

# Our response to key comments from the independent panels' annual reports for 2016/17

October 2017

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# 1 Introduction

We work with the Statutory Panels throughout the year on a wide range of subjects. We value their experience, advice and support in identifying risks to markets, their insight on consumer issues and views of firms. We consider their views when developing our policies and our overall approach to regulation.

The Panels each publish Annual Reports that detail their activities for the year and provide comment on our work. The purpose of this document is to demonstrate how we addressed issues raised by the Panels and how we have considered their views. Our responses to the Panels' reports are grouped into two sections. Firstly, we look at themes that are common across all or most of the Panels. We then look at issues that are more specific to the individual Panels.

Our Business Plan 2017/18 provides detail on our main areas of work this year, as well as our forward-looking plans for each sector. This document does not replicate that level of detail and we encourage readers to read the Business Plan for further information on our current work and future focus.

## FCA panels

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### **Financial Services Consumer Panel**

Represents the interests of consumers, monitors how far we fulfil our statutory objectives for consumers when developing rules or policy and provides us with advice and challenge.

### **FCA Practitioner Panel**

Represents the interests of practitioners, and provides us with external input from the industry as a whole.

### **FCA Smaller Business Practitioner Panel**

Represents smaller regulated firms, who may otherwise not have a strong voice in policy making.

### **FCA Markets Practitioner Panel**

Reflects the interests of practitioners who are likely to be affected by our market-facing functions.

### **Listing Authority Advisory Panel**

This non-statutory panel advises the FCA on technical listing and primary market policy issues and regulation proposals. This panel does not publish an Annual Report.



## 2 Key themes across the panels

The Panels raised a number of common issues, both across the financial year and within their Annual Reports. This chapter is our response to those issues. Not every Panel has raised every issue covered here, nor have we included every area of our work discussed in the Panels' reports. Instead, we have tried to focus on where there were outstanding issues we needed to address or undertake further work on.

### Strategic vision

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#### Brexit

All of the Panels identified Brexit as a major issue for financial services and reported that they are keen to work closely with us in preparation for the UK's withdrawal from the European Union (EU). The Panels focused on the need to ensure that regulatory stability was maintained as far as possible, reconciling inconsistencies between EU and UK rules and early engagement with firms on any actions they may need to take to prepare for Brexit. The Consumer Panel highlighted the importance of minimising disruption for consumers and warned against de-regulatory pressures.

We have liaised with the Panels regularly on our work to plan for the UK's departure from the EU. We welcome their input and will continue to work with the Panels as we provide the Government with technical advice on the withdrawal and work with the Government on the EU (Withdrawal) Bill. We are also working with authorised firms to understand their plans for their cross-border operations into the EU, and from the EU to the UK.

The Markets Practitioner Panel raised some concerns about whether we are fully resourced to deal with significant Brexit-related work. We are operating a 'hub and spoke' system with a central EU Coordination team supported by a network of 'Brexit Leads' across all business areas. This is the most efficient way to ensure we draw from all our expertise, given that Brexit affects many different aspects of our work. We will keep our resources under careful review and we expect to devote more resource on this work during 2018. We aim to communicate with firms as much as possible throughout the process. We continue to work closely with other regulators and relevant bodies in Europe and internationally. This allows us to share information, intelligence and best practice, and to supervise firms effectively.

#### Our Mission

The Panels all actively participated in the Mission consultation; we listened and have endeavoured to address their comments. We will liaise with the Panels as we develop our 'Approach to' documents to clarify how we supervise, authorise, enforce against and communicate with firms and protect and inform consumers, particularly those that are vulnerable or struggle to access financial services.



### ***Vulnerable consumers***

The Financial Services Consumer Panel and the FCA Practitioner Panel have both said they would like to see us do more to identify where there are financial exclusion or accessibility issues.

As we reported in our Business Plan for 2017/18, vulnerability and access to financial services is one of our cross-cutting sector priorities for the current year. We recognise that this is an area where we need to do more as a regulator. We focus on when we should be intervening to prevent harm to consumers, particularly vulnerable consumers, and our approach will be set out in our 'Consumer Approach' document. Further work planned for this year will strengthen our understanding of issues that affect vulnerable consumers, recognising that anyone can potentially be vulnerable at various times in their life.

