Annual Public Meeting 2017: Outstanding questions

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

How is the FCA managing the move to Stratford, and how will operational risks, including around business continuity be managed / mitigated?

The FCA has already started planning for our move to Stratford in May 2018.

We are planning the move to be staggered, commencing in May 2018 and taking place every other weekend. This allows time for appropriate planning and effective communication. We can also ramp up the moves or slow them down within this time frame. The moves are scheduled to conclude by August 2018, however the lease on our current office buildings do not expire until November 2018. This provides us with a more than reasonable buffer should we need it.

How is the FCA planning for Brexit?

The UK's withdrawal from the European Union will have important implications for the FCA over the coming years and will be a key area of focus. We have dedicated resources to co-ordinate and manage this work and are liaising closely with the Treasury and the Bank of England to ensure a smooth transfer of EU rules and legislation into the domestic framework, and ensure that the regulatory framework continues to operate without interruption following the UK's withdrawal from the EU.

We are carefully considering what withdrawal from the EU may mean for our objectives. We are working to make sure that any risks to our objectives, including any operational challenges, are identified and addressed, and that the UK's domestic markets, and the role they play in supporting the wider economy, are safeguarded. The FCA stands ready to respond to any contingencies or new obligations arising as a result of EU withdrawal.

The FCA is working closely with regulated firms to understand their contingency planning for EU withdrawal. The negotiations are a matter for Government and we are providing technical advice and comment on the withdrawal legislation where it makes sense to do so in line with our objectives.

The new Senior Managers regime was designed to avoid the need to discipline firms rather than individuals, yet the FCA still intends on occasion to discipline firms. Does this mean that the new regime needs more work, or possibly that too many individuals are included in it, blurring responsibilities?

The purpose of the Senior Managers and Certification Regime (SM&CR) is to drive up standards of conduct through enhanced individual accountability and personal responsibility.

Firms' Senior Managers have a crucial role in delivering effective governance. This includes taking personal responsibility and being accountable for their decisions and exercising rigorous oversight of the business areas they lead.

The SM&CR is about being clearer on our expectations of individuals within firms and being able to hold them personally to account if they do not meet these expectations.

This should mean that both the firm and the individual are encouraged to display better conduct, which in turn should improve the culture across financial services to the benefit of consumers.

Enforcement action against individuals is not mutually exclusive with taking action against firms. When we start an enforcement investigation, we begin a forensic process. At the end of that process, we will decide what action, if any, to take and against whom, based on what we have found and the culpability of the firms and individuals involved in the matter.

With the extension of the Senior Managers and Certification Regime (SM&CR) to all FCA authorised firms, we want all firms to develop a culture of accountability at all levels and for senior individuals to be accountable for their respective business areas. We believe that this should, over time, result in improved culture and governance in the industry. It should also promote public confidence that firms have the right people in the right roles, working in the interests of consumers and markets.

When will we have proposed rules on the extended SM&CR?

We recently published our proposals to extend the regime and began consulting widely with industry, firms and consumer groups. This consultation will run throughout the summer period and in Autumn we will be holding firm briefings across the UK. We will be clear on how firms will be impacted, explain any changes simply, and ensure that we are proportionate, based on size and complexity of a firm. We expect implementation of the regime to begin from 2018.

What are the implications of the UK leaving the EU on financial services?

How does the FCA see the impact of Brexit on Financial Services in the United Kingdom?

The UK's decision to leave the European Union creates uncertainty for both the UK's financial industry and the FCA. Both the FCA and the Government are keen to ensure that the financial services industry continues to remain resilient and well placed to meet users' needs after EU withdrawal.

The implications for financial services firms will depend on the type of firm in question and also the outcome of the Government's negotiations. We are providing technical advice to the Government to support the EU withdrawal negotiations and related legislative change including the European Union (Withdrawal) Bill.

At the moment, there are a number of EU regulations that are imposed on UK markets. Will this change when we officially leave the EU or will we develop a new benchmark for financial regulations and standards?

The FCA is working closely with the Government on the EU (Withdrawal) Bill. The approach is set out in the White Paper published by the Government on 2 February.

The eventual shape of the UK's future relationship with the EU is a matter for the UK Government, to be negotiated with the EU.

How will the FCA support authorised firms in preparing for Brexit given the prolonged uncertainty? What active engagement does the FCA have in the Brexit negotiations to ensure that the UK financial services industry has proper representation at the table?

The FCA is working closely with regulated firms to understand their contingency planning for EU withdrawal. The negotiations are a matter for the Government, and we are providing technical advice where it makes sense to do so in line with our objectives.

Does the appointment of Keith Jackson as a director in insurance indicate a broader move to bring more commercial sector middle/senior management?

