

Behavioural economics, rooted in a psychological understanding of how consumers actually take decisions, suggests:

- Consumers are not always able or willing to use the 'official' material. Instead they use less structured, more personal decision-making. They typically buy products based on a narrative of what they want and believe they deserve, rather than by logically balancing opportunity against risk.
- Consumers focus on the 'here and now'. They zoom in on headline returns or other upfront product features and do not take account of associated contingent charges like overdraft fees or early exit charges – or of the risks of things going wrong. This means that, for them, potentially expensive product features can be 'hidden in plain sight'.
- Firms, either deliberately or unconsciously, design contracts or use sales practices that take advantage of consumer psychology. Personal interaction, persuasion and trust will typically be the most relevant factors to consumers when they get risk warnings. If firms can first get customers 'bought in' to the benefits of a product, and then give them the risks or downsides, these warnings are unlikely to get through to customers and so will be ineffective. Similarly, if firms preface risk warnings by saying they are required to give them by regulators this, too, is unlikely to make consumers take them into account.

Behavioural economics does not provide a simple silver bullet. It draws on psychology to tell us that consumers rely on heuristics (biases) to make decisions. Other sciences tell us about other aspects of decision-making, especially under uncertainty. Thus to change the decisions people make over time we are likely to consider issues such as what anthropology, neuroscience, marketing, psychology more broadly, and sociology tell us about how people make decisions.

How behavioural economics is adapting our regulatory response

We commissioned research into the literature that firms provide. This identified good practice and highlighted practical examples of where behavioural insights have been used to improve firms' disclosure and make it more effective in real life as part of our Smarter Communications initiative with firms. We have also recently published a Discussion Paper on Smarter Communications[26] which aims to challenge how firms communicate and deliver information to consumers, as well as subsequent feedback.[27]

This, and other research[28] we have done, also shows that 'less can be more' and that too much information can confuse consumers. So, for example, instead of detailed information about premiums, we now require firms providing general insurance to simply show customers at renewal what their previous years' premium was.

We believe we can play a greater role in helping consumers by influencing how they make decisions. This can include changing the way firms present choices to consumers (known as 'choice architecture'). It can also include 'nudging' (encouraging change in small stages) passive consumers by giving them easy options to switch provider or 'default' them into simpler, cheaper products instead of expensive and complex ones. Nudges are changes to the way choices are presented which help people make better decisions. One example where we have used evidence to nudge consumers to make more informed choices is in general insurance add-on products. We made rules in 2015 banning the use of pre-ticked or default purchases of these products, because we found[29] that consumers tended to make worse choices and get poorer value for money when these products were automatically added to purchases.

26 www.fca.org.uk/publication/discussion/dp15-05-smarter-consumer-communications.pdf
27 www.fca.org.uk/publication/feedback/fs16-10.pdf
28 www.fca.org.uk/publication/research/review-of-literature-on-product-disclosure.pdf
29 www.fca.org.uk/publication/occasional-papers/occasional-paper-3.pdf

However, where we judge that even nudges do not prevent consumers from making poor choices, we will consider intervening more significantly, such as restricting some products or imposing constraints on price. Yet these types of measures can negatively affect consumers who do choose well and they can also harm innovations in the market. So we will only use them cautiously, when we are clear that other measures will not work. In doing so, we will seek to strike the appropriate balance between the risks inherent in more and less complex markets.

Q17: Is our approach to the effectiveness of disclosure based on the right assumptions?

Q18: Given the evidence, is it appropriate for us to take a more 'interventionist' approach where conventional disclosure steps prove ineffective?

10.
When will we intervene?

A number of factors together can help us prioritise our decisions.

Severity

When looking at potential harm, we consider two aspects – its cumulative impact and its individual impact on groups of affected consumers or markets. If, for example, poor competition in a widely sold insurance product resulted in premiums being artificially high by £10 a year, the cumulative impact may be high. Alternatively, a potential fraud or mis-sale of a complex investment product may only affect a few people, but the individual loss to each may be substantial.

We also consider how severe the misconduct is, irrespective of scale of harm. Misconduct may be so severe that regulatory action is necessary, even where no loss or actual harm has occurred. For example, if individuals working in a market try to abuse or manipulate it but do not succeed, we expect to take action. This would include consideration about whether such individuals are fit to operate within the market.

