

Unanswered questions from the Annual Public Meeting 2016

A number of questions were sent in before the Annual Public Meeting. The majority of these were answered on the day. The questions that we didn't get to during the meeting, and the answers, are below.

- 1. Can the FCA confirm that the SMEs as counterparties to the trade have not been involved in tax evasion by the banks, and have the sale of these products entrapped the British SMEs with collateral liabilities and currency trades without the knowledge of the SMEs? Some SMEs derivatives are based in Malaysia, was this for tax evasion of the banks?**

Your question makes some specific assertions, and it is difficult to comment without knowing the facts. As such, we would invite you to share with us any information that you consider may be relevant to our work in supervising the banks. Concerns regarding the tax arrangements of the banks can be raised with HMRC.

- 2. Can whistleblowers be offered some sort of reward for their information given, because they will not come forward under the present regime, as they are being threatened by their banks and then blacklisted in the financial industry? With the volume of fine cash available it would seem sensible to offer a reward for evidence given.**

In July 2014, we published jointly with the PRA a note [‘Financial Incentives for Whistleblowers’](#) for the Treasury Select Committee.

At that time we concluded that providing financial incentives to whistleblowers would not encourage whistleblowing or significantly increase integrity and transparency in financial markets, and therefore proposed not to introduce financial incentives. Instead we decided to press ahead with the regulatory changes necessary to require firms to have effective whistleblowing procedures, and to make senior management accountable for delivering these.

We are very conscious of the value of information we receive from all sources and understand the importance of confidentiality. For this reason, whilst the FCA has statutory obligations under the Public Interest Disclosure Act 1998 (PIDA) in relation to workers who wish to blow the whistle on their employer, we take a wider approach and include anyone who wants to report concerns to us about the firms we regulate, irrespective of whether they are an employee of that firm.

All information that whistleblowers ask to be used in confidence is treated as such. We specifically confirm to whistleblowers that their identities, and the information they provide, will remain confidential unless we receive their permission to disclose it.

The new rules on whistleblowing will take effect in September 2016 and will apply to deposit-takers (banks, building societies, credit unions) with over £250m in assets, to PRA-designated investment firms, and to insurers subject to the Solvency II directive; they are non-binding guidance for all other firms we supervise.

We continue to monitor the approach that other regulators or agencies with similar whistleblowing functions and responsibilities to ours are taking with regards to incentivising whistleblowers, but have no immediate plans to reconsider our current position.

3. When can we expect to have the FCA s.166 report, what has the s.166 report cost to date?

We do not usually release the cost of reviews commissioned under section 166 of the Financial Services and Markets Act (FSMA) 2000. This is because it is confidential information pursuant to section 348 of FSMA.

We have now received the final report on RBS from the skilled person. There are a number of steps for us to complete before we are in a position to share our final findings, which will include an assessment of all relevant material, of which the skilled person's report is one. This has been a complex and lengthy review – it is therefore important that we do not rush the final stages of this process.

4. Will there be a similar s.166 report in respect of Lloyds?

We cannot comment on whether there will be any other reviews of firms.

5. Will there be an investigation into the conduct of Cerberus?

We cannot comment on our supervisory or enforcement activities with respect to specific firms.

6. If a UK court finds Sterling LIBOR manipulation, what will the FCA's response be?

Attempted manipulation of benchmarks is unacceptable, and falls short of the standards we expect of firms and individuals. We have imposed fines on 8 firms following attempted manipulation of LIBOR and have taken action against individuals for misconduct related to benchmarks. If there are any new allegations that would be a very serious matter and we would, of course, examine those allegations carefully and take whatever action is needed.

7. According to the US report ("Too Big to Jail") published last week, back in 2012 the FSA hampered the US government's investigations and influenced the Department of Justice's decision not to prosecute HSBC for extensive sanctions breaches as well as the wholesale laundering of Mexican drugs money. The correspondence published with the report indicates that this particular case may not have been an isolated example of the regulator seeking to influence the outcome of investigations into UK banks by foreign regulators. Would it not be best if all such interventions were disclosed at this stage, before any further embarrassing revelations come to light indirectly?

On HSBC, the FCA (and FSA previously), in its role as global lead regulator of HSBC Group for its financial crime remediation programme, has worked closely with the

relevant US authorities on the issues which led to HSBC's Deferred Prosecution Agreement and we continue to do so.

In December 2012 the FSA took action in relation to issues in respect of HSBC's compliance with anti-money laundering rules and US sanctions requirements. The FSA worked closely with the relevant US authorities and this action was separate to, but coordinated with the actions taken by them. In particular, we required HSBC to employ an independent monitor to oversee the Group's compliance with UK anti-money laundering, sanctions, terrorist financing and proliferation financing requirements and to provide independent reporting to the HSBC Board committee and regulators.

