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By email: drcf.algorithms@cma.gov.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to the Digital Regulation Cooperation Forum's call for input on the benefits and harms of algorithms: a shared perspective from the four digital regulators

The Financial Services Consumer Panel is an independent statutory body. We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK. Our focus is predominately on the work of the FCA, however, we also look at the impact on consumers of other bodies' activities and policy where relevant to the FCA's remit. We are responding to this consultation because algorithms are commonly used by FCA-regulated firms to make decisions about financial services consumers – be that whether to lend to them or not, how much their insurance premium should be or whether they're within the target audience for a financial promotion. The increasing digitalisation of financial services means algorithms are playing an ever-greater part in determining consumer outcomes and we want to ensure those outcomes are fair.

We therefore welcome the four digital regulators coming together as part of the Digital Regulation Cooperation Forum (DRCF) to explore the benefits and harms of algorithms and what regulators can do to protect consumers. It is no doubt a complex area, with many potential avenues to be explored. We would therefore encourage DRCF members to remain focussed on interventions that minimise consumer harm and have the greatest positive impact on consumer outcomes.

Our vision for algorithms is that:

- Firms put consumers in a position to understand what data is being recorded, the purpose of collecting that data, and how it will be used and shared.
- The underlying source data informing algorithms is accurate, current, inclusive and representative so that algorithms do not unfairly discriminate against individual or groups of consumers, including those in vulnerable circumstances or with protected characteristics.
- Algorithms promote inclusion and reduce exclusion. They should not create unreasonable barriers to access, switching or cancellation.
- Firms maintain sufficient control and understanding of the algorithms they use so that they are capable of interrogating them to understand how they are impacting consumers. This ensures firms can be held accountable, by consumers and regulators, for how their algorithms impact upon and drive outcomes for consumers.

We would also like to highlight the pace of development in this area, which we are concerned the DRCF's approach will not keep up with. This paper is intended to 'foster debate' but given the speed at which algorithmic capabilities and adoption are increasing, regulators need to move beyond the debating stage and into action. Regulators should ensure their plans and strategies build in capability and capacity to focus on this significant

area of emerging risk. Regulators should also seek to capitalise on developments elsewhere, such as the work done on algorithmic benefits and harms in the US insurance market¹.

Finally, we wish to highlight the importance of consistent definitions being used across regulators when referring to algorithms, artificial intelligence and machine learning. These terms can be used interchangeably which could create confusion amongst consumers and firms. For clarity, throughout this response we use these terms to mean the following things:

- **'Algorithms'** – a set of rules used by automated systems to process source data.
- **'Source data'** – the data obtained from consumers that is then processed by firms, potentially by algorithms.
- **'Artificial intelligence' (AI)** – the theory and development of automated systems able to perform tasks which previously required human intelligence. AI is a set of algorithms that can cope with unforeseen circumstances and alter the algorithms to develop new ones in response to learned inputs.
- **'Machine learning' (ML)** - the development of models for prediction and pattern recognition from data by automated systems, with limited human intervention. ML is a subcategory of AI.

Our responses to the questions posed in the call for input are included at Annex A below.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

¹ See for example reports by the Centre for Economic Justice here: <http://www.cej-online.org/issues/credit-scoring/>

ANNEX A – Responses to questions

Question 1: What are your overall reflections on the findings of this paper?

We agree with the DRCF's presentation of the potential risks posed by algorithms. We see evidence of these risks causing harm to consumers in financial services. For example:

- our [research into digital advertising](#) found that there was potential for targeted advertising – which is driven by algorithms - to exploit and manipulate consumers who were already vulnerable to harm. This could mean consumers buy products that are not right for them, which may lead to harms such as financial loss and an unexpected lack of regulatory protections.
- [Citizen's Advice research](#) found that people of colour may be paying £250 more a year for their car insurance than White people. As markets evolve and the use of 'big data' and algorithms in setting prices becomes more prevalent, there is a risk that these inequalities are perpetuated and amplified.
- firms may use algorithms to determine how likely a consumer is to accept an offer of redress or a payout on an insurance claim and then deliberately lower the amount offered to those consumers identified as likely to accept the lower amount.

We do not agree with some of the presentation of benefits in the DRCF's paper. In particular:

- the paper frames price personalisation as a good thing because it could lower prices for some consumers, which could in turn lower barriers to entry in certain markets. We do not think this benefit is likely to materialise because those consumers on the access boundary often pay higher prices due to the perceived risk involved. The 'poverty premium', where those on the lowest incomes face higher costs, is a well-documented issue that is likely to apply here. Also, lower prices for some means higher prices for others which could lead to unfair outcomes and widen the cross-subsidisation gap.
- the paper also suggested that firms could use algorithms to tell consumers whose applications for credit are rejected that if their income was higher, or their debt lower, by a certain amount then they would have been accepted for the loan. We would not support this use of algorithms as it could encourage consumers to game the system in order to access certain products.