We may assess severity by considering how deep-seated and entrenched problems are or, if not yet widespread, how likely they are to spread and how quickly this could happen. We may act where there is a risk of harm even if no actual harm has taken place. We may decide the potential for harm will rapidly diminish without us specifically intervening – perhaps because of adverse publicity, regulatory initiatives already underway or a number of firms who prioritise good consumer outcomes entering the market. However, the harm may be so deeply entrenched that it could return and increase unless we intervene.

We are more likely to take action where the actual or potential severity is high and/or the individual detriment is significant compared to the total wealth of the individual or the impact on wider financial markets is greatest. We acted on PPI mis-selling because while individual detriment relative to wealth was often low, total severity across the market was high. Where we and firms have the same incentives to improve problems, firms often take action to self-correct and so we are less likely to prioritise taking action.

Affected consumers/users

We consider both the financial capability of consumers and their vulnerability. We analyse whether a particular market is likely to have a *concentration* of vulnerable individuals and will act on this. Some groups of consumers are likely to be vulnerable because of circumstances that we do not want to see firms exploit, such as those who are trapped unwillingly in long-term contracts. These groups include people with credit arrears or small firms that cannot establish creditworthiness to alternative providers of banking services.

Our objectives – should we intervene and how?

We must always consider whether it is appropriate to intervene, and ask questions such as:

- would solving the problems help us meet our objectives?
- could using our powers address the problem effectively or would intervention by another authority be more effective?
- does the activity we are intervening in have a broader social benefit and, if so, how might our intervention affect its provision?
- what degree of consumer protection and responsibility might be appropriate in a particular market?

Some issues, such as access to flood insurance by those living on flood plains, are likely to need wider public debate and possibly Government intervention, given their wider public benefit.

Once we believe we *should* act on an issue, we must consider our ability to solve the problem.

Most of the problems we face have multiple causes. We have learned that an effective remedy requires us to identify the underlying causes of a problem and develop a *package* that tackles enough of those causes to make an impact. Using tools in isolation to tackle individual elements of a complex problem is unlikely to be effective. And tackling only the symptoms of an underlying problem will likely lead to its recurring in a slightly different form, as we have learned with broker funds, distributor-influenced funds and centralised investment propositions.[30] We have to consider our capacity to develop and implement a suitable package that will add up to an effective remedy.

In future, we intend to be more transparent about the things we choose to do and the things we decide not to do. We will continue to use our Business Planning process to support these choices and publish our priorities annually in our Business Plans.

We will be clearer in communicating our assessment of the underlying cause of the harm we want to prevent and how we intend to tackle it. We will seek to take a consistent approach to diagnosing the underlying cause of harm or risk we are seeking to address. This will help us develop clear precedent that allows firms to understand our approach to ensuring they comply with the rules in our Handbook. Firms should also see a more consistent assessment internally and communication externally for our choice of tool to address the identified underlying harm. The Mission will provide the basis for this framework.

We want all parties to be able to clearly track FCA action from harm to causes identified to interventions. This structure should be common across all interventions giving firms clear expectations over what to expect from us. Firms should also see that we have coordinated our approach across available tools to intervene in the most effective way for the harm we have identified.

Q19: Do you think our approach to deciding when to intervene will help make FCA decisions more predictable?

Q20: Are there any other factors we ought to consider when deciding whether to intervene?

Q21: What more do you think we could do to improve our communication about our interventions?

30 www.fca.org.uk/publication/finalised-guidance/fg12_04-adviser.pdf; www.fca.org.uk/publication/finalised-guidance/fg12-16.pdf

11. Competition and market design

We set standards and rules about who can participate in financial markets and how they must conduct themselves. An important purpose of this standard-setting is our ability to influence and review the conditions under which competition in the financial markets is working well.

When competition works well, consumers are empowered as well as informed. They can make sense of the information that they receive and can take their business elsewhere if they are not happy. In turn, firms strive to win custom on the basis of service, quality, price and innovation. This helps generate better outcomes for consumers. Markets are open to entry and innovation, and successful, innovative firms thrive, while unsuccessful firms change or exit the market.

Healthy competition relies on appropriate levels of consumer protection and market integrity. Consumers need to know they can trust the firms they deal with and are protected if something goes wrong.

