

Our Mission 2017

Feedback statement

FS17/1

April 2017

Introduction

'Our Mission 2017', published alongside this feedback statement, outlines our overall response to the consultation published on 26 October 2016 ('Our future Mission'). **This feedback statement provides supporting detail.**

Consultation ran from 26 October 2016 to 26 January 2017. We received over 210 responses from professional bodies, authorised firms, academics, **trade associations, consumer groups, individuals, and the FCA's statutory panels.**

The FCA reviewed and considered each response, passing on comments about specific areas to the appropriate FCA functions. While we are not able to respond to every comment individually, this feedback statement summarises the key points made in consultation responses, and explains how we will address them.

Most of the responses we received directly addressed the 26 questions in our consultation. However, some respondents also made more general comments about how the FCA operates. The summary below starts with these more general comments, and moves on to specific consultation questions.

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General themes/comments:

Some broad themes emerged in the responses received to the consultation on 'Our future Mission'

Key points/range of views	Our response/next steps
<p><i>Transparency, Proportionality and Public Value</i></p> <p>One major theme was the desire for the FCA to be more transparent in the way it operates. Trade bodies emphasised the need for us to explain our internal functions and structure to the outside world, for example by publishing organisation charts. Firms said the regulator could be more open in its decision-making, for example, providing information and explanation during relatively protracted diagnostic work like market studies and thematic reviews.</p> <p>Respondents agreed that we must be proportionate in our interventions. This means considering how to reduce harm in the most cost effective way. However, responses expressed different views about how we should do this. Consumer groups tended to characterise relevant benefits as consumer outcomes. Firms and trade bodies referred more broadly to market benefits, or stronger competition.</p>	<p><i>Transparency, Proportionality and Public Value</i></p> <p>'Our Mission 2017' aims to make our decisions more transparent by explaining how we operate. The Mission begins by clarifying our aim – to serve the public interest by improving how financial markets work and how firms conduct their business. We recognise that regulation is not cost free, and that regulatory costs can be passed to consumers through higher prices. So our aim is to use our tools efficiently and cost-effectively, to serve the public interest (delivering 'public value').</p> <p>The Mission explains how we try to ensure our decisions create public value. Firstly, we consider three key factors when making regulatory judgements - our legal obligations, how we can add value, and the needs of affected users. We will use these factors in making decisions internally, and explaining those decisions externally.</p> <p>Secondly, our response to the consultation sets out a framework to help us decide when to use our tools. We give more details of this 'decision-making framework' in response to Q7 below.</p> <p>We will follow up 'Our Mission 2017' with specific publications to clarify our approach. These will cover FCA functions – Authorisations, Supervision, Enforcement and Competition, as well as our 'Approach to Consumers'.</p> <p>Some responses asked for clearer progress updates during diagnostic work. We have made changes to address this issue. Every FCA publication now has a 'topic page' on our website. This summarises key information, and who it applies to. Readers are also provided with a timeline which</p>

Measurement

Respondents agreed that the Mission could provide ways for us to be more accountable for our decisions. They also encouraged us to go further to measure outcomes as an important way to promote our accountability.

Trust

Some respondents suggested that the FCA should explicitly aim to promote trust in markets. They explained the value of trust as making more mutually beneficial transactions possible.

summarises how far the process has progressed, and what to expect next.¹ We will continue to try to improve how we communicate. For example, over the coming year we will collect feedback from website users and consider how to improve online communications.

Measurement and Value for Money

We agree with respondents that measuring the impact of regulation is important. There are several reasons for this. First, understanding the past impact of regulation should help us make better decisions in future. Second, regulation imposes costs, and some of these are passed on to users of financial services. We should be clear about whether and why we believe costs are justified. This means explaining how our actions add public value.

We have therefore made measurement an important part of the decision-making framework described in response to Q7, below. The Mission document commits the FCA to measuring its performance using the three-tier performance framework outlined in the Mission consultation. We describe this approach in response to Q5.

Trust

The FCA has the strategic objective of making financial markets work well. Trust is clearly important to this. It may help product users engage better with markets and can encourage the development of liquid capital markets. Financial regulators have a role in encouraging trust in financial markets, and helping to ensure that this trust is justified. We do this in a number of ways – by setting minimum standards, by monitoring and enforcing to incentivise compliance and deter poor behaviours and by authorising firms and individuals. Trust relies on firms and individuals as well as regulators. Firm Boards are responsible for running their businesses, and the behaviour of their staff. Poor behaviour undermines trust, which ultimately

¹ For example, this summary for the Investment and corporate banking market study (MS15/1) is online: <https://www.fca.org.uk/publications/market-studies/investment-corporate-banking>

Clear expectations

Industry responses consistently emphasised the value of giving firms clear expectations of how regulation will affect their business. Many **suggested that we should call out 'good' and 'bad' practice more frequently to clarify our own expectations.**

Handbook

Firms pointed out that it can be difficult to navigate and interpret rules and guidance, with the number and variety of sources creating uncertainty. Firms may need to consult multiple rulebooks, and a variety of formal and informal guidance to understand our expectations. Some firms also suggested that the Financial Ombudsman Service **provides 'de facto regulation' through its adjudication.**

Respondents generally supported a review of the FCA Handbook. Several firms asked for more cross-references between relevant publications and the Handbook. But they noted that timings should align with processes surrounding the UK leaving the European Union.

causes harm to individuals, businesses and the economy. It is therefore important both that there is trust in financial markets, and that firms and individuals justify that trust with good standards of conduct.

Clear expectations

We want to help users of financial services and firms understand our expectations. One way to do this is by being a transparent regulator that clearly communicates the rationale for decisions. It will not always be possible to communicate how we reach every decision, but we will seek to be as transparent as possible. It is also important that firms understand our remit and how we cooperate with authorities like the Financial Ombudsman Service and the Prudential Regulation Authority. We will listen to feedback from firms, and work with them to communicate our expectations more clearly.

Handbook

To illustrate this, we are seeking ways to make the FCA Handbook easier to navigate, and have already progressed work in in this area. We recently introduced some practical improvements, including topic-based navigation and searching. More broadly, we are committed to reviewing the Handbook to make our requirements clearer. This review will take place once the **Handbook has been adjusted to reflect the UK's exit from the European Union.**

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

Key points/range of views

In general, respondents thought that our definition captured important aspects of a well-functioning market. There was, however, disagreement about the scope of markets.

Different financial markets

Many respondents suggested that our broad definition could be refined. For example, consumers in some markets, like banking and insurance, may be able to learn from how well previous purchases met their preferences. In markets for longer term products like pensions this learning process may not be possible. These types of factors will influence what form a well-functioning market should take. One firm suggested that our definition should consider how much choice consumers have about purchases. This approach would, for example, distinguish between forms of compulsory insurance, such as car insurance and those bought in addition to universal provision, such as private healthcare.

Our response/next steps

As there was general agreement on our definition of a well-functioning market, we have not changed it.

We acknowledge that respondents to this question raised some significant issues. For example, factors like whether product purchases are repeated or one-off may often be relevant. The Mission seeks to reflect considerations like these. For example, the document describes three **factors that are key to our regulatory judgements: the FCA's regulatory objectives, the potential impact of our intervention, and product users' needs.** We believe that these factors, together with the decision-making framework described in Q7, enable us to give appropriate consideration to the important market characteristics raised by respondents to Q1.

Different financial markets

We agree that there are significant differences between retail, wholesale and capital markets, but there are also links between them. We also agree that it is important to consider potential waterbed effects – across markets, and within them.

Many respondents asked for more detail about specific markets like financial advice, short term credit, banking, and insurance. We approach these issues on a sector basis. We divide financial services into seven sectors - Wholesale, Investment Management, Insurance, Retail Banking, Retail Lending, Retail Investments and Pensions. Alongside the Mission, we **are publishing more detailed analysis of these sectors in our' Sector Views'**. Our 2017/18 Business Plan also sets out our plan for each market.

Several respondents emphasised the need for our definition to clearly distinguish between retail, wholesale, and capital markets. This would **reflect the 'waterbed' effects between markets that regulating one type of product could have on comparable products in other 'markets'**.

Access

Some trade associations suggested that we should consider a wider range of factors. These included availability of alternative products in other markets to ensure that access to services.

User Needs and Characteristics

One respondent encouraged us to give more detail when explaining the role of demand-side characteristics. They suggested we include **consumers'** underlying preference for buying multiple products from one firm, or describing what a realistic level of customer engagement would look like in a particular market.

Other respondents suggested we include alternative characteristics. A consumer group suggested that a well-functioning market must account for the needs and preferences of distinct groups of consumers rather than assuming homogenous demand. Consumer groups tended to characterise the relevant market benefits in terms of consumer outcomes. Firms and trade bodies referred more broadly to market benefits, or healthy competition.