As an organisation it has always been our aim to maintain a balance of skills on our senior team, recruiting both internally and externally depending on the needs of a particular role, the needs of the broader team the role sits within, the organisational needs, and the talent available at a given time. In the last 12 months we have recruited 47% of our senior team from the external market and 53% have been recruited internally. We very much welcome the combination of skills that Keith Jackson brings to this role (including experience he built during his time in the commercial sector), but his appointment does not represent a change in direction.

What progress has been made by the FCA in its review of the retained provisions of the Consumer Credit Act 1974? When will the FCA publish the consultation responses?

Based on the responses from the Call for Input, the groundwork has been laid for the review of retained provisions of the Consumer Credit Act 1974 (CCA). Many of the responses were highly detailed and we have taken the time to scope the project carefully. This is with the aim of ensuring we achieve the desired outcomes, whilst importantly taking into account the changing contexts within which we will be carrying out the review.

Given the important role played by HM Treasury in the review, we are working very closely with them to publish a Feedback Statement on the Call for Input responses, which will provide more information on the plans for the review.

Would it make sense for the FCA and The Pensions Regulator to be combined in some way, so that the regulation of the pensions sector can be more robust?

The scope of what we regulate is, of course, a matter for the Government.

We regulate firms and individuals that promote, arrange or provide personal pension schemes, while The Pensions Regulator is the UK regulator of occupational pension schemes.

We work closely with The Pensions Regulator. For example, through a Joint Risk Group, we share information and monitor risks to the delivery of good retirement outcomes for members of workplace DC pension schemes.

In our Business Plan, we said that we plan to publish a strategy for pensions, setting out our regulatory approach to this sector. Our strategy will also provide further clarity about how we work with other regulators and Government.

It would be much appreciated if you could address your forthcoming supervisory and enforcement approaches, in particular any anticipated areas of early intervention and the enforcement policy.

Our cross-sector and sector priorities for 2017/18 are set out in the FCA's Business Plan for 2017/18. These priorities include culture and governance, financial crime and anti-money laundering (AML) controls.

Key planned activities for this year in the supervisory space are also set out in the Business Plan.

If through our supervisory activities we come to suspect a firm is not compliant with our rules, then we will intervene to stop the activities in question and mitigate the risk of harm.

Where we suspect serious misconduct, our general approach is to investigate and then decide what, if any, action we may need to take.

What impact might the US Choice Act (sweeping deregulation of the financial sector) have? Will it open the door to regulatory arbitrage? What, if any, will be the reaction/stance of the EU/FCA?

It's difficult to say what impact the CHOICE Act may have, given that it is still likely to be subject to further change through the Congressional process. It is not legislation, and so we cannot speculate.

I have an interest in the licensing of debt purchasers and how they buy alleged debt onto their portfolios and the non-compliance of such organisation and the recording of CCJs against the public without proof of debt and their solicitors who act for them in such matters.

Firms that wish to purchase debts due under credit agreements must be authorised by the FCA with the relevant permissions. Such firms effectively 'step into the shoes' of the original lender and the rules that apply to lenders also apply to debt purchasers. For example, firms are required to maintain accurate and adequate data so as to avoid the risk that a person who is not the true borrower is pursued for repayment of a debt or pursued for an incorrect amount.

Before pursuing a customer for repayment of a debt, firms must also take steps to verify the accuracy of the available data in order to ensure they pursue the true customer. If a customer disputes the debt on the grounds that they are not the true borrower, the debt does not exist or the amount is incorrect, firms must suspend attempts to obtain repayment and investigate the dispute.

FCA rules state that it is for the firm to establish, as the case may be, that the customer is the true borrower or that the amount owed is correct. Firms must not continue to make demands for payment of a disputed debt without providing clear justification and/or evidence as to why the customer's claim is not valid.

Given one of the focuses of the FCA is to encourage competition in the industry and keep cost low for customers, what is the FCA doing to address concerns about the rising cost of purchasing data to meet regulatory obligation? Fitch for instance has increased the cost of their rating by 100% over the last 4 years.

At the outset it is important to note that we have an objective to promote effective competition in the interests of consumers. Effective competition can lead to new innovations, wider range or better quality, as well as lower prices.

The question is about whether we feel there is effective competition in the credit rating agency (CRA) market and whether we should intervene to address such concerns.

We are aware there may be concerns about market power in the CRA market. However, at present, these institutions are outside our regulatory perimeter – they are regulated by the European Securities and Markets Authority (ESMA). The regulatory position of CRAs may change after the UK leaves the EU We will keep an eye on how this evolves and will consider then whether there is a case for undertaking work to investigate the concerns.

Do you think the current PPI claims management companies will turn their attention to HPI and PCP contracts and allow customers to claim they have been mis-sold finance when in fact they haven't?

The Government is in the process of transferring the regulation of claims management companies to us.