### ***Firm responsibility and a duty of care***

All of the Panels have talked to us about whether there should be a duty of care on firms to exercise reasonable skill and care in the provision of a service. In particular, the Consumer Panel strongly believe this duty would act as a preventative measure to prompt firms to adapt their business models.

We have discussed the advantages and disadvantages of imposing a duty of care on financial services firms with all the Panels. In Our Mission we committed to publishing a discussion paper on this issue. We will publish this paper alongside our broader work on our Handbook review which will streamline our rules and guidance and ensure they remain fit for purpose. We will begin the Handbook review once the outcome on Brexit is clear and we have more certainty about the relationship between UK and EU law.

### ***Cost effectiveness and value for money***

The Panels said 'regulatory overload' is an ongoing issue for firms, while the Consumer Panel underlined the need for us to more effectively measure our success as a regulator. The Smaller Business Practitioner Panel challenged the number of data requests we make to firms and whether our cost benefit analyses for significant work could be more rigorous. Their concern is that regulation should be proportionate to the size of a firm and the risk it poses. The Consumer Panel urged us to carry out a segmentation of small and medium enterprises (SMEs) and consider their role as consumers, recognising that they are not always 'sophisticated' customers.

Sustainable regulation is a priority for us. Our Mission emphasises our commitment to ensuring we clearly communicate where and how we will prioritise and target specific areas of harm for consumers and firms.

We recognise that the volume of regulatory change can put pressure on firms' resources. We have a thorough Business Planning process which prioritises our work according to where we can have the most impact. We publish these priorities in our annual Business Plan. Our Mission also provides further detail on how we focus our resources to reduce harm, advance our objectives and deliver the greatest public value.



### **Reducing regulatory overload**

As we have moved to a more sector-based approach to our work, we now have better oversight of all individual projects covering each sector. So we will try to ensure that, as far as possible within our remit, we can reduce the cumulative impact of our regulatory requirements on firms. Our cost benefit analysis process is rigorous and has been strengthened by the requirements of the Enterprise Act to undertake a full impact assessment analysis of the cost of relevant projects.

Our proportionate supervisory approach ensures we allocate a dedicated team to the small number of firms with the greatest potential impact on consumers and markets. We are currently allocating all other firms to 'portfolios' of firms, grouped according to their business model. Through the portfolios, we will work with individual firms when needed, as well as undertake multi-firm work, thematic work based on common issues and targeted communications. This approach will use our resources in a more efficient way, ensure we have a more effective relationship with smaller firms and focus our communications on issues that are more relevant to our different firm audiences. We have no current plans to undertake a segmentation exercise of SME customers.

### **Evaluating our work**

Evaluation is a key part of the decision-making framework in our Mission, and we will rigorously assess the impact of our key interventions. It is difficult to quantify the benefit of all of our interventions, as much of our activity delivers intangible benefits, such as enhancing trust. Where we cannot quantify the value we add, we will set out a clear causal analysis of how an intervention is intended to work and show, as best we can, the cost of activities. We are also improving our outcomes-based performance framework this year to set out more measures and outcomes from our interventions.

## **Communication with customers and firms**

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All of the Panels recognised that our Mission had been a productive piece of engagement with stakeholders. However, they did say that more effective communications would be helpful on key projects, such as ring-fencing and Brexit, and on the way that we supervise and investigate firms.

Our Mission demonstrates our intention to be more transparent with firms and consumers about how we operate as a regulator, what actions we take and why we make certain decisions. Following the Mission, we will publish documents later this year with more detailed explanations of how we deliver specific regulatory functions – Authorisations, Supervision and Enforcement – as well as how we interpret our competition duties and consider the needs of consumers. On Brexit, we are working with the Treasury, other regulators, firms and consumer organisations in preparation for the UK's withdrawal from the EU (as outlined above).

