

Helen Charlton
Financial Services Consumer Panel
c/o Panel Secretariat
12 Endeavour Square
London
E20 1JN

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
wwwfca.org.uk

14 November 2022

Dear Helen,

I would like to thank you and all the Panellists for your insightful engagement on a huge variety of topics this year. I welcome in particular the Panel's help on possible changes to our remit, for example the inclusion of Buy Now Pay Later products, and on our consultations on policy changes, for instance the regulatory regime for pre-paid funeral plans. Your expertise and insights have also been essential in shaping the incoming Consumer Duty.

I look forward to working with you over the next year.

Thank you also for your thoughtful comments in your 2021/22 Annual report. I respond below to the issues you raised.

Future Regulatory Framework (FRF) and financial inclusion

You have asked that we 'have regard to' financial inclusion under these proposed changes, which you consider will help to make financial services regulation work better for everyone.

In our response to the Treasury Committee report on the '[Future of Financial Regulation](#)', we said that we do not think a 'have regard to' financial inclusion would necessarily add to our ability to act within our remit and objectives. We discussed at the [Financial Inclusion Virtual Summit 2022](#) how our strategy, which includes issues such as access, fair value, suitability and treatment and confidence, contributes to financial inclusion.

We agree that understanding consumers' experiences is critical to achieving our consumer protection objectives. To inform our approach, we use data from our Financial Lives Survey, insights from the Panel itself and our Consumer Network as well as other research.

Financial inclusion is a complex issue that needs strong partnerships and collaboration across Government, regulators, industry and other organisations. We do not think a have regard on inclusion would add to our existing ability to act within our remit in line with our objectives; and it might risk increasing expectations that the FCA should step in to fix problems that it does not have the power to solve.

We remain committed to continuing to work with Government, members of the Financial Inclusion Policy Forum and other partners to support financial inclusion in financial services.

More generally on the FRF, we are supportive of the Financial Services and Markets Bill as drafted, including provisions which help ensure proper scrutiny of the FCA's work, but recognise the provisions included in the Bill may change and evolve as it is considered by Parliament. As the Panel is aware, we are waiting for further information on the Government's timetable for transferring files. We will continue to engage with the Panel once we have more information on this and what impact it may have on our other commitments.

Finally, the Treasury framed the new proposed 'international competitiveness and growth' objective as secondary. We believe strikes the right balance by reflecting our important role in supporting long-term international competitiveness and medium-to long term growth, without detracting from our existing operational objectives.

FCA Transformation

In your report, you have asked us to be clearer on the outcomes we seek and the metrics we use to see whether they have been achieved.

In our [2021/22 Business Plan](#) we committed to reporting seven strategic outcomes and related metrics that aligned with our transformation programme. We report against these outcomes [here](#). For each of these metrics we set out our intended direction of travel, a latest value and recent years where available, the source and brief explanatory text. We also provide further detail about the data source, how the metric is calculated, some points to consider when interpreting the numbers and, where relevant, potential improvements and links to related material.

Some of these metrics align with those we use for our topline and commitment outcomes and in other cases, the metrics may differ but use the same data sources. Please visit the above webpage for information on our metrics and how we are performing against them.

Claims Management Companies (CMCs)

You have asked us to do more to make consumers aware of the complaints process for CMCs. You are concerned that our proposed ban on individuals from failed financial services from 'phoenixing' as CMCs is not retrospective, allowing those who have already done so to continue to provide claims management services.

When the fee cap rules came into force, we updated our website, including a video on how to make a complaint. We are working with regulatory partners, including the Financial Ombudsman Service and Financial Services Compensation Scheme, to help improve consumer awareness of the redress system. For example, in relation to British Steel we are working together to promote better understanding amongst consumers.

On our CMC phoenixing intervention, we have asked CMCs to provide us with information about any relevant connections to failed firms they may have going back six years. We have defined what we mean by relevant connections in our rules. Therefore, any CMCs with pre-existing relevant connections will be prevented from managing new claims associated with those connections. Having this information will help us to supervise and enforce the rules and applying the ban to new contracts will ensure customers have appropriate protection in the long term.

The Consumer Duty (The Duty)

In your report, you have asked us to do more around the Duty, such as using ‘best interests’ wording for the consumer principle and attaching a private right of action.

In finalising our rules and guidance, we worked very closely with members of the Panel to strengthen the rules, address their concerns and strengthen the incentive for firms to comply with the Duty. We want to thank the Panel for their input and insights.

We do not believe ‘best interests’ would be a better or clearer standard. We think ‘a firm must act to deliver good outcomes for retail customers’ best reflects the aims of the Duty, and firms’ obligation to be proactive in achieving those goals.

In line with the Panel’s suggestions, we have strengthened our governance and accountability requirements. This includes guidance that firms should have a Duty champion at Board (or equivalent governing body) level and guidance setting out the type of questions we would expect the champion and Chair to use to guide discussions by the firm’s Board. We have also strengthened our redress requirements, so firms that cause harm must take action to rectify the situation.

Our Consumer Duty Guidance contains examples of good and bad practice across a range of sectors. We are working closely with the industry to ensure they understand our expectations, and have extensive external engagement planned for the implementation period. This includes a series of sector-based webinars for industry, which had reached over 10,000 individuals by 3 November 2022. We expect to reach additional stakeholders with further promotion of the webinar content, which is available on demand on our website.

Pensions

You have asked us to go further than ‘stronger nudges’ when looking to increase take-up of advice and guidance.

We know more can be done to support consumer decision-making. We are working closely with the Department for Work & Pensions and the Money and Pensions Service - among others - to identify interventions beyond the Stronger Nudge.