Access

Consumers' ability to engage in financial markets is fundamental to effective competition. Our Occasional Paper 17 explored some access issues that consumers face. We will use our decision-making framework to look at ways to address access, working with firms and third parties. It is also true that some access issues will be a matter for government rather than regulators. These may include whether all consumers should have access to a bank account or Post Office branch. When using our decision-making framework to analyse access issues, we will consider factors like the availability of alternative products and how an access issue relates to our remit.

User Needs and Characteristics

We agree that our regulatory judgements should consider the needs and preferences of distinct groups of consumers, including evidence about their preferences and likelihood of engagement. This means being realistic about the level of consumer engagement, rather than assuming all consumers **make 'rational' choices all the time. As outlined in the Mission document, 'Considering user needs' is therefore one of the three key factors we consider when we decide whether and how to intervene.**

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

Key points/range of views	Our response/next steps
<p>Most respondents agreed that consumer loss is part of a well-functioning market and that consumers should take responsibility for their decisions. Several submissions noted that where consumer loss has occurred, firms and the FCA need to be clear about the reasons for the loss.</p> <p>Cause of loss</p> <p>Many respondents said that we should treat losses caused by misconduct differently from those caused by other factors. One respondent, however, cautioned against 'hindsight bias'. Changing consumer circumstances may retrospectively change how suitable previous advice was - so any assessment of misconduct must be fair and reasonable.</p> <p>Vulnerable Consumers</p> <p>Consumer groups stressed the importance of treating vulnerable consumers differently. This was both because losses are likely to have a greater impact on their lives, and because their circumstances might make loss more likely. For example, one respondent pointed to the significant emotional and psychological impact of financial loss on</p>	<p>'Our Mission 2017' re-emphasises an important regulatory principle: consumers should take responsibility for their decisions. This links to the idea that consumer loss is part of a well-functioning market.</p> <p>Cause of loss</p> <p>We entirely agree with respondents that the cause of loss is important. Firms must fulfil their obligation to Treat Customers Fairly by considering customers' needs and circumstances, including potential vulnerabilities. In respect of 'hindsight bias', we agree that the relevant question is whether a firm's conduct met relevant standards when it took place, and that any assessment of this question must be fair and reasonable. If firms Treat Customers Fairly, and sell products in an appropriate way then consumers may bear some responsibility for losses. In contrast, consumers should not bear responsibility where loss occurs as a result of firms' misconduct.</p> <p>We also agree it is sometimes possible for harm to arise without anyone being at fault. We will often take action to improve how markets operate, or how firms will act in future, without any implication that misconduct has occurred in the past.</p> <p>Vulnerable Consumers</p> <p>As 'Our Mission 2017' makes clear, we consider users' needs when we decide whether to intervene. The impact of potential financial loss may be more important to vulnerable consumers, though this does not necessarily mean they should be protected from all risk. We consider this issue in more detail at Q16 below. An awareness of product users' needs and</p>

consumers with mental health problems. Another respondent pointed out that an unforeseeable change to circumstances, such as a serious illness, can affect a consumer’s ability to afford their existing financial commitments.

characteristics should inform how we use the decision-making framework described at Q7.

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

Key points/range of views	Our response/next steps
<p>In general, many responses suggested that ‘Our future Mission’ (the Mission consultation) got the balance right between individual responsibility and the regulator’s role. However, some responses proposed amendments to this approach.</p> <p>Some highlighted the need to be realistic about how responsible consumers can be for outcomes created by markets. In particular, firms and professional bodies argued that the balance had swung too far in favour of consumers, citing the ‘de facto regulation’ created by Financial Ombudsman decisions. Other respondents, including consumer groups, stated that the consultation placed too much weight on consumer responsibility.</p> <p>A number of respondents noted that there was a difference in financial capability between retail and wholesale consumers when exercising due-diligence. They pointed out, for example, that there was less need for regulatory action in wholesale markets as market counter-parties were more capable of ‘looking after themselves’.</p> <p>A few respondents called for a clearer statement about what due diligence we expect individuals to undertake and how much this varies depending on the consumer, market and product involved.</p>	<p>Clearly, it is important to be realistic about the level of responsibility that consumers can accept in particular markets. We recognise that it is difficult to balance expectations of how consumers should act, firms’ responsibility, and the regulator’s role in enforcing market discipline. We also understand that a nuanced approach is required: a different balance between these factors may be relevant to different markets with diverse consumers, products, firms and intermediaries. As respondents suggest, there may often also be important differences between particular retail, wholesale, and capital markets.</p> <p>We make decisions, on behalf of the public, on where the balance between firm and consumer responsibility lies. We recognise our approach will not consistently satisfy all parties. In ‘Our Mission 2017’, we try to be more transparent about the basis on which we will make decisions. We will communicate on that basis in future.</p> <p>We think that using our decision-making framework to prioritise regulatory action where it will add most public value will enable us to maintain the right balance between reasonable expectations of individual due diligence and our central role in ensuring ‘fit and proper’ thresholds are met.</p> <p>We also recognise that regulatory costs can be significant for firms, and</p>

ultimately to consumers. So we need to ensure these costs are proportionate and deliver public value. We provide more detail on our decision-making framework in response to Q7.

Retail and Wholesale

Respondents made specific comments about how our approach to retail and wholesale markets should differ. We distinguish between the type and level of information firms are required to give, for example, to retail and professional clients, institutional investors and eligible counterparties.

Similarly, we also recognise that capabilities and vulnerabilities vary between different groups of retail consumers. For example, we have used our segmentation model of retail consumers to inform our work and are currently developing our 'Approach to Consumers', which will be published later in 2017.

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?

Key points/range of views	Our response/next steps
<p>There was broad support for the distinction we draw between retail and wholesale markets in 'Our future Mission'. Many respondents asked for greater clarity on the distinction between retail, wholesale, and capital markets. They also felt that we should consistently reflect this distinction across all areas of the FCA's work.</p> <p>There was agreement that –generally speaking- wholesale product users will have more information, resources and capability to assess the products they purchase.</p> <p>Many responses emphasised that while the differences between these</p>	<p>We consider markets in reference to their particular characteristics. We agree with respondents that these distinctions are important but neither simple nor binary. We take a sector based approach to differentiate between retail, wholesale and capital markets. We give further details of how we analyse seven different market sectors in our 'Sector Views' publication. We have also structured our 2017/8 Business Plan around our work in each of these seven market sectors. This Business Plan also covers cross-sector issues, such as Financial Crime and Innovation, and how different markets overlap (e.g. retail investment and investment management).</p>

markets are key, distinctions are not simple or binary. This is for two reasons.

First, we should explicitly acknowledge the role of capital markets alongside those of retail and wholesale markets – making three categories to consider rather than two.

Second, some respondents emphasised that wholesale and capital markets often have a critical impact on consumers, and we should not downplay this link. LIBOR manipulation was given as an example. This point was made by both consumer groups and trade associations.

Third, many respondents emphasised that there is a spectrum of capability within each type of market (retail, wholesale, capital). This means that any generalisations about product users in each market type need to be researched and qualified. Small and Medium Sized Enterprises (SMEs) were often given as an example of this spectrum of capability. In some cases, SMEs may be classified as product users in wholesale markets, but it does not follow that they hold a high levels of resource, capability and expertise in these products.

Finally, firms and a professional association emphasised that the retail, wholesale, capital market categories are constantly changing and may overlap. This makes it important to review the categories used in regulation.

'Our Mission 2017' makes clear that we regulate for the benefit of the public, including: individuals, businesses and the wider economy. While the distinction between retail, wholesale and capital markets is important, effective regulation of wholesale and capital markets can also benefit retail consumers. Abuses in this market (e.g. Libor) can reduce trust, which ultimately affects all market users.

Wholesale and capital markets also have a significant economic impact. So regulatory action to improve market efficiency and effectiveness (e.g. IPO changes) can have a positive economic impact, which ultimately benefits businesses and individuals, and creates public value.