### **Live and Local**

We continue to run our 'Live and Local' campaign to give firms the opportunity to speak to us directly. At these events, we focus on our principles for business, particularly treating customers fairly and running a regulated business in a way that complies with our rules and expectations. We also provide further information on our reporting requirements and useful tips for reporting correctly. At the end of these events, feedback shows that firms new to regulation have gained a better understanding of how to achieve good customer outcomes.



### **Giving firms more flexibility in their customer communications**

One of our ongoing commitments is to drive improvements in how effectively firms communicate with consumers. This year, we removed ineffective disclosure requirements on firms from our Handbook. This gives firms more flexibility in the ways they engage with consumers in a fair, clear and not misleading way, and discourages a 'tick box' approach to consumer communications.

### **Ring-fencing**

We have welcomed feedback from the Panels on our communications to firms about the changes ring-fencing will bring. In response, we have promoted a set of 'common messages' that we have shared with banks of all sizes, the regulators, relevant trade bodies, consumer organisations and the press. We continue to maintain a ring-fencing page on our website, which also provides links to a wide variety of other useful information. We know that many of the banks' own communications refer their customers to this page.

### **Explaining lessons learned from our enforcement**

We note that the Practitioner Panel want us to more proactively discuss with firms how they can improve the way they work and key issues from our Enforcement investigations. As part of changes to our Enforcement processes last year (further to the Treasury Review and Andrew Green's report post-HBOS), we committed to improve transparency by, for example, providing regular updates throughout investigations and setting out our concerns and the reasons behind them once we have carried out an investigation. Both during and at the end of any investigation, whatever the outcome, we will explain and feed back to firms what it was that had led to the suspicion of misconduct, and also use that information to inform our supervisory and policy work. Our Enforcement Annual Performance Account publishes information about disciplinary outcomes, including cases where we took no further action, and the number of cases opened during that year and their related issues. We have also publicly committed to try to publish more information about early intervention work, where we are legally able to do so.

## **Cyber resilience, financial crime and technology**

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All of the Panels have expressed concerns about the increasing risk of sophisticated cyber-attacks. They highlighted the necessity for close co-operation between all stakeholders to prevent cyber-attacks. The Markets Practitioner Panel were concerned about the cost of our anti-money laundering (AML) rules and whether they serve the intended purpose of keeping money made from criminal activity out of the financial system.

The Consumer Panel highlighted our work on Big Data, and the need to ensure we have the right supervision and enforcement tools to protect against consumer harm. The Panels have also raised concerns about the revised Payment Services Directive (PSD2), which comes into force in January 2018, particularly issues of data protection and responsibility between the firm and a third party when things go wrong.

### **Cyber resilience**

Cyber resilience is, and continues to be, a critical area of focus for us and 'technological change and resilience' is one of our Business Plan's cross-sector priorities. We continue to help develop the sector-wide capability to defend against – and recover



from – cyber-attacks, improve awareness and measure what effective cyber resilience looks like. We assess firms' cyber resilience capabilities through our supervisory work. This seeks to enable firms to prepare for, and prevent, attacks using appropriate risk management, information sharing, protection and detection, and incident response systems.

We have launched the Cyber Coordination Group initiative to raise the overall resilience of the financial sector. This brings together around 150 firms from across the financial sector to share intelligence, raise awareness of threats and effective resilience, and work collectively to structure effective recovery systems. We have also published a guide for firms on the foundations of good cyber security which supports the cross-industry work being done by the National Cyber Security Centre. We have an established incident response procedure for firms, which we have recently expanded to include an out-of-hours contact for smaller firms.

We continue to work with firms, domestic authorities (including the Treasury, Bank of England and National Cyber Security Centre) and international bodies to ensure that both we and the firms we regulate are better placed to deal with such attacks.

### **Anti-money laundering**

We agree it is important that firms take a proportionate approach to anti-money laundering compliance. This work is most effective when it remains focused on the outcome of reducing financial crime, rather than procedure. The Money Laundering Regulations are prepared by the Government and stem from internationally-agreed standards. They offer flexibility in how firms can comply and we do not set out prescriptive requirements for firms on how to meet them. An industry body, the Joint Money Laundering Steering Group, prepares detailed guidance on the steps financial firms can take to comply, to ensure that practitioners are involved in the drafting of guidance and that it is both workable and proportionate.