We published our [Pensions Consumer Journey Feedback Statement](#) together with The Pensions Regulator in June 2022. This explored how best to engage consumers throughout the lives of their pensions so they can make informed decisions leading to better outcomes. As noted there, and in light of the [Consumer Duty](#), we do not think proposing new rules is the right approach at this point.

Industry has a key role in developing innovative ways to support consumers. We want firms to consider the needs and types of consumers at the different stages of their pension journey and tailor their offering to them to ensure consumers achieve good outcomes. We think this can be achieved without introducing prescriptive rules.

Consumer investments

You suggested that self-certification should cease as it has not protected customers.

As the Panel is aware, amending the Financial Promotion Order (FPO) exemptions is not within our remit. The Treasury is considering responses to its consultation on reforming the FPO exemptions for sophisticated and high-net-worth investors, including a proposal to remove self-certification. We're working closely with them on this, using the results of our behavioural testing on the issue.

As the Panel is aware, we do not believe self-certification is the right approach. We will continue to keep this under review and consider whether we need to make any further changes to our rulebook, once the Treasury have concluded their consultation.

In our [policy statement](#) on strengthening our financial promotions rules for high-risk investments, we introduced a cooling-off period and a personalised risk warning ('positive frictions') for first-time investors. However, other protections, such as our main risk warning and ban on certain inducements to invest, will apply to both new and existing investors.

We have recently published our [Consumer Investments Strategy](#) -reporting on our progress in the last year.

Debt Advice

You are concerned about the overall quality of debt advice and poor consumer outcomes in the market. You have also asked that we include debt management and not-for-profit debt advice firms in the proposed ban on fees charged by debt packagers.

We recognise the Panel's concerns about the need for quality debt advice. We have regular contact with the Money Advice and Pensions Service on their modelling of debt advice need, demand and funding.

Our supervision teams continue to work with the largest debt advice providers to understand what firms are seeing, monitor trends in consumer demand for debt advice and identify potential concerns early, including firms' operational resilience. We expect all providers to offer suitable advice and are working with firms to support that outcome. Where we identify conduct or poor debt advice problems, we respond at individual firm level, through broader planned multi-firm work or at a policy level.

We consulted on banning debt packagers from accepting referral fees for passing customers on to debt solutions providers due to conflict of interests we identified. This conflict was between giving consumers advice in their best interests and firms' financial incentives to make certain recommendations over others. Our rationale for not including Debt Management Plan providers and Not-for-Profit firms is cited in the [CP21/30](#) consultation. Broadly, the conflict of interest is less acute for these models.

We received detailed responses on this and other issues, and we are carefully considering them. We expect to publish a follow-up on debt packagers in due course. In the meantime, we remain committed to tackling the potential harms these firms may cause and continue closely supervising the sector.

Access to cash

You have suggested that one single regulator needs to be given responsibility for access to cash.

In July this year, the Government introduced the Financial Services and Markets Bill. This contains measures on maintaining a sustainable network of retail cash infrastructure in the UK over time.

This legislation will make us the lead regulator for retail cash access. It will give us the responsibility for ensuring the reasonable provision of cash access services in the UK. We are best positioned to take on this role because of our existing regulatory relationships with current account providers and others who are likely to provide cash access.

We will have new powers to act, particularly where we find or expect a significant negative impact on customers' ability to access cash. We will use our new powers to ensure cash access facilities continues to provide appropriate coverage across the UK, to meet the evolving cash needs of consumers and businesses.

Buy Now Pay Later (BNPL)

You have explained your disappointment in the time it is taking for legislation to bring BNPL within the FCA's remit.

The Government consulted on the scope of BNPL agreements to be brought within regulation in October 2021 and published its consultation response in June 2022. This stated it would further consult on the draft legislation by the end of the year.

We share the view that BNPL should be brought into regulation quickly and early decisions would also enable us to make robust operational plans, for example in relation to resources needed at the authorisations gateway. In the meantime, we continue to engage with the sector to minimise the risk of harm. For example:

1. We intervened on potentially unfair and unclear contract terms of 4 BNPL firms using our consumer protection powers in February 2022. This resulted in them amending their terms and, in some cases, paying redress.
2. We met BNPL firms at a roundtable event in July 2022, to urge them to do more to support customers struggling with the rising cost of living, including signposting to money guidance and debt advice.
3. In August 2022, we issued a 'Dear CEO letter' to firms offering BNPL - warning them they may be committing a criminal offence if they don't have an FCA-authorised firm approve their financial promotions when approval is necessary. We reminded them that their adverts must be clear, fair and not misleading.

General Insurance

In your report, you have stressed ongoing concerns about poor conduct in the general insurance sector, referring to an example of consumer 'ping pong' (back and forth from banks to insurers).

The conduct of firms across financial services, including general insurance, is an important focus for us. Our [Strategy 2022 to 2025](#) set out areas of focus, including fair value, suitability and treatment, confidence in markets and access. In insurance, we have introduced product governance fair value rules and are undertaking multi-firm work on product governance/ fair value. We are also focused on the cost-of-living crisis and have agreed a workplan to mitigate consumer harm.

Under the Consumer Duty, firms must act in good faith towards retail customers, and design and deliver support that ensures customers do not face unreasonable barriers for example, when submitting a claim.

To help consumers claiming on travel insurance cancelled due to Covid, we introduced [Covid guidance for cancellations and refunds](#) in April 2021. This aims to protect consumers who may suffer difficulties getting refunds for cancelled travel arrangements without going to unreasonable lengths to mitigate a financial loss.

We are grateful for your support and input this year and look forward to working with you to achieve our common goal of protecting consumers.

Yours sincerely,

Nikhil Rathi
Chief Executive