We take the issue of tackling money laundering very seriously because the laundering of money through UK financial institutions undermines the integrity of the UK financial system. As outlined in our business plan, AML and financial crime is one of our seven priority themes for 2015/16. It is the responsibility of UK financial institutions to ensure that they minimise the risk of being used for criminal purposes and, in particular, of facilitating money laundering or terrorist financing.

We have continued to make strides in pursuing our financial crime strategy, to enhance integrity in our markets. In November, we issued our largest fine of £72m for financial crime failings against Barclays Bank. We hope that this fine will remind other firms of the importance of vigilance when assessing and addressing financial crime risks. In addition, as part of the new accountability regime, we have created a new prescribed responsibility for financial crime with the aim of ensuring it is a priority among firms' senior management.

As you will appreciate, we operate under strict confidentiality restrictions so are unable to comment further on any supervisory action or current enforcement investigations.

8. **What is to stop networks from deliberately writing exclusions within their agreements with ARs that are so wide and vague as to prevent action ever being taken against them? This seems to undermine the regulatory regime, and the purpose for which networks exist. How does the FCA plan to address these issues and protect consumers in accordance with its duties under S.2 FSMA and S.5 FSMA?**

Under the network model, it is the network that is the authorised firm; however, each case is different, so it is not possible to generalise in terms of specific action we might take. There are a number of routes open to us to take action against either or both a principal and an appointed representative, depending on the particular circumstances of the case.

We will be considering the relationship between principal firms and their appointed representatives further as we apply the Senior Managers and Certification regime across the financial services market. We are also discussing these issues with the Financial Ombudsman Service and Financial Services Compensation Scheme.

9. Please confirm how many of the respondents to the FAMR raised the issue of the long-stop.

All 268 responses to the FAMR consultation are available to the public, and can be found in the [FAMR Final Report](#).

As the FAMR report said:

“Some respondents to the Call for Input felt strongly that the risk of indefinite liability has a negative impact on financial advice businesses, including in terms of reducing investment and commercial incentives to provide certain types of advice. For this reason, some respondents supported the introduction of a longstop limitation period for referring complaints to the Financial Ombudsman Service in addition to the existing three- and six-year time limits, broadly reflecting the approach in the general law in England and Wales, where claims brought 15 years after the events to which they relate can generally be ruled out of time.

“However, other respondents felt that the introduction of such a longstop would not reflect the reality of financial services advice, where many products sold are very long term and consumers cannot reasonably be expected to realise they have a cause for complaint for many years, because it can be very difficult to assess the quality of advice earlier on. Accordingly, introducing a longstop would amount to removing an important consumer protection, by preventing the ability of consumers to obtain redress for long-term products such as pensions.”

Taking these arguments into account, and bearing in mind the analysis of the number of complaints which related to advice longer than 15 years ago, the Report recommended that there should be no introduction of a long-stop.

10. Please clarify the numbers of staff at the PIA and, separately, the PIA OB, on 1 December 1997, and the FCA and the FOS since the inception of FSMA and the Compulsory Jurisdiction on 1 December 2001, and the number of IFAs at each date, and explain whether the FCA consider that it is regulation which has failed the industry, or FCA/FOS empire building which has succeeded.

Current and past FCA staffing levels can be found in our Annual Reports; as of 31 March 2015, we had 3337 staff. By the end of the financial year 2015/16, as per their Director's report, the FOS had 235 full time ombudsmen, 70 flexible ombudsmen and 422 other complaint handlers.

We do not hold the information you have requested about historic staffing levels of the PIA, the PIA OB, the FOS or the number of IFAs in 1997 or 2001.

11. Please clarify how any departed adviser could be expected to know of rules created after his resignation, and why he should be bound by them in respect of the jurisdiction of FOS?

Exempting firms from FOS jurisdiction a set length of time after they have ceased to be regulated would be akin to a long stop, which was considered as part of FAMR and rejected. We have not seen significant evidence of large volumes of complaints of this kind, nor that handling such complaints is disproportionate for the firms concerned. On the other side of these complaints will be consumers who may have individually lost substantial amounts of money.

The jurisdiction of the Financial Ombudsman Service applies to firms which are authorised and which were authorised when the substance of the complaint took place. Firms know this when they obtain authorisation, and all rule changes are consulted on. It would not be fair on consumers to allow firms or individuals who have left the industry to be exempt from complaints handling rules.

We would not expect firms responding to complaints made about advice given in the past to apply today's advice standards to that advice; they would need to consider what the requirements were at the time. The Financial Ombudsman Service does the same.