### **Big Data**

In January 2016, the Consumer Panel responded to our Call for Input on Big Data in general insurance, which highlighted concerns about the ownership of personal data and informed consent. Given the importance of data protection and the leading role of the Information Commissioner's Office (ICO) in this area, we co-hosted a roundtable with the ICO for stakeholders to discuss how data is used and data protection rules applied in retail general insurance. We also recognise that the increasingly sophisticated use of data might lead to pricing practices that create concerns and we are undertaking work to look into pricing practices in the retail general insurance sector to assess how different pricing factors are used.

### **The revised Payment Services Directive (PSD2)**

We recognise requests for further clarity on responsibilities under PSD2 where third-party payment service providers are involved. PSD2 gives authorised third parties a right to access customers' payment accounts to make payments, use account data or initiate payments. Following consultation, we have provided further guidance in our Payment Services and Electronic Money approach document on responsibilities between payment service providers, including where these are third parties.

As a condition of authorisation, third-party payment service providers will also need to demonstrate they meet a number of security requirements. These requirements are designed to protect customers and include measures to ensure technical security and data protection. We will take a risk-based approach to supervising these firms.





## Competition

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The Panels singled out two pieces of competition work for comment – the Asset Management Market Study and our Mortgages Market Study.

### Asset Management Market Study

We are pleased that the Panels have expressed overall support for our work in this sector. The Panels have provided valuable input to inform our thinking.

We noted the Practitioner Panel's concerns that any changes to the regulation of this sector need to consider the incoming requirements of MiFID II, PRIIPs and the Senior Managers and Certification Regime (SM&CR). Where we believe that these forthcoming requirements will at least partly address our concerns we are taking these into account. Our package of remedies is designed to support and complement these regulatory initiatives. For example, we are testing specific ways to improve the effectiveness of forthcoming disclosure requirements by assessing the behavioural impact of different measures, such as testing ways to help investors make effective price comparisons through the use of comparator charts.

This work is a long-term project and we will monitor and adapt our plans if needed in light of any consequences from EU withdrawal.

### Mortgages Market Study

The Practitioner Panel welcomed our focus on the increasing impact of intermediation in the mortgage sector. The Smaller Business Practitioner Panel asked for our work to look at the impact of lending into later life and how this is affected by prohibitive levels of capital loading. The Consumer Panel asked us to focus on barriers for consumers who may wish to switch provider but are restricted by the stricter affordability checks, as well as consider the impact of potential conflicts of interest within the value chain.

Following our feedback statement on our call for input on competition in the mortgage sector, we undertook a market study. This identified a number of areas, as recognised by the Panels, where competition could potentially be improved for the benefit of consumers. These include challenges or barriers faced by consumers to making effective decisions when choosing or switching a mortgage. This could be, for example, because the available tools to help them do not fully meet their needs or because of commercial relationships in the sector that may not be in consumers' interest. We are particularly interested in the impact that intermediation and our rules, including those resulting from the Mortgage Market Review, may have on consumer outcomes.

As part of this work, we have considered the impact of older consumers' borrowing to ensure it is aligned with our broader regulatory approach to the UK's ageing population. We recognise the potential impact on competition of capital requirements for smaller banks, building societies and lifetime mortgage providers. As our remit here is limited, we continue to engage with the Prudential Regulation Authority and the Bank of England on this.



## Key work streams

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### Advice

The Panels were actively involved in the Financial Advice Market Review (FAMR) working group and continue to be engaged as we implement the FAMR recommendations. The Smaller Business Practitioner Panel welcomed the clarity created by the change to the regulated activity of advising on investments, while the Practitioner Panel stressed the importance of a variety of advice channels to meet the full range of consumer needs. However, the Consumer Panel stressed the importance of continued FCA scrutiny of the robo-advice market.