We are concerned by the level of understanding that is expected from consumers in terms of how their data will be used and shared. Truly informed understanding and consent is not realistic in such a complex area and it is not reasonable to expect consumers to understand how algorithms function. Basic concepts will need to be understood (i.e. what data is being recorded, the broad purpose it will be used for and where it might be shared), but this information should be kept at a level that is useful for consumers. For example, in explaining the purpose for which the data was collected, it would be reasonable to say the data will help the firm identify which products are suitable, but it would not be reasonable to describe the technical use or algorithmic processing of the data.

The base position for consumers is that they should expect fair treatment from firms, without bias or discrimination. This is especially the case for financial services consumers who will benefit from the new Consumer Duty being introduced by the FCA.

In terms of the role of regulators, we would like to see the DRCF being more ambitious in terms of the joint working it can facilitate between the four digital regulators, and others with influence in this area. Algorithms pose a serious emerging risk for consumers

and effective collaboration will ensure a consistent approach and allow measures to mitigate risks to be put in place more quickly. This will ultimately reduce harm and protect the greatest number of consumers.

Question 2: What other issues could the DRCF focus on?

The issues of greatest concern to us – fairness and access – are covered well in the DRCF’s paper.

One area that could be considered in greater detail is the benefits and risks of the four digital regulators using algorithms. They have the opportunity to jointly develop interoperable RegTech and SupTech that will help them identify issues in their sectors – and across sectors – more quickly which will prevent or minimise harm to consumers.

Question 3: Which area of focus does the DRCF have the most potential to influence and which would you prefer the DRCF prioritised?

We encourage the DRCF to focus on the areas where it can minimise harm to consumers and have the greatest positive impact on consumer outcomes. This would most likely include a priority focus on fairness: ensuring the fair treatment of consumers should be the ultimate aim of regulators in this (and all) areas. A focus on fairness will prevent bias, discrimination, unfair decisions, exclusion and consumer harm. This will create strong foundations for building consumer trust in digital systems and the firms that use them. We recommend the DRCF refer to the [European Consumer Organisation’s report on AI rights for consumers](#) as it sets out some useful principles to guide consumer protection in this area.

Ensuring diversity and inclusion in the source data as well as the overall design of the algorithmic processing is particularly important because those in vulnerable circumstances are most likely to be discriminated against and to feel the greatest impact if things go wrong. The DRCF may wish to engage the Equalities and Human Rights Commission to inform their thinking in this area.

We would also like to see the DRCF prioritising accountability and ownership amongst firms for the consumer data journey. It must be clear who is responsible for decisions about the use of algorithms, the quality of the data used to drive them and the resulting impact on consumers. Firms’ governance arrangements should expressly include procedures and arrangements for governing the use of algorithms. Firms should also demonstrate a proactive approach in assessing the potential risks and impact of their use of algorithms at the product design stage. For this to work, firms must ensure they have sufficient understanding of the algorithms and systems they use so that they are capable of interrogating them to evaluate the impact they have on consumers.

Question 4: What outputs would consumers and individuals find useful from the DRCF to assist them in navigating the algorithmic processing ecosystem in a way that serves their interests?

We wish to reiterate our concerns relating to the expected level of consumer understanding in this complex area. Ultimately the burden should be on firms to do the right thing and consumers should have confidence and trust in this being the case.

It may be useful to create resources that include prompt questions for consumers to consider, building on the ‘[5 questions to ask before you invest](#)’ approach taken in the FCA’s InvestSmart campaign which aims to prevent consumers falling victim to investment scams. Prompt questions in this area could include “do you know what data you’re sharing?” and “do you know who you are giving your data to?”

The DRCF may also want to consider developing a single interface for consumers to report to their concerns about misuse or unfair use of data. Consumers would have an

easy-to-use single point of entry to make a complaint and then the DRCF members could decide between them who is best placed to deal with it. This would avoid consumers being frustrated by having to approach multiple bodies to find the right place for their complaint, which may undermine overall trust in both digital and regulatory systems.

Consumers should also be pointed to a single place to find out more information. For example, if they don't understand what they're being asked for, or if they want to find out more before consenting to supply their data, they could be directed to an independent and impartial information source (such as a jointly hosted website of DRCF members). This website could also include the single complaint portal as described above.

Question 5: Do you have any evidence on the harms and benefits of algorithmic systems you would like to share with the DRCF?

Our [research into digital advertising](#) found that there was huge potential for high-cost credit lenders to target advertisements towards particular groups of consumers based on the personal data that individuals share online and their online activity – such as the things they 'like' and 'follow' and the links they click. We are worried about the potential for this targeting, which can easily be done by algorithms, to exploit and manipulate those already vulnerable to harm.

The research also identified a risk of consumers being drawn to unauthorised and/or cloned firms and fake social media accounts. Algorithmic systems could be used to create and administer such clones and fake accounts and use machine learning to work out how best to entice victims and how to avoid regulation.