When the FCA was created we were given an objective to promote effective competition in consumers' interests. We also have a competition duty that underpins our consumer protection and market integrity objectives[31] and influences all of our work. This mandate enables us to identify and address competition problems and requires us to take a more pro-competition approach to regulation.

When we are developing interventions on market design, our market studies are key. Since we were given our competition objective, we have carried out (or are carrying out) market studies to analyse how competition is working in cash savings, retirement income, general insurance, credit cards, investment banking and asset management. We use these studies to gather information on a range of relevant issues: firm strategies, business models, profitability, consumer behaviour, impact of regulation and other relevant factors. This analysis can help us to determine underlying causes of harm or potential harm.

As a result of market studies we can use our powers to seek to remedy any concerns we have identified. For example, our credit card market study[32] found there was scope for the market to work better for consumers struggling with credit card debt. We proposed a number of measures, including consulting on rules requiring firms to identify early signs of debt problems and intervene accordingly. By treating customers well, for instance, by trying to help them with debt issues, firms will be well-placed to win new business and also retain existing customers. Competition and consumer protection work in tandem.

We have also undertaken internal policy work to encourage sound firms entering the market or stopping practices that discourage innovation. We also have powers to enforce EU and UK competition law in providing financial services. These powers may also be exercised by the Competition and Markets Authority in all sectors of the economy.

Competition law forbids cartels and other potentially anti-competitive agreements, and abuse of dominant position. Examples of cartels include agreements to fix prices. Examples of other potentially anti-competitive agreements include where a distributor agrees with its supplier not to sell below a particular price. An example of abuse of a dominant position includes a dominant business taking action to exclude rivals from the market.

31 Section 1B(4) FSMA.

32 www.fca.org.uk/publication/market-studies/ms14-6-3-credit-card-market-study-final-findings-report.pdf

We have investigatory and enforcement powers under CA98 in relation to breaches of competition law. Anti-competitive agreements or abusive conduct by authorised firms may also breach obligations under FSMA, or other legislation, as well as competition law. In addition they may call into question the fitness and propriety of these authorised firms or individual approved persons. In such cases we may take action under other powers as well as CA98.

Our diagnostic tools

We employ a range of tools to diagnose the underlying cause of harm and to determine what action to take, which we have listed at page 20-21.

Our approach is always to consider a range of potential interventions. We prefer interventions that support competition rather than impose regulatory restrictions on it. So when considering market design, we favour interventions that support our operational objective to support competition in the interests of consumers. Inevitably, as with other tools, we may need to use a combination of interventions, depending on the underlying causes:

- **Transparency** – We want to use interventions that enhance firms' transparency in line with the principles of good regulation. But we have to ensure that any increased transparency is informed by a clear understanding of individuals' behaviour in practice and the biases that drive this behaviour. Hence, for example, our requirement on general insurers to disclose previous years' premium when sending out a renewal quote.

- **Proxies for competition** – Where we believe increased transparency is unlikely to be effective, we may seek to intervene in ways that provide a proxy for active consumers. An example of this is the creation of the role of Independent Governance Committees appointed by firms to scrutinise value for money in workplace pensions. These committees monitor the quality of the pension offered and, where necessary, use their role to intervene to try to increase value for money offered. They were introduced following an Office of Fair Trading report[33] which concluded that consumers were unable to act as an effective demand-side in this market and we have recently proposed rules to support these committees in their dealings with asset managers.

- **Minimum standards and high-level principles** – We try to meet our statutory objectives through setting minimum standards and high-level principles. We use our tools to incentivise firm behaviour to ensure firms comply with the standards and principles we have set.

- **Specific market interventions** – On some occasions the actual or potential harm means we intervene in ways that have a much more direct impact on competition within the market. This is particularly likely where consumers cannot easily recognise the quality of the service they are buying. Such restrictions may include making advice compulsory, such as for pension transfers, or capping prices as we did with payday lending. On other occasions we intervene to increase efficiency within a market, such as changes to listing rules to bring them into line with changes in the way companies report on their activities and executive pay in annual reports.

- **Product interventions** – In some cases the consequences of the identified harm can be so acute, widespread and specific that we need to intervene directly on products. This can involve us making specific requirements or restrictions or even banning a product. We do this when a high-risk product or service has emerged very quickly. We also do this where the problem has existed for some time but the risks have not been mitigated by the market or current regulation. This situation usually also shows that existing product governance provisions are insufficient as they have failed to identify and mitigate product or service risks.