As part of our FAMR work, we have published information for firms to help ensure they know about the existing flexibility in adviser-charging rules, including when providing robo-advice. We set up our Advice Unit specifically to help firms develop their automated advice models, focusing on those which will serve gaps in the market identified by FAMR. We have worked with firms to develop guidance to improve suitability reports, reducing both their length and the time firms spend preparing them. We are also currently proposing changes to our rules and guidance to implement recommendations from the FAMR report, including new guidance on streamlined advice and the boundary between advice and guidance. When we are aware that firms are not complying with our rules on advice, we will take relevant supervisory action.

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

The Practitioner Panel, Smaller Business Practitioner Panel and the Markets Practitioner Panel all discussed MiFID II in their Annual Reports. They highlighted the issues they previously raised with us during our consultation on taping requirements and their concerns about implementing the Directive on time. In particular, the Markets Practitioner Panel expressed concern about the delay in providing relevant provisions on complex wholesale issues such as commodity derivatives, ancillary exemptions, the treatment of illiquid instruments and new transparency requirements.

We recognise the challenges for firms in implementing MiFID II for 3 January 2018. We issued our consultation papers on MiFID II as soon as reasonably practicable to give firms as much time as possible to prepare for the 2018 deadline. During 2016/17, we published five consultation papers and published our first policy statement with near final rules and guidance in March 2017. MiFID II introduces a number of new investment services and financial instruments – which means that we expect a significant number of applications for a new authorisation or variation of permissions. To mitigate the risk of market disruption, we opened the Authorisation gateway on 30 January 2017 for early applications. Along with our communications with affected firms, this should help firms get their applications in early and ensure that they are ready with their full set of permissions by January 2018.

We listened to the Panels' concerns, as well as broader feedback, about the extension of taping requirements. As a result, we modified our proposals and financial advisers will, if they are not authorised under MiFID II, be allowed to choose between taping and making written notes of relevant calls. We have also amended the scope of application of taping rules to corporate finance business.

We accept that the delays in agreeing and clarifying some wholesale aspects of the legislation make it more difficult for firms to plan for implementation. The delays have reflected the complexity of the legislation. In certain of its interpretative materials, the European Securities and Markets Authority has taken a pragmatic approach which takes account of the implementation challenges faced by firms.



### **Senior Managers and Certification Regime (SM&CR)**

We have engaged with the Panels throughout our policy development for the SM&CR, both for banks and in relation to our proposals to extend it to all FSMA-authorised firms. Both the Practitioner Panel and the Markets Practitioner Panel encouraged us to adopt a proportionate and flexible approach when developing proposals to extend the regime, incorporate learnings from applying the SM&CR to deposit takers and dual regulated firms. The Markets Practitioner Panel also advised against extending the whole SM&CR to non-executive directors.

We have been grateful for the Panels' engagement and challenge, which has helped to shape the proposed rules which are currently subject to consultation. In particular we have taken on board the Panels' views that the regime should ensure clear senior management accountability and help instil good standards of basic conduct from all staff; but achieve this in a proportionate way that reflects the different risks of harm posed by different firms and an individual's role within the firm. We believe our proposals for the extension strike this balance appropriately and focus on a regime that will be simple, clear and proportionate. We will continue to engage with the Panels as we consider responses to our consultation and finalise our rules.

### **Financial Services Compensation Scheme (FSCS) funding scheme**

Both the Practitioners Panel and the Smaller Business Practitioner Panel have argued that the funding of the FSCS needs reform. In December 2016 we consulted on this to meet the FSA's commitment in 2013 to consider FSCS funding again in three years.

We will continue to work with firms and the Panels to ensure that the changes to the funding structure are proportionate and in line with firms' responsibilities and actions. We will also consider how to provide more clarity about which products are covered and, as discussed in our 2016 paper, how professional indemnity insurance can contribute to any proposed solution. The 2016 paper also consulted on proposals to introduce FSCS coverage for debt management firms, extend coverage for fund management and apply FSCS protection to the advice and intermediation of structured deposits. We will publish a further paper in Autumn 2017 to consult on proposals for the areas discussed in the 2016 paper, as well as make final rules for those areas previously consulted on.