In the meantime, we are working with the current regulator to identify the scale and scope of emerging claims management markets (CMCs), and to understand the nature of any conduct risks that develop. The conduct of CMCs in all sectors will be closely monitored to maximise regulatory compliance.

Is the FCA strategy building the public's trust in obtaining appropriate advice from advisers and that it represents good value for money against other routes that they may engage to obtain such information?

The FCA recognises that it is important to have a market which delivers affordable and accessible financial advice and guidance to everyone, at all stages of their lives.

The Retail Distribution Review (RDR), which came into force at the end of 2012, has helped to raise standards in the industry and over time should help to build trust in financial advisers. It raised the minimum level of adviser qualifications, improved the transparency of charges and services, and removed commission payments to advisers and platforms. The post implementation review carried out in 2014 showed that, whilst many changes were still bedding in, in most areas the RDR was on track to meet its objectives.

A market where advisers aren't driven by commission and are better qualified will provide a better quality of advice for consumers. This is borne out of the findings of our recent Assessing Suitability Review (published May 2017), which found that in 93.1% of cases the sector provides suitable advice. The findings were also positive in relation to platforms, with consumers shopping around between providers and some charges falling.

The landscape has shifted since RDR was developed. The introduction of pension reforms has arguably made it even more important that consumers get the help they need with financial decisions. The Financial Advice Market Review FAMR, which was launched in 2015 in conjunction with the Treasury, was aimed at making the financial advice market work better for consumers. Its final report in March 2016 included recommendations designed to tackle the barriers to consumers accessing and engaging with financial advice for saving into a pension, taking income in retirement and investing.

All the FAMR recommendations are either already completed or on track for completion on schedule.

Is the FCA reviewing how firms are managing cyber risk?

Yes. Broadly, we're focusing on three areas.

Firstly, we supervise the largest firms, those with the biggest impact on consumers and markets, we undertake direct assessments of their cyber resilience capabilities, motivating firms to prepare for and prevent attacks.

We are working with the Financial Policy Committee (FPC) to establish an impact tolerance for cyber-attacks and we are issuing information requests to our highest impact firms to assess their capabilities, providing them with individual feedback. We are also working closely with the Bank of England and National Cyber Security Centre (NCSC) on the "sector exercising strategy".

Secondly we aim to promote international consistency and strong understanding of the financial sector through participation in key national and international groups. We were key authors of the CPMI-IOSCO Guidance on Cyber Resilience for Financial Market Infrastructures (FMIs), published in June 2016. This guidance is considered a leading practice document amongst Financial Sector firms and is being pushed more broadly than FMIs.

Finally, we work to increase awareness across the breadth of our regulated firm base, for example, we have launched the Cyber Coordination Group (CCG) initiative and have published a guide in June articulating the foundations of good cyber resilience for all of our regulated firms.

In light of the recent report on Asset Management market study, what are the future implications for rules and requirements for packages offered by asset management?

The Asset Management Market Study identified several ways in which the market for asset management products and services could work better for investors. We have proposed and are consulting on measures to strengthen our rules which require authorised fund managers to act in the best interests of fund investors.

In particular we are proposing reforms to the governance of fund managers which will hold fund managers and managers of underlying investment portfolios to greater account. Our reforms are intended to increase the focus on value for money and to drive fund managers to offer better value products for investors.

We are also planning to consult, where relevant, on rules or guidance in other areas, for example around the disclosure of costs and charges to retail investors, and around the way that asset managers use benchmarks and report their performance. We will set out our proposals in these areas later this year.

Why do the FCA rules and regulations not restrict financial firms from creating complex asset management products, thereby offloading risk to their clients?

There are a number of risks that investors take when they buy asset management products. Asset managers do not typically 'offload' risks on to their clients, but rather their products enable clients to access the potential returns, and the risks, of different investment markets.

For retail funds, FCA rules include a number of limitations around the risks that fund managers can take on behalf of clients. For example, FCA rules require that retail fund managers invest in a diversified portfolio of investments, that they only invest in investments that meet certain basic criteria and that they do not take on more than a limited amount of leverage and that they manage the risks associated with derivatives within certain limits. Investments owned by a fund must be legally separate from the balance sheet of the asset management firm.

Regulation around Alternative Finance / Crowdfunding: potential reviews

We believe that crowdfunding has the potential to enhance competition in the interest of consumers. Last year we began our post implementation review of our crowdfunding rules. Although the work is still ongoing, our early findings suggest that more work is needed to ensure that the market works consistently well for consumers. We set out a number of concerns about this market in our Interim Feedback Statement, published in December 2016.

We will publish our findings at the conclusion of the post implementation review. The interim findings suggested that there is evidence of potential consumer detriment, and we intend to consult on a package of rules to address our concerns and ensure that as the market develops that our regulatory regime remains proportionate and fit for purpose. Our primary focus is the loan-based market, but we have concerns across both loan-based and investment-based sectors. We will propose new rules for both.