33 http://webarchive.nationalarchives.gov.uk/20131101164215/http:/www.oft.gov.uk/shared_oft/market-studies/oft1505

Understanding human behaviour is crucial to understanding how firms compete in the marketplace and so in developing interventions to market design. Understanding individuals' behaviour in practice and the biases that drive behaviour helps us to improve the design of our interventions. Where possible we will behaviourally test any proposed interventions to understand how effective they are likely to be. However, we recognise that behavioural testing may not be a suitable technique for many of the interventions that we consider (See 'How behavioural economics is adapting our regulatory response' in Chapter 9).

The nature of the products in some markets will exacerbate the challenges we face. In markets where a greater proportion of consumers are vulnerable, the required interventions are likely to change. Here we will rely more on interventions designed to change provider behaviour or introduce measures that act as proxies for competition. The number of consumers with low financial capability is an important factor when we decide how to respond to issues of market design.

We are not a price regulator, but where evidence suggests other options are ineffective, we will consider price interventions, for example, improving the transparency of prices, standardising price structures to make comparison easier or intervening on secondary elements of price such as exit charges. If necessary, we will intervene to introduce price caps.

When we consult on new proposals, you can expect us to be clear about what we are doing by setting out:

- the change in outcomes we want to achieve – including a number of key indicators and measures
- the story of the change we intend to bring about
- whose behaviour will be affected and how
- how we expect the relevant firms and markets to reshape themselves around the revised regulatory landscape
- how we will assess the change in outcomes, and
- how we will look out for and try to head off any serious unintended consequences

Q22: Is there anything else in addition to the points set out above that it would be helpful for us to communicate when consulting on new proposals?

12.
Supervising firms

The regulated financial services sector in the UK is made up of 56,000 firms authorised by us and more than 130,000 individuals approved by us to carry out a controlled function within an authorised firm. We authorised 1,004 new firms in 2015. A range of other firms are engaged in financial services, but do not require FCA authorisation.

FSMA gives the FCA broad powers for regulated firms and individuals in pursuit of our regulatory objectives. FSMA also gives us General Functions to:

- make rules
- prepare and issue codes
- give general guidance, and
- determine the general policy and principles by which we perform particular functions

Firms entering the sector

A necessary part of effective conduct regulation is to ensure that market participants are 'fit and proper' persons to enter the financial services sector.

The Threshold Conditions, set out in FSMA, are the minimum conditions a firm is required to satisfy in order to be given and maintain our permission to carry on regulated activities. We operate an authorisations gateway to ensure that firms and individuals entering the financial services industry meet, and are likely to continue to meet, Threshold Conditions. Our supervision is designed to ensure that Threshold Conditions continue to be met at all times. If authorised firms are in breach of Threshold Conditions, and we do not expect them to correct the situation, we seek to remove them from the market – either voluntarily or through the use of our formal powers.

FSMA sets the Threshold Conditions that firms must meet:

- **Effective supervision** – The firm must be capable of being effectively supervised by us.
- **Appropriate resources** – The firm needs to have appropriate resources to deliver the service, including financial resources, as part of our prudential assessment for solo-regulated firms.[34]
- **Suitability** – The firm must be a 'fit and proper person', and its management needs to act with integrity and have the adequate skills and experience to run the business. The firm also needs to have proper policies and procedures in place and be able to appropriately manage its conflicts of interest.
- **Business model** – The firm's business model must be suitable, viable and sustainable. Its services and products must be appropriate for its target market and it cannot pose a risk to our objectives.

34 The FCA is the prudential regulator for over 54,000 firms. The PRA is responsible for the prudential supervision of deposit takers, insurers and major investment firms.

On top of these conditions, we also consider the legal status of the firm and the location of its offices in the UK.

We use a proportionate, proactive and judgement-based approach with appropriate risk tolerance when considering whether or not to authorise a firm and to allow a firm to remain authorised. We assess the risk it poses to all of our objectives by focusing on high risk issues as part of our proportionate approach.