## 3 Specific issues raised by the panels

### Financial Services Consumer Panel

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#### Payment protection insurance (PPI) and section 404 FSMA powers

The Consumer Panel asked us to be more proactive with our section 404 FSMA powers, particularly the PPI deadline for complaints. Section 404 gives us power to make rules requiring firms to establish and operate consumer redress schemes where firms have not complied with our rules on a regulated activity. The Panel felt strongly that we should have asked firms to proactively contact all PPI customers potentially affected by *Plevin*, and that the deadline for mis-selling complaints for many customers would be earlier than 29 August 2019. The Panel also stated that firms should improve their PPI complaint-handling processes and that we should take enforcement action against the individual executives responsible if consumers were treated unfairly.

#### A complaints-led approach to PPI redress

Section 404 schemes are one of the wide range of supervisory and remedy tools we consider when assessing and responding to misconduct or other issues and any related consumer harm. Following consultation, we concluded that relying on a complaints-led approach to PPI redress in light of *Plevin* (as we have mainly done for redressing PPI mis-selling) was fair, proportionate and reasonable in the circumstances. We considered it would be inappropriate to require firms to proactively contact all consumers potentially affected by *Plevin*, given that our rules had not required them to disclose commission. Even if we sought to implement a section 404 scheme, we do not consider it could apply to the two-thirds of PPI sales made before January 2005 (when insurance mediation became a regulated activity) or to credit agreements from lenders that did not carry out insurance mediation before 1 April 2014, because of the requirement in section 404 for there to have been a regulated activity.

#### Reaching undecided consumers

Our view is that the primary overarching message of the campaign to consumers is clearly 'Do it now!' without further delay, to consider their own position and decide whether to make a complaint. We consider this strong and effective prompt has equal force for those who may fall out of time to make a mis-selling complaint before 29 August 2019. We have supplemented our campaign with a requirement that firms write to over 1.2m consumers whose previous mis-selling complaints were rejected, to tell them that they could now complain again, in light of *Plevin*. Consumers who may have been affected by undisclosed high commission will be adequately prompted to act before the deadline by our wider consumer communications campaign and partnership activity, as well as from other consumer body advertising and messaging. We have amended our website to make the point that a shorter deadline may apply to some people, particularly those who received letters from firms about potential mis-selling. Following the Panel's observations, the larger firms have also agreed to make this clear on their websites.



We note that even where a firm rejects a mis-selling complaint now as out of time under a shorter deadline, it should still assess that complaint in light of *Plevin* and pay redress where appropriate. We believe that for consumers as a whole, the campaign, with these additional supporting messages and measures, provides an appropriate level of protection. However, we will continue to monitor the number of mis-selling complaints that are being time barred earlier than August 2019.

Our data indicate that firms are generally dealing fairly and consistently with PPI complaints, including upholding around 80% of them as mis-sold. Additional complaints are now likely to be upheld in light of our new rules about *Plevin*. However, firms' handling of PPI complaints, and the quality of their processes and dealings with consumers, will be of key importance throughout the whole two-year period and until all complaints made in time have been fairly dealt with. We will continue to monitor firms' operational dealings and complaint-handling performance throughout this period and will be ready to take action should we see standards fall.

### ***Insurance Distribution Directive (IDD)***

The Panel expressed concern that we might rely on Treating Customers Fairly principles to deliver the new general principle within the IDD that firms should act in the best interests of their customers. This particularly links to the Consumer Panel's broader request that we introduce a duty of care for financial services firms (as discussed in Chapter 2).

We have a client's best interest rule (COBS 2.1.1R) which requires firms to 'act honestly, fairly and professionally in accordance with the best interests of its client.' Our proposals for implementing the IDD include a new rule that extends the best interest rule to general insurance and pure protection contracts, and to extend the rule for all life policies. Our proposals also prohibit remuneration of the firm or its employees which would conflict with that duty to act in the client's best interests. We have also reminded firms to review their product information and work with partners in the distribution chain to ensure that this information meets the end customer's needs. As highlighted earlier in this paper, we have plans to consider a broader duty of care.