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

Key points/range of views	Our response/next steps
<p>Overall, respondents welcomed the commitment in 'Our future Mission' to measure the outcomes of our regulation to assess their value. Firms and professional associations suggested that measuring the outcomes of activity would only work if we were also more open and transparent about which of our interventions had worked and which had not.</p> <p>Some firms highlighted areas of our work which require greater measurement, for example by using specific measures of success for particular interventions. There was also support for more explicit use of post-event evaluation to assess how successful particular interventions have been. Firms also asked for clarity about how and to whom we will report on these areas. Consumer groups also made this point. An academic respondent welcomed our suggested approach of measuring outcomes in markets rather than merely of FCA-outputs. They also encouraged us to consider how to measure ethical behaviour by market participants, particularly as a predictor of conduct risk.</p> <p>Respondents agreed that measurement and evaluation are welcome, but argued that we cannot make decisions based on numbers alone. Professional associations and firms encouraged us to consider the important role of qualitative performance indicators. One firm suggested that specific indicators could include 'ratings based on surveys of...firms'. Many respondents stressed that our approach to measurement must be proportionate, focusing on significant interventions and developing a sense of direction about their impact.</p> <p>Respondents suggested specific criteria we could use to evaluate the</p>	<p>'Our Mission 2017' underlines our commitment to a three tiered approach to measurement, covering: operational efficiency, the impact of our interventions and outcomes in the markets that we regulate. We agree with respondents that it is important to be honest about what has worked and what has not.</p> <p>In the longer term, we will therefore report publicly on the impact and outcomes of the key interventions and work we did in previous years. We believe that measuring the impact of regulation will help us make better informed decisions about how to add the most public value. This process will mean we will report on the outcome of interventions 3-5 years after they take place.</p> <p>We will also look at what more we can do to evaluate the impact of our work through post implementation reviews (PIRs). We will publish all ex-post impact evaluations, and carry out at least one of these evaluations (also called 'ex post Cost Benefit Analysis') per year, aiming to increase this over time. Ex-post CBAs will measure impact against a benchmark of non-intervention and will either be reviewed or delivered by external experts. We will be open and clear if our own reviews show that our work did not deliver the result we intended. We agree with respondents that it is important to analyse the costs and benefits of action, but a proportionate approach is required. We cannot make regulatory judgements on the basis of numbers alone.</p> <p>We will also be clear about testing on proposed future remedies and interventions. We will, for example, publish results from testing, even</p>

impact of regulation. These included the number of cases upheld by the Financial Ombudsman Service, and the size of Financial Services Compensation Scheme levies, as they reflect conduct risks that have materialised, rather than being prevented by effective regulation.

when these are not statistically significant. We demonstrated this approach in November 2016 by publishing a round-up of FCA research into the effectiveness of disclosure (Occasional Paper 23). This detailed results from a full set of trials, including those with results that were not statistically significant. Our aim is to enable others to learn from these results.

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?

Key points/range of views	Our response/next steps
<p>A number of responses agreed with our interpretation and said we had struck an appropriate balance. However, a large number suggested other aspects that we should include in our interpretation:</p> <ul style="list-style-type: none"> a. Some consumer groups stated that any interpretation of the integrity of the UK financial system must have the consumer at its heart. Other responses urged us to find out what consumers want from the financial system and how that can best be delivered as a condition of restoring trust in the system, b. A wide range of respondents asked for us to recognise more explicitly the international dimension of financial markets when we consider the integrity of the UK financial system, c. Some respondents accepted that considering market integrity and the FCA’s role in relation to it was a difficult balance to strike. One firm gave the example of getting the balance right between effective detection and deterrence of financial crime compared with the barriers to access and inconvenience caused to consumers. 	<p>Given these responses, we will continue to operate on the basis described in ‘Our future Mission’. 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.</p> <p>In doing so, we acknowledge the international dimension of our work, and the need for financial services to create public value, including by benefitting consumers.</p> <p><u>Link to Consumers</u></p> <p>We aim to deliver regulation that creates public value, for example by benefitting <i>users</i> of financial services: consumers, businesses and the economy.</p> <p>When we act to promote trust and market confidence, this ultimately makes the market work more effectively for all parties, including product users. Our actions to further our market integrity objective therefore ultimately benefit individual consumers.</p> <p>Trust in financial services markets has been challenged by misconduct, for</p>

example, in Foreign Exchange (FX) and the sale of Payment Protection Insurance (PPI) products. The Financial Advice Market Review (FAMR) found that low levels of customer demand for financial advice were driven by a lack of trust, following previous mis-selling.² Firm misconduct can therefore lead to a loss of trust which causes harm by reducing demand for appropriate products. We reflect this principle in our regulatory approach. For example, our work on Initial Public Offerings (IPOs) aims to make the market more efficient and increase investor confidence. Ultimately, this should deliver benefit both to end-investors, and companies raising capital.

We consider how to add public value for all users of financial services, and do not limit ourselves to actions that have an immediate, direct consumer benefit.

We have taken important steps to embed changes that will improve trust in the market, including the Senior Managers and Certification Regime **(SM&CR)**. **We must understand consumers' experiences of financial markets**, and gather information on these by cooperating with consumer bodies, analysing data from third parties including the Financial Services Consumer Panel (FSCP), and importantly, our own Contact Centre.

International Markets

We agree that it is important to consider the international dimension of financial markets and financial regulation when considering the integrity of the UK financial system. The UK hosts large, globally-active firms whose presence ultimately benefits both consumers and the wider UK economy. If regulation does not add public value – if it is expensive, inefficient or fails to prevent misconduct – this disadvantages the UK financial services market and consumers.

The international nature of markets also means that we engage and co-ordinate with international regulators and global organisations. For instance, we are active members of the International Organisation of

² See Final Report here: <https://www.fca.org.uk/publication/corporate/famr-final-report.pdf>

Securities Commissions (IOSCO). We are currently represented in all permanent Policy Committees of IOSCO, Chair the Committee on Asset Management, and vice-chair the Enforcement and Exchange of Information Committee.³

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

Key points/range of views	Our response/next steps
<p>There was broad support for the decision-making framework proposed in 'Our future Mission'. Responses generally thought our approach was logical and appropriate. In general, the use of a clear framework to explain how we assess harm and decide whether and how to intervene was considered useful progress, particularly in helping industry and other stakeholders understand our decisions.</p> <p>Respondents also suggested specific improvements to the model. A number suggested that the decision-making framework implied that we would only act to address harm once it has materialised. They proposed we should amend it to reflect the value of proactive action to prevent harm. It was also suggested that the framework should acknowledge the critical importance of improving competition in markets where outcomes are poorer than they could be, but where there may be no discernible 'harm' to measure.</p> <p>It was also suggested that the framework should do more to explain expected timetables for different types of work in order to help firms' business planning. Other respondents suggested that the framework implies a bias towards intervention, rather than allowing markets to</p>	<p>The 'intervention framework' outlined in 'Our future Mission' (consultation document) may lead us to decide against intervening in a market. To reflect this, we refer to it as a 'decision-making framework' in this feedback statement.</p> <p>We will use our decision-making framework to make judgements about taking action and what actions will add the most public value. We will use it both for day to day decisions, such as those taken by our authorisations and supervisory functions, and when we make strategic decisions.</p> <p>Within this framework, we recognise that many respondents thought our interpretation of 'harm' focused too much on reacting to problems rather than preventing them occurring in the first place. The Mission consultation was, however, clear that 'the preferred approach is typically preventative – to stop bad things from happening in the future'.</p> <p>So we re-iterate that 'harm' in this framework is a broad concept. As the consultation document (p.19) suggested, we will analyse five types of harm. Broadly, these forms of harm fall into three categories: bad things that may happen, bad things that have happened, and outcomes in</p>

³ The Committee on Enforcement and the Exchange of Information, and the Commodity Derivatives Markets Committee, jointly with the US Commodities and Futures Commission (CFTC).

resolve identified issues. While welcoming the proposal in general terms, a trade association suggested we should pay more attention to how rules apply in the real world, rather than just their intended effect.

Firms particularly stressed the potentially significant costs of regulatory interventions. Providing data to the regulator, responding to consultations and liaising with supervisory teams all take up valuable resources. They asked us to consider this impact when we decide how and when to diagnose harm. In this context, a professional association proposed that we should explicitly aim to do the minimum necessary to securing our objectives, consistent with Cost Benefit Analysis (CBA).

markets that could be improved. We will consider how outcomes can be **improved within the category of 'harm prevention'**. This allows us to consider potential preventative and remedial action together on the same basis.

We will decide whether to intervene based on overall public value, and not solely according to whether harm relates to a single incidence of firm misconduct or a wider market failure.

Our 'Sector **Views**' inform decisions about what our priorities should be in different markets, helps us do this. To develop distinct strategies for each sector and oversee how prioritisation of regulatory tools happens, a team representing key FCA functions consider harm we have identified, emerging issues and risks on an individual sector basis.

Other relevant factors to help us determine whether to intervene are the likelihood of the markets being able to resolve the issue themselves and the cost to industry. For more significant issues, we recognise that collaboration with industry will be essential to identify the course of action that delivers the most public value.

Critical assessment and effective Cost Benefit Analysis (CBA) of proposed interventions including diagnostic work like market studies already play a crucial role in helping us arrive at proportionate and effective decisions. We understand the demand to communicate more clearly how key projects are progressing. We have updated our website to try to achieve this. Every FCA **publication now has a 'topic page'**. This summarises key information, and who it applies to. Readers are also provided with a timeline which summarises progress made.⁴ We will consider more feedback from website users in the coming year, including how to encourage more engagement with relevant publications.