Recently we have made significant efforts to increase our support for new firms or business models looking to enter the market. Our initiatives include:

- **Project Innovate** – Assistance for innovator businesses.
- **Regulatory Sandbox** – A restricted authorisation which allows firms the space to test new ideas.
- **Advice Unit** – Provides regulatory feedback to firms seeking to develop automated advice models.
- **FCA RegTech sprints** – One-off events designed to stimulate activity on particular issues, actively reach out to innovators and explore what firms can do and where regulation and regulatory processes could make it difficult for them to do it.
- **Bank mobilisation and New Bank Start Up Unit** – A flexible authorisation process for banking applications that recognises necessity for longer lead in times for capital raising and setting up of infrastructure. The Unit, run by staff from the PRA and FCA, will help new banks to enter the market, providing the information and materials they need to navigate the process to become a new bank.
- **International Agreements** – Establishing international agreements with regulators in other countries to provide support for FinTech companies trying to enter the others' market.[35]

Continuing supervision of firms

We set minimum standards by which firms offering financial services should operate. These standards include our Principles for Businesses[36] which set out the behaviour we expect from firms we regulate and conduct rules applying to individuals under the SM&CR. These standards will help markets to function well if firms and employees are sufficiently incentivised to meet them. We believe meeting standards is about the purpose of the requirement as well as the letter of the law. If we only focused on the latter, both firms and regulators would end up with an ineffective tick-box approach, with firms concentrating on compliance rather than actually improving outcomes for their customers.

Firms and their employees may have incentives to breach minimum standards. It is the responsibility of firms' own governance, and particularly their Boards, to ensure that these standards are maintained. It is important that we do not substitute for the role of firm governance.

The SM&CR is an important development which supports our objective to ensure firms take responsibility for their regulatory compliance by establishing individual responsibility and accountability within the regulatory framework. It places a responsibility on firm's senior management and means that individuals can be held to account where there are breaches. Creating this link between the behaviour of individuals and the conduct of the firm helps to reinforce our desired approach to monitoring and oversight of firms.

35 In 2016 the FCA entered into an agreement with the Australian Securities and Investments Commission to support innovative businesses.

36 www.fca.org.uk/about/principles-good-regulation

We expect firms to develop a culture of responsibility where they identify risk of harm developing from their behaviour and take action themselves to address this risk. This is a key accountability of Senior Managers under the SM&CR. Where firms identify something that has gone wrong, we expect them to fix the issue and we will generally only intervene if they have not done so, or if we have better tools to tackle the problem. We then monitor firms to understand what they have done to address the issues and how they have done it. These are key indicators of the culture within the firm.

As well as conduct, we monitor the financial soundness of firms where we are the prudential regulator. This provides greater confidence in the safety and soundness of many businesses across a range of important consumer and wholesale markets.

Our focus in supervision must start with the business models of firms, namely how they earn returns, manage risks of all types, the way in which remuneration of individuals creates incentives to meet our objectives, and the quality and effectiveness of governance. Our aim is to understand firms' systems and controls, how they identify risks and the governance they use to implement these systems. Much of our work with firms, whether one-to-one or through our publications, speeches, workshops and seminars, is aimed at spreading the adoption of best practice and compliance with our rules. This work is essential because of the importance we place on a culture within firms that identifies and addresses potential issues.

We monitor firms to identify where breaches of policies and rules may happen by using on-site visits, the data they must report to us, mystery shopping, and lessons drawn from individual firm work and sector-based analysis of emerging risks of harm. Our reviews of the effectiveness of firm governance are central. They assess: the collective effectiveness of the board, the individual effectiveness of the senior management functions (SMFs) and the culture of the firm. Where we identify issues of potential concern we seek more information from firms to help diagnose the type of harm and its underlying cause. We then use this information to determine whether and what action is required. This action can include any of our tools, from tightening rules to market studies and formal investigation. Often, it will simply require firms to address the issue through changes to their systems, governance practices, business model and controls.

Larger firms operating in relatively concentrated markets

In highly concentrated markets – markets where a small number of firms account for a large percentage of transactions – we can oversee much of the market by concentrating on a small number of large firms. We oversee the activities of these larger firms – currently over 100 – individually and proactively. We work closely with these firms to enable them to identify potential user harm arising from their business practices, and we expect firms to report potential misconduct to us as soon as they identify it. We are proactive. We use the intelligence we gather from individual firms and closely monitor their governance and controls to identify issues before they cause widespread harm.