### ***FCA Register***

The Consumer Panel report mentioned ongoing issues about the accessibility of the FCA Register, in particular clear language and the use of jargon.

There are specific legal definitions for some financial terms which have meant that the Register sometimes lacks clarity. As part of our broader commitment to improve how we communicate with both consumers and firms, we are trying to simplify our language and remove barriers – both on the Register and on our external websites. As part of our current programme of work to improve our authorisations processes, we intend to make changes to the Register to improve how the website functions and make it easier for customers to find the information that they need.

### ***Financial promotions***

The Panel asked us to make full use of our powers under section 137S of the Financial Services and Markets Act 2000 to publicise when we have required a firm to take action in relation to a financial promotion.



When we ban or prevent a financial promotion taking place, we issue a decision notice. We do not publicise that decision notice if we judge that to do so would be unfair to the firm or might harm the interests of consumers. We believe that this is a proportionate way to respond to such complaints about financial promotions.

### **Consumer credit**

#### **Credit Card Market Study**

The Consumer Panel expressed concern that our work on the Credit Card Market Study had not gone far enough to protect consumers. The Panel highlighted that people could be paying a high level of interest and charges over a long period. The Panel asked us to take further action to treat all forms of unsecured credit in the same way, including measures to require proper affordability checks and, if necessary, price caps.

In April 2017 we issued a consultation paper on remedies as part of a broader package to address these issues. Under our new proposals, firms must use a series of prompts and interventions to help customers in persistent debt repay their debt more quickly, depending on what they can afford. Additionally, firms would be required to exercise forbearance for customers who cannot afford to repay more.

Our proposed rules on early intervention would see credit card firms required to use their data to identify customers at risk of financial difficulties and take appropriate steps to help them. The paper also sets out the details of an industry agreement to give customers more control over credit limit increases. This will see new and existing customers offered greater control over increases to their credit card spending limits, and restrictions on which customers would be offered credit card limit increases.

Our market study identified significant number of customers who carry a credit card balance for a long period of time without paying it down, and that firms have no incentive to intervene as these customers are profitable. We consider our proposals specifically target these problems. Introducing a price cap would not be an adequate remedy on its own to address these concerns and help customers struggling to pay their debt find an affordable way to repay.

We have published a consultation on proposed changes to our rules and guidance on firms' assessments of creditworthiness, including affordability. These apply across the consumer credit market, but we are proposing particular changes in relation to credit cards and other running-account credit. Our proposals include changing some provisions from guidance to rules and clarifying how firms must apply them.

#### **Overdrafts**

The Consumer Panel has encouraged us to consider an 'opt-in' rule for unarranged overdraft charges, similar to US law. Under such a law, consumers must request an overdraft facility and agree the terms upfront. The Consumer Panel also urged us to consider a cap on unarranged overdraft charges, set at the level of net additional administrative costs.

In our response to the High-Cost Credit Call for Input we set out our concerns with both arranged and unarranged overdrafts. We have significant doubts about whether unarranged overdrafts in their current form can continue in a well-functioning market for consumer credit, and we intend to consult on possible remedies in 2018.



In considering where further interventions may be necessary and proportionate, we are coordinating this with other related work. In particular, ongoing research into how to improve prompts and alerts and the effectiveness of the monthly maximum charge (MMC).

We welcome the Panel's input to that discussion and we share their concern about the harm of unarranged overdrafts, particularly for vulnerable consumers. We also share the concern that the MMC alone will not be sufficient to tackle the problem.

## FCA Practitioner Panel

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### Panel Survey – areas for further progress from the FCA

This year we decided to combine both the FCA annual firm feedback questionnaire with the FCA Practitioner Panel survey. This led to a single high-quality report and reduced the duplication and volume of data we request from firms. The survey showed that firms' view of the effectiveness of the FCA continues to be increasingly positive. The Practitioner Panel noted that the key areas for improvement were on transparency and predictability of regulation, better communications on Brexit and improved perception of the quality of our policy and technical staff.

As discussed earlier, our Mission was a significant milestone in being clear with firms about how we regulate and prioritise, alongside our Business Plan and Sector Views. As covered earlier, we will also communicate to firms and consumers about Brexit when we are able to do so and when the picture for financial services is clearer.