⁴ For example, this summary for the Investment and corporate banking market study (MS15/1) is online: <https://www.fca.org.uk/publications/market-studies/investment-corporate-banking>

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

Key points/range of views	Our response/next steps
<p>Respondents suggested the remit of our statutory objectives provided the main boundary between public policy and the FCA's regulatory responsibility, with government setting public policy and the regulator executing it.</p> <p>Several respondents suggested that we try to clarify the 'boundaries' within that remit, arguing that, in practice, public policy and FCA regulation are closely linked. Firms, in particular, commented that a better understanding of these 'boundaries' would help us determine the areas where we could more actively contribute to and influence public policy to benefit consumers and improve market efficiency. Suggestions for this included working closely with government to explore how public policy solutions can address wider societal issues or by using our convening powers to bring together industry, consumers and other stakeholders. One respondent said that being clearer on the areas outside of our remit would support clarification of who is best placed to take action.</p> <p>In this context, few responses provided alternative models for regulation. One exception was a consumer group, which gave alternative criteria for identifying well-functioning markets. This group also suggested that we should be more willing to realign competition so that it takes place on the 'right' grounds to fulfil these criteria. A campaigning organisation echoed that message, encouraging us to focus the market more explicitly on the 'broader purpose of the industry'.</p> <p>A small number of respondents suggested that in light of the UK's</p>	<p>As 'Our Mission 2017' outlines, our aim is to use our tools efficiently and cost-effectively to deliver the greatest public value. To do this, we consider three key factors when we exercise regulatory judgement. The first of these is the FCA's regulatory objectives. Parliament has given us objectives and powers, and we must act within them. Our regulatory remit is the first main factor we consider when we make decisions to improve outcomes for users of financial services.</p> <p>The interaction between regulation and public policy is, however, complex. It can change over time. We understand respondents' desire for as much clarity as possible on this issue.</p> <p>We agree with respondents that the starting point for this distinction must be our objectives and powers given to us under different pieces of legislation. In 'Our Mission 2017', we make clear that our regulatory judgements begin with the objectives given to us by Parliament. In some cases the boundaries are clear. For example, creating new markets for new goods and services or ensuring that everyone gets a specific good or service is not within our regulatory remit. Assessing a market where poor competition results in more vulnerable consumers paying higher prices would, however, fall within our remit. But in other instances the boundaries are less clear. For example, in some cases we apply our principles to activities that are not prescribed in the Regulated Activities Order (RAO), but are carried out by regulated firms (e.g. Libor in 2009).</p> <p>'Our Mission 2017' states that we will use our decision-making framework to identify where FCA action would both meet our objectives and deliver public value. This means being honest when we do not think we are able to</p>

decision to leave the EU, actively promoting UK competitiveness might be a public policy imperative that also applied to the FCA.

address harm in markets or where we think that harm in markets would be best addressed through alternative measures by other actors (e.g. by government). The Mission is also clear that our regulatory judgements will **consider users' needs. To some extent, this aligns with one respondent's suggestion that competition should take place on the 'right' grounds.** Similarly, when other stakeholders are better placed to address harm, we will share evidence with them.

Financial regulation and public policy are interlinked in practice, and boundaries can be complex. We therefore accept the suggestion that we should clarify, where possible, the boundaries within that remit. Our powers do allow us to act outside the perimeter in some circumstances. For example, the Financial Services and Markets Act (FSMA) gives the FCA and the Competition and Markets Authority (CMA) concurrent powers to investigate breaches of the Competition Act, to conduct market studies and to make market investigation references. In these, and other, powers we are not restricted by the regulatory perimeter.

We will continue to work closely with other regulators, and government to consider how best to address public policy issues that undermine market efficiency.

Finally, the FCA has no statutory objective to promote competitiveness. Instead, our statutory objectives are described in sections 1B, 1C and 1E of the Financial Services and Markets Act (FSMA): consumer protection, market integrity, and competition. Any change to these objectives would be decided by Parliament, not by us.

We are, however, required by FSMA to have regard to the desirability of sustainable growth in **the UK's economy in the medium and long term** (FSMA, 3B(1)(c)). In addition, under FSMA s.1JA, HM Treasury can make **recommendations as to aspects of the Government's economic policy to which we must have regard. The Government's recommendations refer to** its wish that the UK remains an attractive domicile for internationally active financial institutions, and to its aim to encourage trade and inward investment which can be supported by being seen as an attractive place to

do business. Thus, like other regulators, we consider this principle in our work. Much of what we do, such as our work to promote competition, and our Public Service Equality Duty seeks to support this objective.

We are clear that regulation to promote sustainable growth is not about de-regulation; weak regulation and sustainable growth are generally mutually exclusive.

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

Key points/range of views	Our response/next steps
<p>Respondents broadly agreed that price discrimination is often inevitable and can have either positive or negative effects in particular markets. A professional association argued that we were right to acknowledge that this is a complex area, and suggested that decisions should be taken on a case-by-case basis rather than with overarching principles.</p> <p>Some trade associations and firms emphasised the positive aspects of price discrimination. These potentially include giving access to more consumers in markets like retail banking. In contrast, one firm suggested that – using definitions in Occasional Paper No. 22: Price discrimination and cross-subsidy in financial services – cross subsidies are generally unacceptable, and may justify our intervention. This firm encouraged us to consider factors like the duration, timing and behavioural incentives behind a cross subsidy.</p> <p>A trade association objected in principle to us considering the question of price discrimination and cross subsidy. It argued that we should exclusively aim to encourage transparent pricing, and ignore relative prices for different consumers groups.</p>	<p>‘Our Mission 2017’ makes clear that we aim to serve the public interest by preventing harm in financial markets in the most cost efficient and effective way possible. This question should be seen in that context.</p> <p>Price discrimination and cross subsidy are complex areas, and the responses we received reflect this. A number of submissions requested detailed guidance on the conditions when price discrimination may be unacceptable to us.</p> <p>Judgements on any specific case may consider key factors. These may include whether patterns of price discrimination cause unacceptable harm to a particular group of consumers, and whether or not price discrimination harms the development of effective competition in that market.</p> <p>These judgements will inevitably be made on a case-by-case basis, using our analysis of who is affected and how competition is developing in particular markets. This means that it is difficult to summarise a simple set of criteria for identifying acceptable and unacceptable levels, or kinds, of price discrimination. We agree with respondents that consumers may lose</p>

This section of 'Our future Mission' cited academic research which modelled the impact of suppliers' potential strategic responses to 'naïve' and 'sophisticated' consumer behaviour. Some respondents objected to this terminology. Consumer groups, for example, argued that an inability to move between providers could often result from a number of factors, like market structure, rather than consumers' 'naivety'.

A number of respondents asked us for greater clarity. Some firms, for example, encouraged us to provide guidance on when we would consider levels of cross subsidy to be excessive. Similarly, a trade association argued that our current approach is not clear, other than reserving the right to make judgements in future about appropriate price discrimination and cross subsidy in particular cases. This respondent asked us to provide more detail on the principles we would use to decide this.

out as a result of price discrimination for a number of different reasons, not simply because of 'naivety'. We believe that price discrimination may be a legitimate concern, for example in circumstances when it encumbers effective competition in the interest of consumers.

We will set out our 'Approach to Competition' later in 2017. This will include further detail on our approach to price discrimination.

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

Key points/range of views

Firms, political stakeholders, and professional associations mentioned the importance of financial education in response to this question.

Several firms suggested that more financial regulation does not help individuals to take greater responsibility for outcomes. Instead, they argued for a 'proportionate' regulatory approach that balances consumers' needs with the costs imposed on industry.

Some respondents argued that different regulatory principles should

Our response/next steps

'Our Mission 2017' acknowledges that the context for financial regulation is changing. Consumers are increasingly asked to take greater responsibility, for example for their retirement savings.

Many of the challenges in financial services regulation are related to information asymmetry between supplier and product user (where the supplier knows more about the product than the customer), and by the inherent uncertainty of many financial products. We agree with respondents that financial education can play an important role in

apply to different types of purchase. For example, long-term investment products and pensions might need greater regulatory focus than other areas. The degree of regulatory focus could be based on factors including the degree to which the product is compulsory or discretionary.

Some firms noted that innovation could be a response to increased individual responsibility, which regulation should take into account.

mitigating some of these issues. However, this is an issue for Government and for the advice bodies – e.g. Money Advice Service and The Pensions Advisory Service – rather than the FCA. Unlike our predecessor, the FSA, we do not have a financial education objective.

User Needs

'Our Mission 2017' reflects that regulation must respond to users' changing needs. For example, consumers may be given increased responsibility for long-term saving and retirement products, and regulation should reflect this. We agree that this does not necessarily require more regulation, and that regulation should continue to be proportionate. However, it could require regulation to be innovative – for example, using technology in decision-making, or using behavioural economics. We agree with **respondents that our judgements should reflect users' needs, and the type of purchase being made.** That is why the Mission acknowledges user needs as an important factor in regulatory judgements.

We will also continue to consider how different approaches can make us more effective. Project Innovate, which began in 2014, is one area where we have taken a novel approach. It aims to engage constructively with innovative businesses to help remove unnecessary barriers to innovation. This work will continue (see Q23).