We need a good understanding of these firms' business models and the potential harm that these models could pose. We analyse business plans and meet with senior executives and boards to explore how the governance, controls and culture of the firm are designed to ensure it complies with our rules and principles. We support the information we get from these discussions by monitoring the firm's own management information and regulatory returns. Where we identify specific issues, we work with senior management to assess and understand how firms are responding.

Where we find significant problems our aim is to react swiftly, diagnosing the cause of harm quickly and using our tools to take appropriate action.

However, we need to ensure that in discharging our responsibilities we do not blur the responsibility of boards and management for the running of their firms. Our oversight does not guarantee that nothing will go wrong – financial services firms are large, complex, and face a variety of conflicts and competing incentives. We do not have zero risk-tolerance for things going wrong. Crucially, boards and Senior Managers are, and remain, responsible for their actions.

How we oversee fragmented markets/smaller firms

We do not have, or aim to have, sufficient resources to monitor every firm individually, though improvements in data science are improving our targeting of individual firms for individual attention. We prioritise our activities on firms that pose the biggest risk of harm or are the largest, where any problems emerging would have the most significant impact. For those firms we do not individually supervise, we carry out an assessment of the market in which they operate and target our resources at those firms or issues where we believe they can be most effectively applied.

It does not, however, mean that these firms will not hear from the FCA. Where risks are identified we will seek to understand more about the governance and controls within firms, regardless of size. We seek to communicate with as many firms as possible, even where they have not been targeted for specific additional work. Our communications can both highlight specific risks and show where we are more likely to take action if we find firms are failing to comply with the Handbook. We are reviewing our approach to maintaining contact with such firms.

Firms leaving the sector

Regulated firms will inevitably fail, especially when markets are competitive. Our approach is to ensure that firms that no longer meet the Threshold Conditions and have no realistic prospect of doing so in the future fail in an orderly way, rather than trying to stop them failing in the first place. By ensuring failure is orderly, we aim to protect consumers and markets when failure occurs. Orderly failure forms part of a financial market functioning well and thus minimising disruption for others in the market. Allowing firms to fail can also support competition by ensuring that firms that no longer meet the standards of regulators or consumers are replaced by new firms.

We distinguish between failure of intermediaries acting as agents (eg asset managers) and those acting as principals (eg banks and insurers). With agents, we seek to ensure that consumers do not lose more than the services which stop being provided, and that disruption of customers' access to their asset is minimised. Customers of firms acting as principal, on the other hand, can in some circumstances lose money (but may be compensated by the FSCS) – or be unable to access their money for a short period – because of firm failure.

If a firm refuses to exit voluntarily, we are required to use powers to enforce their exit. In such cases, the burden of proof is on the FCA (or the PRA where the cause of failure involves the safety and soundness of a dual regulated firm or to insurance policyholder protection) to show that Threshold Conditions are no longer being met. In contrast, when the firm enters the market, the burden of proof to show that Threshold Conditions can be met is on the firm.

Work since the financial crisis has made firms' exit from the market more orderly. The Special Administration Regime (SAR), introduced by the Government in 2011 and operated by the Resolution function of the Bank of England, deals with situations where investment firms, which hold client money and assets, fail. It ensures that client assets and money are returned as quickly and easily as possible. For example, in 2011 MF Global, a major global financial derivatives broker, entered the SAR and the-then FSA worked closely with the administrators to ensure that client money was returned as soon as possible.

Q23: Do you think it is our role to encourage innovation?

Q24: Do you think our approach to firm failure is appropriate?

13.
Our approach to enforcement

Where we suspect a breach of our rules we first seek further information from firms. Where we suspect serious misconduct we investigate and then decide what, if any, action we may need to take. Our approach to using our powers focuses on deterrence. Both specific deterrence (deterring the person from offending again) and general deterrence (deterring others from offending) are important aims of enforcement. However, deterrence is not their only purpose.

There is a substantial public interest in the FCA investigating suspected material breaches of our standards, in our detecting them as early as possible, investigating them fully and quickly, and in ensuring those under investigation are treated fairly. Where appropriate, a full FCA investigation helps engender public confidence in the financial system and markets that wrongdoing is properly identified and dealt with.

When we make decisions about sanctions and remedies, the need for specific and general deterrence is a necessary consideration and aim. We also have other necessary aims. Our public sanctions should underline the value and legitimacy of the rule, requirement or standard our investigation is upholding. In this way, investigations should draw clear bright lines that the rest of the market can follow, helping everyone comply. 'Good' investigations can help to make our markets work well.