I would like to know about the FOREX regulatory framework and how FOREX institutions are supervised in the UK.

The wholesale foreign exchange (FX or Forex) market is one of the largest and most liquid markets in the world with a daily average turnover of $5.3 trillion, 40% of which takes place in London.

While some FX trading sits outside the regulatory perimeter, our broad regulatory framework aids us in supervising all FX market activities of authorised firms in the UK, for example through our competition powers or our Principles for Businesses.

Following significant fines in 2014 for FX conduct failings, we have worked with a large number of London-based firms on an industry-wide remediation programme, and have seen the creation of the new Bank for International Settlements (BIS) FX Global Code.

We noted in our Mission document earlier this year, these sorts of standards can be a useful way for the industry to police itself in support of our regulatory work, and can help firms to communicate expectations of individuals when linked to the Senior Managers and Certification Regime.

I have some questions around protections for investors against fraud (for example, what checks are made before firms and individuals become FCA-registered?), and the FCA's priorities and choices in investigating and prosecuting allegations

We welcome any information about fraud that falls within our remit within the financial services arena. We have a range of regulatory, civil and criminal powers to investigate and take action against firms and individuals breaching our legislation. We also work with domestic and international partner agencies to share intelligence and ensure that any wrongdoing is investigated by the appropriate agency.

In addition, we dedicate a lot of time and resource to consumer education, including the Scamsmart campaign, to prevent consumers falling victim to investment fraud.

Authorising firms and individuals is an integral part of the FCA’s overarching system of supervision of the UK’s Financial Services Market. As with on-going supervision, Authorisations aims to ensure that firms and individuals understand and attain our standards of conduct in respect of customer treatment, market integrity and competition.

We assess applications against the FCA's Threshold Conditions which set out the minimum requirements and standards that firms must meet and maintain. We take a proportionate approach to the degree of scrutiny we apply to applications according to the risk that these firms might present to consumers and market integrity.

What is the FCA's favoured approach to Insurers/MGAs supervising and monitoring their distribution chain?

Our expectation is for firms to comply with the relevant rules and guidance as set out in the FCA handbook and referenced extensively within our 2015 thematic report on 'Delegated Authority: Outsourcing in the general insurance market'. Firms should ensure that they have effective and risk-based controls in place that appropriately identify and mitigate any conduct risks associated with the activities they undertake, including where they delegate responsibility to others.

The extent of the oversight and monitoring required is likely to vary dependent on factors such as the nature and length of the distribution chain, the number of parties involved, the products being sold and the customers to whom the product is being sold. We would therefore expect all parties, including insurers and managing general agents, to appropriately consider the risks generated by their activities and the roles they fulfil within distribution chains, and to ensure that they put in place appropriate controls and oversight (including MI) to effectively and consistently mitigate these risks.

I would like to ask about the leakage of financial information out of the report and accounts (on the agenda for an AGM) into subsidiary documents (not on the agenda for an AGM). Eg, Pillar 3 disclosures and Solvency and Financial Condition Reports. This could put vital information out with the scrutiny of members and shareholders.

Financial information which is required to be laid before a general meeting is a matter of company law. However, listed companies are required to provide via a Regulatory Information Service certain periodic financial information to the market under the Disclosure Guidance and Transparency Rules and the Listing Rules. In addition, they must also be aware of their on-going obligations under the Market Abuse Regulation to disclose any inside information to the market as soon as possible unless there is an ability to delay the disclosure of that information.

In relation to the FCA & enforcement of regulation, why are certain organisations able to not be prosecuted and others are?

The FCA has statutory powers to prosecute companies (though not for insider dealing). There are a number of statutory offences that apply to the company itself for particular acts or omissions. Some criminal offences are such that the company may be liable for the acts, or consent or collusion by its officers in particular criminality. In some other instances, a company may only be criminally liable if under what is termed the 'directing mind' principle, in other words that the criminal action or omission has been pursued by an individual person who is a senior controlling officer of the company. Application of the law in these instances is often complex and highly fact specific, particularly given the structure of multi-national corporate entities.

In deciding whether to institute criminal proceedings against a person (be they an individual or a 'legal person', such as a company), prosecuting authorities, including the FCA, must apply the Code for Crown Prosecutors. The Code requires prosecutors to consider a two stage test. Firstly an evidential test (there must be sufficient evidence for a realistic prospect of conviction in relation to the suspected offending). Secondly, a public interest test (that a prosecution is required in the public interest).

There are multiple factors that weigh in favour or against criminal proceedings, but they include consideration as to the relative seriousness of the offence, mitigating actions by the company, and the existence of other sanctions and penalties (whether by authorities in England and Wales or elsewhere) in relation to the conduct.