Different Products

We completely agree that our decisions should vary depending on the products involved – such as long term investment products, or short term **insurance. This is reflected in the 'Sector Views', published alongside 'Our Mission 2017'.**

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

Key points/range of views	Our response/next steps
<p>A number of respondents did not consider that a Duty of Care was necessary to help ensure that financial markets function well. They gave several reasons:</p> <ol style="list-style-type: none"> Some responses said existing common and statute law already provide sufficient protections for consumers, and that these are akin to the Duty of Care. Many responses noted that the existing Principle 6 already created an obligation on firms to Treat Customers Fairly. Some respondents highlighted the cost, complexity and time involved in seeking to bring a court case based upon the Duty of Care. A number of firms and professional bodies considered that a Duty of Care would have a chilling effect on their product provision and approach to innovation. <p>However, a number of respondents either supported a Duty of Care or saw some merit in the proposal:</p> <ol style="list-style-type: none"> Some respondents stated that a Duty of Care would provide consumers with a legal right to take a case to court. This was supported by some comments that Principle 6 has not worked in practice or is too vague to provide meaningful protection. Some respondents, including some firms, believed that a Duty 	<p>The UK's decision to leave the EU is likely to create changes in the legislation which currently inform our Handbook rules. 'Our Mission 2017' states that we will publish a Discussion Paper to explore the Duty of Care issue as part of our future Handbook Review, once the legislative position is clear.</p> <p>We recognise there are different opinions on the Duty of Care. The concept of a Duty of Care and fiduciary duty are sometimes used interchangeably in this debate, but it is important to differentiate between the two.</p> <p>A Duty of Care imposes an obligation to exercise reasonable skill and care in the provision of a service. There are clearly different opinions about the merits of introducing this obligation. In contrast, a fiduciary duty requires (broadly) that the firm must not put personal interests above those of the client, must avoid conflicts of interest and must not profit from the firm's position without the client's knowledge. Although the Financial Services Consumer Panel (FSCP) proposes that the FCA should introduce a Duty of Care into its rules, the explanation for this view is based - in part - on concepts that are really part of a fiduciary duty.⁵ In this context, we acknowledge that supporters of a Duty of Care make some useful observations about the value of trust in financial services.</p> <p>There is already a considerable number of laws, rules and standards which support consumers in their dealings with firms conducting regulated</p>

⁵ The FSCP states that the duty would oblige providers of financial services to avoid conflicts of interest and act in the best interests of their customers.

- of Care would improve the culture of financial services markets.
- c. Some responses suggested that a Duty of Care would provide a clearer definition of responsibilities between consumers, intermediaries and firms. One firm said a Duty of Care might help shift the focus away from the FCA securing redress and place the emphasis back on the consumer-firm relationship.

activities. We already have 'client's best interest' rules which have a similar effect to that of a fiduciary duty for some regulated activities⁶, but not others.

We note the following:

- a) The FCA has a consumer protection objective of securing an appropriate degree of protection for consumers.
- b) We can and do use Principle 6 (treating customers fairly) as a supervisory and enforcement tool to secure appropriate consumer protection.⁷
- c) A number of FCA rules contain an obligation on firms to take reasonable care for certain activities.⁸
- d) FSMA⁹ provides for a private individual who has suffered loss to sue an authorised firm for breaching *certain* rules (not Principles).
- e) Consumers can use the Financial Ombudsman Service to get redress which is less costly and complex than court proceedings.

We note that the Senior Managers and Certification Regime (SM&CR) was explicitly intended to improve the culture of authorised firms, which the FSCP argues is an important reason for introducing a Duty of Care.

We also know there is a gap in support for some smaller businesses that have complaints about financial services conduct but cannot use the Financial Ombudsman Service. We will consult shortly on how this issue should be dealt with.

⁶ There is a 'client's best interests' rule for designated investment business, first charge mortgage business, UCITS and some AIF business and for insurance distribution (from 1 January 2018). No such requirements exist for accepting deposits or consumer credit.

⁷ See examples of Enforcement Notices that cite Principle 6 here: <https://www.fca.org.uk/publication/final-notices/swinton-group-limited.pdf>; <https://www.fca.org.uk/publication/final-notices/lloyds-banking-group-2015.pdf>.

⁸ For example, ICOBS 5.3 states that 'A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment'

⁹ Section 138D of FSMA.

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

Key points/range of views	Our response/next steps
<p>There was broad support for the principle that complex products should generally attract greater consumer protection, with important caveats. A number of firms, and a consumer group, pointed out that product complexity does not always correlate with risk of serious harm. Products can conceivably be complex and lower risk, for example if governance standards are very high. They can also be simple and high risk (credit). A trade association therefore repeatedly warned against 'chasing the complexity'.</p> <p>Many responses therefore argued that complexity has to be placed in the context of a wider set of criteria for deciding the appropriate level of consumer protection. Suggestions for this wider list of criteria included:</p> <ul style="list-style-type: none"> - The type of market/ transaction (retail/ wholesale/ capital) - The cost/value, and nature of potential loss - Duration of product use - Capability and/or vulnerability of the consumer <p>Several responses also emphasised that product complexity should not be accepted as a 'fact of life'. One firm suggested that enhanced protection could be provided to consumers of a prescribed suite of 'suitable' products. Similarly, a consumer group encouraged the FCA to focus more on the quality and simplicity of products supplied.</p>	<p>'Our Mission 2017' explains that we use public value to assess markets and products. This is relevant to factors like complexity.</p> <p>We acknowledge that responses to this question raised a number of challenges. We agree that complex products can be lower risk than some simple products. However, more complex products can exacerbate information asymmetries, and increase the chance of mis-selling. As 'Our Mission 2017' states, we may restrict firms' ability to market complex products to retail customers where this is justified by the scale of potential harm.</p> <p>Our decision-making framework (see Q7) explains how we will try to diagnose the root causes of harm and – where appropriate – select regulatory tools that reduce this harm in the most cost effective way. This approach is designed to maximise public value.</p> <p>In some markets, complexity can be an important cause of harm. It may exacerbate information asymmetry – a potential cause of market failure – particularly in retail markets. Complexity should therefore be addressed as part of the decision-making framework outlined in 'Our Mission 2017'.</p> <p>We agree with respondents, however, that complexity does not necessarily cause or constitute harm itself. A complex product could conceivably create relatively little risk of harm. Conversely, a simple product could cause significant harm to consumers. To take this into account, the decision-making framework will consider a number of factors that influence harm, including complexity, and its effects on competition.</p>

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

Key points/range of views	Our response/next steps
<p>There was broad agreement that the FCA should consider consumers’ financial capability in its work. Respondents contested specific parts of how capability was characterised in ‘Our future Mission’, however.</p> <p>Some responses emphasised that capability is not static. Instead, it varies over time, and may be difficult for firms to observe. Respondents drew different conclusions from these arguments. One consumer group concluded that firms should be expected to make their products suitable for the consumers they sell them to more often. In contrast, a firm suggested that the regulator needs to provide very clear guidance to firms if it is to expect them to respond to different levels of capability.</p> <p>A number of firms and trade associations argued that low income may not exacerbate the effects of lower financial capability. Research on pension saving by the Department for Work and Pensions was cited to evidence this view. This suggested that lower income savers can often have advanced budgeting skills.</p> <p>Other respondents noted the interaction between capability and vulnerability, but insisted that these two ideas must be distinct and separate in the FCA’s thinking. A trade association, for example, argued for balance between access to financial services and levels of regulatory protection.</p>	<p>‘Our Mission 2017’ makes clear that user needs, along with the FCA’s regulatory objectives, and the potential impact of intervention, is one of three critical considerations when we exercise regulatory judgement.</p> <p>In this context, we are pleased that many respondents agree with the distinction between consumers with greater and lesser capability. We agree with respondents that this distinction is unlikely to be simple or binary in practice, and that capability may not be static. We also agree that factors like income do not themselves constitute, or necessarily cause, a level of financial capability. Despite this, there may be important correlations between capability and factors like income.</p> <p>A spectrum of capability among product users is always likely in any market. Different levels of capability are, however, more often relevant to retail than wholesale markets. While capability is a distinct concept, it also interacts with other factors like vulnerability and protected characteristics, in respect of which we have a Public Sector Equality Duty. Vulnerability may also depend on circumstances.</p> <p>It is therefore important to understand capability in the context of other factors that affect market outcomes. Our decision-making framework (see Q7) explains how we will try to diagnose and address the root causes of harm. These may include levels of financial capability. Where our diagnostic tools (e.g. market studies) identify capability as a barrier to competition, we may work with third parties to address this. These may include firms, charities, and public sector bodies.</p>