When we start investigations we begin a forensic process. We pursue all relevant lines of inquiry to determine whether a rule or requirement has been contravened, how serious or grave it is, who is responsible and why any misconduct has happened. This process does not mean we have decided to apply a sanction, that a sanction is inevitable or that it is even likely. Indeed, the term 'referred to Enforcement' is often misunderstood to signal we have made a decision to initiate enforcement proceedings when, in fact, we have decided to investigate. The phrase may convey an unhelpful misrepresentation of the nature of the interaction that firms might expect with us. A more neutral term, such as referral for investigation of a suspected contravention or breach, may be helpful. Often, once a breach has been identified the firm will be able to fix the problem, but they have an obligation to report the breach to the FCA.

Many investigations will result in a decision that there is insufficient evidence to take action. We do not believe that this is a wasted effort, as it can remove any suspicion that there is serious wrongdoing and exonerate those who might have been under suspicion. More particularly, the result of an investigation will produce insight and learning that ought to be captured so as to be useful to the firm and to us as an aid to better compliance. We believe that a formal discussion between the firm and FCA, about what lessons from issues have emerged, can support improved regulatory outcomes.

It should also be clear that any public sanction or other action is the result of a fair process. This process should clearly take into account not only the seriousness of the misconduct involved, but also the circumstances of the offending, the record of the offender and the consequences, including for consumers, markets and the public interest. Here the vulnerability of the consumers affected or targeted may be relevant.

Many findings of misconduct are resolved by agreement and we have developed processes to encourage and foster agreed outcomes. There is real value in resolving cases through agreement like this. However, it requires that the outcomes reflect an accurate picture of the wrongdoing, together with an acknowledgement of both causes and consequences, and that sanctions and remedies, including redress, are fully addressed.

Our public sanctions must also encourage or require full remedy of both the causes and the consequences of misconduct, including for customers or other affected victims. When we assess sanctions and penalties we take into account how much someone has cooperated with us, is prepared to acknowledge what has gone wrong and to remediate the causes and address all the consequences, including through paying redress.

There are many benefits flowing from a full and open acknowledgement of both responsibility and accountability for wrongdoing and all its consequences. This can reduce the scale, size, or – in exceptional circumstances – even the *need* for any additional deterrent element.

Given our desire to be more transparent we will review use of 'private warnings'. A private warning does not provide a determination that a breach has occurred and may give the impression that fair process has not been followed. Equally, many firms may appreciate that 'private warnings' offer a quick and clear resolution to concerns which can be achieved more quickly than a full investigation. Our judgements should provide a line in the sand while helping to educate the market about our expectations of firms complying with the Handbook.

Q25: Do you think more formal discussions with firms about lessons learned will help improve regulatory outcomes?

Q26: Do you think that private warnings are consistent with our desire to be more transparent?

14. Looking ahead

We are facing a number of significant challenges to the traditional regulatory model. These issues pose a direct challenge to the way we oversee firms and individuals. Societal and technological changes have increased the scope and sophistication of financial services. Their critical importance also affects consumers who are less capable of understanding these services and those who are or may be vulnerable. These issues now require us to become more sophisticated in the ways we identify where individual firms may cause consumer harm and target our resources accordingly.

We must use our communications with firms to be clear about our expectations of them. This means being clear about the process, our analysis and the expected outcomes. This is particularly important to help all firms and individuals learn lessons from good and effective enforcement. This will be a priority for us.

Recent years have started to see rapid changes to the business models of firms that we regulate, as well as the entry of new firms employing innovative models. This poses a further significant challenge to our traditional approach to monitoring and overseeing firms. Part of this change is a result of developments in society and technology which are directly opening up new opportunities and part as a result of macro-economic change (eg the low real interest rate environment) forcing firms to change their business models.

As regulators we too can benefit from the same changes. In recent years data science – also known as machine learning or artificial intelligence – has become increasingly prevalent. Data science offers a series of tools that allow us to extract useful information from increasingly large, complex and varied datasets. These techniques have great potential when used in regulation.

At the FCA, our initial focus on data science is to see how we can better sift through the large amounts of data we receive to target those firms with a higher risk of having problems. This uses existing data sets to identify firms with a greater risk of regulatory breach which we use to focus targeted monitoring of firms.