Over the past few years, we have invested in our FCA Academy to ensure that our staff are well equipped to carry out their specialist roles. Staff turnover decreased this year and we have strengthened our Academy to offer staff more specialist training. Additionally, 91 members of our staff were seconded in 2016/17 to partner organisations to strengthen and deepen their technical knowledge. We also hosted 67 secondees in this period from organisations including authorised firms, the European Securities and Markets Authority, the Treasury, the Bank of England and consumer bodies, to benefit from their specialist insight.

## FCA Smaller Business Practitioner Panel

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Along with the other Panels, the Smaller Business Practitioner Panel supported our recent and continuing work on high-cost credit. However, the Panel also identified some outstanding consumer credit issues it would like us to address. These were the remaining applications for authorisation that have yet to be processed; the difference in charges model of remuneration widely used in the car finance industry, leading to consumer detriment and competition imbalances between firms; and changes to the Direct Debit Guarantee Scheme to reduce systemic risks.





### Consumer credit authorisation applications

We have processed the vast majority of consumer credit applications – 99.3% of applications have been determined to date. We have publicly committed to concluding the small number of outstanding applications by the end of 2017. These applications have taken longer because they involve more complex facts that have taken more time to determine. Such cases include commercial debt management firms and peer-to-peer platforms, and we consider that it is important to take the time to ensure that these applications are properly assessed and decided.

### Assessing consumer credit in car finance

We appreciate the Panel's input into issues identified with the car finance industry. In our Business Plan for 2017/18, and again in July 2017, we committed to undertaking discovery work. This will look at the motor finance market to ensure that it works well and to assess whether consumers are at risk of harm. This includes supervisory work with FCA-authorized lenders, detailed analysis of millions of anonymised credit reference agency records and careful scrutiny of firms' sales practices and processes. We are also working closely with the Bank of England and the Prudential Regulation Authority, who are considering the risks raised by the expansion of motor finance that fall within their regulatory remit. We expect to publish our feedback on that work in the first quarter of 2018.

### Direct Debit Guarantee Scheme

As the Panel acknowledged, we have been working closely with them to make improvements to the Direct Debit Guarantee Scheme. We have already made changes to our rules to safeguard better against systemic risks in the process for indemnity claims, counter claims and challenges. We will continue to engage with the Panel to ensure that the scheme operates effectively and in line with our statutory objectives.

## FCA Markets Practitioner Panel

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### Low interest rates

The Markets Practitioner Panel expressed concern about the impact that a negative and/or low interest rate environment might have on firms and consumers. For example, indebted consumers may be ill equipped to deal with a sudden increase in rates if they have become used to low interest rates.

We are undertaking work in relevant sectors to encourage firms and consumers to consider the implications of continued low interest rates. In the pensions and retirement income sector, we are encouraging firms to provide consumers with information they need to make suitable investment choices. We are also aware of the profitability issues that firms face in this environment, which fosters a search for yield. We encourage firms to manage risks appropriately, ensure that products and services remain suitable for their customers, and provide customers with appropriate information.

Our work on vulnerability and access to financial services will also address interest rate-related issues. For example, interest rate changes can lead to an increase in defaults, potential insolvencies and reposessions.





## Liquidity

We appreciate the Markets Practitioner Panel's input on liquidity issues. We have noted their suggestion that we should include the trend of the 'search for yield' resulting in illiquid investment funds, as riskier investment decisions are made here.

In February 2017 we published a discussion paper to get evidence and feedback on the issues around illiquid assets. The paper's aim was to decide whether we need to provide more, or different, rules and guidance to support market stability and protect consumers, without preventing them from accessing a diversified range of investment opportunities. We hope to publish feedback on the responses to that paper during the first half of 2018, setting out any proposals for new rules and guidance that we think it is appropriate to consult on. We also continue to participate in the ongoing debate with national and international authorities around the liquidity management of funds, highlighted by some firms suspending open-ended property funds after the EU referendum vote in June 2016.