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

Key points/range of views	Our response/next steps
<p>The majority of responses to this question focused on ways to improve or implement the proposed approach, rather than disagreeing or querying it.</p> <p>A professional body warned of the negative impact on public trust in financial services when there are difficulties for the FCA taking redress action outside of the regulatory perimeter.</p> <p>Some responses called for clearer public criteria and explanation of FCA action for redress schemes outside of the regulatory perimeter.</p>	<p>As 'Our Mission 2017' explains, redress is important: it gives product users confidence that if they are not treated fairly they know who to complain to, and can get compensation. Redress should help to ensure that consumers have an appropriate degree of protection, and contribute to them having justified trust in financial markets.</p> <p>We understand that the regulatory perimeter gives rise to a number of important issues. The lack of an obvious mechanism for redress for SMEs has on occasion led us to oversee redress schemes in relation to products and services outside our regulatory perimeter, or for business customers that did not have a right of action under s.138D of FSMA. The redress schemes for businesses that were sold Interest Rate Hedging Products and for clients of RBS's GRG are examples of such involvement. However, this is clearly unusual. This feedback statement therefore discusses constraints on our ability to deliver redress schemes outside our regulatory perimeter.</p> <p>There are, however, important issues where firms' business clients do not have access to the Financial Ombudsman Service. We promised to address these issues in our feedback to DP15/7 and by consulting on widening the remit of the ombudsman service. We will shortly do so using a formal consultation and feedback statement.</p> <p>In addition, the Senior Managers and Certification Regime (SM&CR) means that individuals can be held accountable for misconduct that falls within their area of responsibility, and this is not confined to matters falling within the regulatory perimeter. We consider that the SM&CR is intended to encourage greater responsibility and accountability within firms for their conduct and that this should lead to improved dispute and redress schemes</p>

for consumers.

For example, we would expect firms to proactively identify consumers who had suffered detriment and provide redress accordingly, and the process of obtaining this redress should be as simple as possible in the particular circumstances. The work we have already done on the behavioural economics of redress letters¹⁰ shows what difference simplicity of approach can make in this area, and we will keep these lessons in mind when we work with firms on redress schemes.

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

Key points/range of views

Respondents made a number of specific suggestions in response to this question. Many called for better communication and the promotion of redress schemes. In particular, there was demand for clearer communication of the remit and duration of individual schemes, as well as the process that must be followed to obtain compensation.

Some respondents called for closer alignment between the FCA and the **Financial Ombudsman Service**. Others called for more **'proactive redress schemes'** that require minimal action from consumers. This proposal was often motivated by a desire to reduce the number of consumers who lose a percentage of their compensation to pay for claims management services.

One firm said that the FCA and firms should ensure that schemes are

Our response/next steps

We agree with respondents that clear and timely communication about redress schemes is important.

We will therefore consider how to improve communication in this area, building on lessons learned from our work on 'Smarter Consumer Communications'¹¹.

A good relationship with the Financial Ombudsman Service is important to us. We meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest and consult at an early stage on any issues that might have significant implications for the other organisation.

We recognise the advantages of redress schemes that are easy to understand and improve access to compensation. We will consider whether

¹⁰ FCA Occasional Paper 2 (2013)

¹¹ Feedback Statement 'Smarter Consumer Communications' FS16/10.

designed to deliver quickly for the majority of affected customers. A **number of responses cited larger SMEs’ lack of access to the Financial Ombudsman Service** and proposed alternative dispute resolution mechanisms to deal with this issue.

voluntary schemes achieve these aims and take appropriate action if they do not.

We discussed extending access to the Financial Ombudsman Service to more SMEs in Discussion Paper DP15/7. We will share feedback on this paper, and consult on proposals relating to access to the Financial Ombudsman Service shortly.

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

Key points/range of views

The principle of providing vulnerable consumers with **‘greater protection’ received widespread, though qualified, support. Responses supported the principle that vulnerable consumers should be given greater levels of protection.** Many responses, however, argued that more clarity and certainty is needed in the definition and application of this term if outcomes for consumers are to be improved.

One academic respondent suggested that the term ‘vulnerable customer’ appears so widely drawn that almost all consumers could be included, so it is not clear what specific value this provides. For similar reasons, firms suggested that the current definition suggested by the FCA can be difficult to apply. This raised related practical considerations. Firms suggested that the processes put in place to assess vulnerability could be a barrier to consumers accessing products. **Another firm suggested that the FCA’s expectations of firms are currently not well articulated,** and that this causes uncertainty.

One firm asked for an exact definition of vulnerability from the regulator. In contrast, another firm said it would be unnecessary for the FCA to provide a precise definition because this would risk the unintended consequence of worse outcomes for consumers on the

Our response/next steps

As we say in ‘Our Mission 2017’, product users’ needs and characteristics, including vulnerabilities, are an important consideration when we make regulatory judgements.

We welcome respondents’ support for the principle of offering ‘greater protection’ to vulnerable consumers, and understand that more work may be needed to explain this. We will work to explain and improve our approach, for example by mapping how our decisions affect vulnerable consumers.

We also acknowledge that in many cases, the best tool to protect consumers in vulnerable circumstances may sit with other organisations, not the FCA. We will therefore work with third parties to improve outcomes, for example by convening public sector organisations, charities, consumer groups, and firms. Nonetheless, we believe that understanding vulnerability should be central to our decision-making framework, not a separate process.

Responses to the consultation highlight important differences between different aspects of consumer vulnerability. Research suggests that vulnerable consumers are more susceptible to harm, and often less able to

border of vulnerability. Instead, this firm suggested that monitoring and raising awareness would be a more suitable way forward. Similarly, a trade association suggested that the FCA should focus on a range of **relevant factors like consumers' capability and the risk of poor outcomes**, rather than categorising particular groups as vulnerable.

A number of responses suggested ways to categorise vulnerabilities. A trade association, for instance, suggested that emotional and financial vulnerability should be distinguished. Other responses emphasised the difference between vulnerability as a barrier to engaging in a transaction, and being vulnerable to the consequences of a transaction **'going wrong'**.

Trade associations highlighted the work they have done in partnership with other bodies to help firms identify vulnerable consumers. They urged us to make full use of these existing standards rather than creating new requirements.

One consumer group proposed a change to FCA processes. They suggested that since vulnerable consumers may constitute a small number of product users in large markets, measures designed to mitigate harm they experience **may not 'pass'** Cost Benefit Analysis (CBA), i.e. benefits may not exceed costs. This respondent therefore suggested that, where appropriate, the FCA could re-weight harm experienced by vulnerable consumers to remove this barrier to action.

Another consumer group, while welcoming the principle of greater protection for vulnerable consumers, warned that the FCA should not focus on vulnerable consumers to the detriment of wider issues. Doing so, this respondent warned, risks neglecting systemic issues, like mortgage payment protection insurance, that affect large numbers of **'non-vulnerable' consumers**. Similarly, a professional association supported the principle of protecting vulnerable consumers but warned

represent their own interests (Occasional Paper No. 8).¹² The harm they experience is often under-represented as a result (e.g. in metrics like complaints and sales data). We also acknowledge that vulnerability may often be relevant in retail markets but rarely relevant to wholesale buyers. It is important, however, that we consider all relevant interests and potential harm when we decide whether and how to intervene.

This means that the FCA should challenge itself to consider the interests of all consumers; not just those who are most able to represent their interests.

To do this 'vulnerability mapping', we need more information how different markets affect vulnerable consumers. As a first step towards developing **this information, we will publish an 'Approach to Consumers' in the summer**.

We will also consider how vulnerable consumers' particular needs can be reflected in Cost Benefit Analysis (CBAs).

¹² <https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability>

that measures to achieve that objective should not distort competition, for example by reducing firms' incentives to serve particular groups of consumers.

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

Key points/range of views

Respondents generally welcomed the proposals on disclosure in 'Our future Mission'. Firms, consumer groups, academics, and professional associations all agreed that often 'less is more' when it comes to product information.

That said, a number of respondents emphasised that disclosure plays different roles, and takes on different significance in retail, wholesale, and capital markets. In particular, the resources and expertise available to wholesale purchasers makes transparency in these markets critical to market integrity, but product information operates differently for retail consumers.

More generally, various firms welcomed the recognition that 'disclosure does not correct market failure'. Responses emphasised that information asymmetry is only one of many causes of market failure, and that it cannot be assumed that disclosure resolves asymmetry. That said, some submissions cautioned that historic cases of mis-selling have often coincided with failures to disclose appropriate information clearly.

Many respondents mentioned our existing work on 'Smarter Communications'. Many firms welcomed the approach it took to noting and encouraging good practice. They encouraged us to take this approach more often, allowing them to rely on examples of good and bad practice rather than legal interpretation of existing rules. A trade

Our response/next steps

Our aim is to promote public value by addressing harm in the most cost effective and efficient way possible. Disclosure should be seen as one of the many tools available to us.