Our next focus is financial crime, on detecting insider trading, market manipulation and anti-money-laundering. Other applications for technology are constantly developing and we will explore these over time.

As we learn more from our work on data science we expect to be able to make better use of the data we receive, and use it to better target our activities with individual firms. While regulation will inevitably continue to involve a high degree of human judgement, new technologies offer us the opportunity to improve the use of our resource and thereby give firms the right incentives to reduce the frequency and severity of harm.

We want to know what you think of the issues in this document. To help, we have drawn out a number of specific questions where we want to get your feedback.

Some of the issues discussed in this paper could have implications for our rules. So we would like to hear views on the need for a more specific Handbook review. We are determined to be clearer with firms about the expectations they can have of us and the decisions we will take. To support this, we are planning work to review our Handbook to identify changes we could make that would clarify our rules. To help this review we will issue a call for evidence to seek your views about particular areas of the Handbook that would benefit from clarification.

Consultation across the breadth of our stakeholders is fundamental to the formulation of the FCA's Mission. To support this, we are actively seeking the views and feedback of interested parties through a comprehensive engagement and communications plan. This programme will include briefings, regional visits, speaking platforms, discussion forums, digital communications and one-to-one engagement.

Please send us your comments by 26 January. You can send them to us using the form on our website at: www.fca.org.uk/mission.

Email: FCAMission@fca.org.uk

List of abbreviations

CA98	Competition Act 1998
FCA	Financial Conduct Authority
FPC	Financial Policy Committee of the Bank of England
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GAP	Guaranteed Asset Protection
GENPRU	General Prudential Sourcebook
MAS	Money Advice Service
PPI	Payment Protection Insurance
PRA	Prudential Regulation Authority
PSR	Payment Systems Regulator
RAO	Regulated Activities Order
SAR	Special Administration Regime
SM&CR	Senior Managers & Certification Regime
UKLA	UK Listings Authority
VfM	Value for Money

Annex 1
List of questions

Q1: Do you think our definition of a well-functioning market is complete? What other characteristics do you think we should consider?

Q2: Do you think our approach to consumer loss in well-functioning markets is appropriate?

Q3: Do you think we have got the balance right between individual due diligence and the regulator's role in enforcing market discipline?

Q4: Do you think the distinction we make between wholesale and retail markets is right? If not, can you tell us why and what other factors you believe we should consider?

Q5: Do you think the way we measure performance is meaningful? What other criteria do you think are central to measuring our effectiveness?

Q6: Do you think the way we interpret our objective to protect and enhance the integrity of the UK financial system is appropriate? Are there other aspects you think we should include?

Q7: Do you think our intervention framework is the correct one?

Q8: Where do you believe the boundary between broader policy and the FCA's regulatory responsibility lies?

Q9: Is our understanding of the benefits and risk of price discrimination and cross subsidy correct? Is our approach to intervention the right one?

Q10: Does increased individual responsibility increase the need and scope for a greater and more innovative regulatory response?

Q11: Would a Duty of Care help ensure that financial markets function well?

Q12: Is our approach to offering consumers greater protection for more complex products the right one?

Q13: Is our regulatory distinction between consumers with greater and lesser capability appropriate?

Q14: **Is our approach to redress schemes for issues outside our regulatory perimeter the right one? Would more specific criteria help firms and consumers?**

Q15: **What more can we do to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention?**

Q16: **Is our approach to giving vulnerable consumers greater levels of protection the right one?**

Q17: **Is our approach to the effectiveness of disclosure based on the right assumption?**

Q18: **Given the evidence, is it appropriate for us to take a more 'interventionist' approach where conventional disclosure steps prove ineffective?**

Q19: **Do you think our approach to deciding when to intervene will help make FCA decisions more predictable?**

Q20: **Are there any other factors we ought to consider when deciding whether to intervene?**

Q21: **What more do you think we could do to improve our communication about our interventions?**

Q22: **Is there anything else in addition to the points set out above that it would be helpful for us to communicate when consulting on new proposals?**

Q23: **Do you think it is our role to encourage innovation?**

Q24: **Do you think our approach to firm failure is appropriate?**

Q25: **Do you think more formal discussions with firms about lessons learned will help improve regulatory outcomes?**

Q26: **Do you think that private warnings are consistent with our desire to be more transparent?**

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