We are pleased that many respondents agreed with the proposals on disclosure in the consultation. We agree that there are important differences between the role of disclosure and transparency measures in retail, wholesale and capital markets. Retail consumers may have less time to spend analysing disclosures, but wholesale buyers may have significant time, resource, and expertise for this task.

For example, proper disclosure in capital markets plays a central role for both wholesale and retail participants, and in the functioning and integrity of the UK's financial system.

Disclosures from issuers of financial securities are central to the price-formation process and to the integrity of the UK's financial markets. Consequently, the FCA works to ensure that issuers announce relevant information in a timely, accurate and fair way in line with the Disclosure & Transparency Rules and the Market Abuse Regulation (i.e. communicated to everyone at the same time).

Wholesale participants will dedicate significant resources to internalising, analysing and making decisions off the back of these disclosures. This forms the robust price formation process through which market integrity is

association urged us to do more to ensure that disclosure rules allow communications to be adapted for use with digital channels.

Beyond this, respondents also advocated ways for us to adapt our approach to encourage better use of disclosure by the industry. Suggestions included using the regulatory Sandbox more to allow firms to test changes to disclosure, and increased use of waivers to encourage innovation by firms.

Consumer groups agreed that we should not use demand-side remedies, including disclosure, as a default response to market failure, and acknowledged that adequate disclosure is necessary but not sufficient for good outcomes.

Alternative approaches were suggested by some respondents. These included increased use of a suite of simple products that are broadly suitable for the consumers they are sold to.

One respondent argued that greater distinction was needed between the needs of different groups of consumers. In particular, they **suggested that the current regime is 'over-protective' of sophisticated** consumers who use wealth managers and who, they claimed, need less information disclosure as a result.

One professional association said it considered that disclosure is effective but did not provide evidence to support this view. A number of firms suggested that financial education is very important.

ensured.

Conversely, retail investors may rarely have the same knowledge, skill or capacity. So, when both wholesale and retail participants are active in the same market on equal terms, we ensure a level of (albeit indirect) retail consumer protection.

We agree with respondents that problems in financial markets are rarely caused by information asymmetry alone. Disclosure is not a simple and, empirically, often a far from complete solution. This has been reflected in our policy work, for example PS16/23, *Smarter Consumer Communications: Removing ineffective disclosure requirements in our Handbook*. Market failures are usually caused by several underlying drivers. Consequently, a combination of remedies is likely to be required to address these. This means that assessments of market failure and whether and how to address it will require a case-by-case approach.

Research, including randomised control trials, field trials, and post-implementation surveys will be a useful indication of how effective remedial measures are, including disclosure and transparency measures. Research findings are often, however, highly dependent on the context in which information is presented to product users. This means that we should be careful when applying even our most rigorous findings to real-world markets.

We acknowledge that the importance of financial education was raised by a **number of respondents, though this is not a central part of the FCA's remit.**

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

Key points/range of views	Our response/next steps
<p>The majority of respondents agreed that alternative regulatory measures should be considered when disclosure is ineffective. An academic noted, however, that regarding 'anything beyond disclosure...[as] 'interventionist'' would be an archaic view of regulation.</p> <p>A trade association acknowledged the success of alternatives to disclosure, citing examples relating to GAP insurance.</p> <p>Many submissions, particularly from firms, also emphasised that 'interventionist' measures should be sparingly and carefully used, and that the potential for unintended consequences should be considered before intervening.</p>	<p>Disclosure, and alternatives to it, should be seen in the context of our decision-making framework. This is outlined in 'Our Mission 2017', and response to Q7. This describes how we will diagnose harm, and select regulatory tools to address its root causes. We agree that alternatives to disclosure should be characterised as 'alternative regulatory measures'; they may not be 'interventionist'.</p> <p>We believe that whenever we decide on the most appropriate regulatory measures to address harm in financial markets, we need to consider the range of tools available including disclosure and transparency measures, but also the range of alternative regulatory measures available. Our decision-making framework, and the principle of maximising public value, will play an essential role in achieving this.</p> <p>To this end, we agree with respondents that no particular regulatory tool should be seen as a 'default option' (including demand-side interventions to change disclosure). Each case will need to be considered on its own merits (e.g. considering the type of market failure, the characteristics of the relevant market) to determine the measures that will produce the most public value.</p>

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

Key points/range of views	Our response/next steps
<p>The vast majority of respondents agreed that the proposed decision-making framework will make our decisions more predictable. Many firms, however, said they would welcome more consistency and clarity over why we choose to intervene as an alternative and more helpful benchmark than predictability. In this context, they called for timely and clear communication with industry. A number of respondents noted that, while predictability is important, the FCA also needs to remain flexible and anticipate emerging problems.</p> <p>One respondent suggested following the Securities and Exchange Commission’s (SEC) practice of holding Board meetings in public (unless commercially sensitive material is being considered) to make decisions more predictable and enhance transparency.</p>	<p>As proposed in ‘Our future Mission’ and confirmed ‘Our Mission 2017’, we will be clearer about why we choose to intervene by communicating the harm identified, stakeholders affected, the proposed intervention, the causal steps which connect our intervention with the outcome we hope to achieve, and measures of success.</p> <p>We do not think our decision-making framework undermines our ability to respond quickly to emerging problems because it complements our existing risk management framework. This should aid swift decision-making rather than hindering it. In ‘Our Mission 2017’, published alongside this document, we explain that we are guided by three factors when we make regulatory judgements: the FCA’s regulatory remit, the potential impact of our intervention, and taking into account of product users’ needs.</p> <p>We note the suggestion that we should, like the SEC, hold Board meetings in public. Unfortunately, this is not possible because the vast majority of our Board meetings cover commercially sensitive material. We do, however, publish Board minutes online, and appear before Parliament’s Treasury Select Committee (TSC) twice every year for accountability hearings.</p>

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

Key points/range of views	Our response/next steps
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Respondents proposed a number of other factors for us to consider when deciding whether to intervene.

Several respondents said that the possibility of unintended consequences is a key factor to consider. One firm cited anti-money laundering measures which, they argued, have affected access to financial services.

Some respondents cited the importance of treating widespread consumer loss and fraud as a priority factor in determining whether to intervene, as well as the need to consider effective competition.

A number of responses suggested that 'market-testing' is important, to ensure that interventions are effective. Some responses called for better and clearer 'causal' analysis between the intervention and the achieved or observed outcome. Others emphasised the importance of Cost Benefit Analysis (CBA).

The decision-making framework in 'Our Mission 2017' explains our general approach to deciding whether and how to intervene in markets. Its aim is to promote public value by reducing harm in the most cost effective and efficient way possible.

In that context, responses to this question raised a number of important points that we will consider further. A number of these considerations are relevant to our aim to promote public value (unintended consequences, **consumer loss, market testing...**).

As outlined in Q7, we use a 'Sector Views' to help decide what our priorities should be in different markets. Research suggests that that critical assessment and effective Cost Benefit Analysis (CBA) of proposed interventions contributes proportionate and effective regulatory decision-making.¹³ For example, the Mission confirms that we intend to be clearer about the causal link between our intervention and the observed change in the market. But we must also be honest about the limits to the accuracy, or even ability, to test and measure all of our proposed interventions.

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

Key points/range of views

Most respondents welcomed our proposal to be clearer about our rationale for intervention.

Some respondents suggested that earlier engagement with industry would be helpful before the FCA consults on proposed changes (see Q22).

Aside from formal consultations, a large number of respondents asked for more transparency from FCA work in general. Trade bodies, for

Our response/next steps

'Our Mission 2017' acknowledges the need for us to communicate clearly and consistently about our interventions. The decision-making framework described in the Mission will provide a basis for internal decisions and external communications.

In this context, we acknowledge comments on the importance of clear and early engagement with firms and other stakeholders. In addition to the points set out in Q19, we are considering other ways to make our decision-making more transparent. We will be publishing regular information on how

¹³ Occasional Paper 13 (2016)

example, suggested that we publish anonymised case studies of investigations, summaries of frequently asked questions to the Contact Centre, our internal organisation charts, sector-specific information on the website and examples of good and poor practice. Firms highlighted the importance of sharing lessons learned and emerging themes across the industry to inform their planning. Some respondents asked for more transparency in relation to our enforcement activity, including better information about cases, their progress, findings and results, regardless of whether formal action is taken. One respondent also suggested that publishing details of instances when the FCA compelled a firm to withdraw or amend misleading financial promotions would help firms better understand expected standards.

often we have used particular regulatory tools.

For example, following suggestions from respondents to the Mission **consultation, we will review the 'Transparency' pages on our website.** In doing this, we will aim to make the signposting of information clearer. Where possible, we will publish internal organisation charts. Where information raises issues of wider importance, we will look to publish anonymised details of cases where firms have withdrawn or amended misleading financial promotions following FCA action.

We are considering whether anonymised examples of why we have decided to take Enforcement action can be published. Additionally, we will consider publishing summaries of frequently asked questions from the FCA Contact Centre. We will also explore how we can help firms to understand our expectations, for example by explaining examples of good practice more often.

We would like to point out, however, that we need to be mindful of the statutory limits of what we are able to say publicly. For example, FSMA states we cannot simply **share 'confidential information' with the public.** So we cannot always provide information, even when requested under the Freedom of Information Act (FoIA) 2000.¹⁴

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?

Key points/range of views	Our response/next steps
<p>Most respondents agreed with the proposed communications proposal, with several respondents welcoming greater clarity on who will be affected by the proposals and why.</p>	<p>We are considering how to make our decision-making more transparent. This is noted in response to Q21. We acknowledge the importance of allowing sufficient time to implement changes to regulation. The time</p>

¹⁴ More information is on the FCA website: <https://www.fca.org.uk/freedom-information/information-we-can-share>

A number of respondents also welcomed our proposal to be clearer on how we will consider the potential unintended consequences of interventions.

Several trade bodies suggested that we should signpost the main body of consultation papers with the sections of the Handbook we are referring to. They emphasised the importance of allowing enough time to implement any proposed changes and for changes to embed. Firms echoed this point and noted that the wide range of distribution channels used for communicating a large volume of regulatory expectations created a significant burden on them. In this context, several respondents said they would welcome a review of the FCA Handbook to keep up with developments in financial markets and make it easier to navigate.

demands created for industry and others should be considered through our decision-making process, including the decision-making framework.

We are always seeking ways to make the FCA Handbook easier to navigate and have already undertaken work in in this area. For example, we recently introduced practical improvements like better topic-based navigation and searching. We are committed to a full Handbook review to make our requirements clearer. We will undertake this review once the Handbook has **been adjusted to reflect the UK’s exit from the European Union.**

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

Key points/range of views

There was a mixed response to this question. Many submissions argued that we should encourage innovation, but there was also significant scepticism on this matter.

Several respondents argued that we should neither encourage nor impede innovation. Some respondents raised the need to strike a balance between removing barriers to innovation and the potential risks of doing so (e.g. to consumer protection), as well as maintaining a proper regulatory balance between new innovative business models and more traditional ones. Consumer groups pointed out that we should actively encourage innovation where the primary objective is to improve consumer outcomes. A number of respondents said we should

Our response/next steps

As ‘Our Mission 2017’ states, engaging with innovative businesses is an important part of our objective to promote effective competition. Our activity in this area is directed toward both entrepreneurs and incumbents, and aims to help them navigate regulation. The importance of this work was emphasised in HM Treasury’s recommendations to the FCA on 8 March 2017.

We will support innovation where it does not erode consumer protection or the integrity of the financial system. Supporting innovation in the interest of competition both includes removing barriers to innovation and proactive work like Project Innovate and the Regulatory Sandbox. These help us gain a better understanding of market trends, new business models and

be cautious because of the potential for unintended consequences.

Trade bodies, firms, and others expressed support for our current work to support innovative businesses (Innovate and the Regulatory Sandbox). They also pointed out that we must remain committed to these initiatives to maintain momentum.

Some responses suggested that encouraging innovation requires active engagement from different parts of the FCA. Proactive supervision would be required, for example, to stay open to innovative ideas from both entrepreneurs and existing firms and regular reviews of the existing body of regulation to ensure it is digital-friendly and technology neutral.

products and the potential risks arising from them. We are pleased that so many respondents welcomed these initiatives and recognise that the demand for innovation in financial services is likely to grow rather than diminish. For that reason our work in this area will continue for the foreseeable future.

We acknowledge, however, that for our approach to innovation to be effective, we need to ensure that findings and lessons learned are shared **with and embedded in other parts of the FCA, for example via our 'Sector Views'**.

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

Key points/range of views

Although generally supportive of our approach to firm failure, a number of responses called for the potential impact on the wider market to be considered. Some responses said that we should act if firm failure was indicative of a wider systemic issue in the market.

Consumer groups emphasised the importance of ensuring that **consumers affected by a firm's failure knew where to go for assistance** or an alternative service provider. They noted that vulnerable consumers needed particular protection in this context.

One firm said that it is important for us to learn lessons from firm failures and to publicise them.

Our response/next steps

'Our Mission 2017' reiterates that we do not try to remove all harm from markets or operate a zero-failure regime. We seek to ensure that firm failure is orderly wherever possible and that the impact of failures on consumers and markets is organised and managed when it does occur. In December 2016, we published a wind-down planning guide instrument. This aimed to help minimise the potential impact of firm failure on consumers and markets.¹⁵

Providing appropriate assistance and information to consumers affected by a firm's failure is important. At a minimum, we provide practical guidance for consumers who may be owed money when a firm fails.¹⁶ Where possible, we also seek to provide more tailored advice and information in the event of a firm failure. For example, we published a detailed Q&A¹⁷

¹⁵ https://www.handbook.fca.org.uk/instrument/2016/FCA_2016_79.pdf

¹⁶ See How to claim compensation if a firm fails here: <https://www.fca.org.uk/consumers/claim-compensation-firm-fails>

¹⁷ See MF Global investors – your questions answered here: <https://www.fca.org.uk/news/news-stories/mf-global-investors-%E2%80%93-your-questions-answered>.

Another respondent queried the extent to which our tolerance for firm failure is understood externally and whether we were minded to review our position in light of firm failure by a major retail firm.

after the failure of MF Global, a major global financial derivatives broker. The extent of assistance provided will depend on the particular facts of a case. We cannot guarantee full compensation for all losses by all consumers suffered as a result of a firm failure, even where client money/asset protections are in place.

We recognise that it is important to learn lessons from firm failure, particularly when it may indicate wider market issues. For example, when the Swiss Franc decoupled from the Euro in 2015, several firms experienced irrecoverable losses. We worked with firms that could be affected to ensure that any potential failures would be as orderly as possible and cause as little harm to clients as possible, given the circumstances.

More generally, we also analyse data on firm failure to inform regulation. We will consider whether the lessons learned from this work should be published.

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

Key points/range of views

Responses were overwhelmingly supportive of more discussions with the regulator.

Professional bodies said they would benefit from a better relationship with the FCA, enabling them to use information from the regulator to hold their members to account. One professional body called for anonymised case studies to be published online. This would enable firms to understand why action had been taken in particular cases. More generally, respondents suggested that lessons learned should be

Our response/next steps

'Our Mission 2017' explains the importance of clear and consistent messages that provide firms with greater certainty about our expectations.

In this context, we are encouraged that respondents see value in more formal discussions about lessons learned from supervisory and enforcement work. We will consider how to facilitate these discussions in future.

We already engage firms in a number of ways, including our 'Live & Local' events. These cover a broad range of topics and wide geographic spread of locations. These events are important. They help to explain our approach

made available to the industry more often.

A number of firms called for more early-stage discussion with FCA staff before rule changes and proposals. This communication could happen in different ways, including: seminars, workshops, industry events and 'Live & Local'.

Many responses welcomed the proposed change in emphasis in the **term 'referred to Enforcement'**. Some responses, however, expressed scepticism about whether this really would lead to more proportionate rather than inevitable enforcement action.

and provide practical help to firms on subjects that matter to them. We will continue, however, to reflect on and improve how we engage with firms. In doing so, we must be careful not to give any particular firms or sectors an unfair advantage.

Given responses to the Mission consultation, we will consider what more we can do to publicise the lessons learned from our interaction with firms, subject to privacy and confidentiality considerations. Respondents may be interested to read our Enforcement Annual Performance Account. This document publishes information about disciplinary outcomes, including cases where no further action was taken. In addition, we will publish an **analysis of our 'Approach to Supervision', 'Approach to Enforcement',** and other areas this business year.

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

Key points/range of views

A significant number of responses supported the continued use of private warnings. Many respondents suggested that these warnings are a quick, flexible and proportionate early intervention tool.

A number of responses, however, expressed caution about the use of private warnings, or proposed ways to improve their use. A number of responses called for greater consistency and clearer criteria for the use of private warnings. One consumer body questioned the effectiveness of private warnings, and noted that their lack of transparency makes it difficult for third parties to assess their effectiveness.

Some responses proposed that private warnings should be anonymised and published to allow third parties to learn lessons.

A few respondents queried whether we have sufficient understanding of what drives firm behaviour, and consequently which interventions

Our response/next steps

'Our Mission 2017' emphasises our commitment to 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, both with the firms we regulate and the general public.

In this context, we received a variety of views about the continued use of private warnings. These included requests for clearer communication and publication of anonymised examples.

We have considered this feedback carefully, and intend to consult on the use of private warnings. This consultation will form part of a review of our Enforcement Guide, and the Decisions Procedure and Penalties manual. We **will also publish a document to discuss and explain our 'Approach to Enforcement' shortly.**

would be most useful and efficient.

One response cast doubt on the validity of the 'credible deterrence' view that underscores our approach, and suggested that we adopt an **'ethical approach'** to regulation instead.



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