

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Authorisations Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

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By email: approachtoauthorisation@fca.org.uk

Dear Sir / Madam,

FCA Mission: Our Future Approach to Authorisation

This is the Financial Services Consumer Panel's response to the FCA Mission: Our Future Approach to Authorisation.

Authorisation is an important gateway: exacting authorisation requirements are a necessary and important first hurdle for firms that want to offer financial products and services. Authorisation enables the FCA to meet its strategic and operational objectives: it helps to prevent harm, to protect consumers and to ensure markets function well. It is also essential for building consumer trust. The FCA regularly exhorts consumers to check that their financial services provider is authorised (most recently in the context of Open Banking). People must have confidence that the authorisations process offers assurance about the conduct of firms. If the Threshold Conditions are not tough enough, the FCA should make them tougher.

Need for greater focus on consumers

The document has too much focus on firms, and too little on consumers. The impression given is that the FCA is preoccupied with making the process easier for firms to navigate, as if authorisation is an inconvenient administrative process, rather than the high hurdle it should be. There also seems to be an over-reliance on redress schemes to mop up customer complaints after poor behaviour rather than applying rigorous standards at the point of authorisation to identify and address potential harm before it occurs. In consumer credit, for example, the FCA's Thematic Review of staff incentives, remuneration and performance management¹ reported shocking findings about the prevalence and level of commission paid, lack of management controls, and poor governance. The FCA should proactively identify such shortcomings when firms apply for authorisation, in line with the FCA's assertion that it uses authorisations as a preventative tool to prevent harm from occurring.

The FCA should act as a robust gateway which applies rigorous standards to protect consumers, maintain market integrity, and reduce the need for subsequent remedial interventions. It is right for the FCA to explain clearly and thoroughly to firms what it

¹ <https://www.fca.org.uk/publication/consultation/cp17-20.pdf>

expects of them. However, this is a second-order priority, and should not be the main focus of the paper, or the wider activities undertaken by Authorisations.

We are concerned that the lack of focus on consumers may also reflect the general approach adopted by Authorisations. While other FCA Divisions have actively engaged the Panel in the development of their Approach documents, Authorisations has not done this. Nor are we aware that Authorisations has solicited the views of consumers or their representatives, again unlike other FCA Divisions. We recommend that Authorisations takes steps to embed the consumer interest and protection of consumers into its work, and to set out how its approach helps to improve outcomes for consumers. The Panel would be happy to provide input.

Improvements required to the FCA Financial Services Register

The Approach to Authorisation notes that the FCA is required to maintain a Register of all firms and individuals that are, or have been, approved by either the PRA or FCA. The aim is to support public trust and transparency in financial services. However, the Register has a number of shortcomings which greatly diminish its usefulness to consumers. These include:

- it uses language aimed at professionals familiar with industry jargon;
- it is difficult to navigate;
- it can be impossible to locate firms using consumer-facing brand names;
- it fails to provide adequate information about passported firms and the potentially lower consumer protection standards applicable in those firms' home jurisdictions; and
- it does not highlight information that would be useful to consumers, e.g. about fines or other enforcement action against the firm, in the UK or overseas.

We recognise that the FCA is making changes to the Register which seek to address some of these problems, and to address issues arising from the extension of the Senior Managers and Certification Regime (SM&CR). We support the FCA's plans to consult on proposals to publish a directory of certified employees, which will be searchable by consumers and other stakeholders². We are also pleased to learn that mortgage advisers will receive a reference number (IRN) and feature on this database. We hope the FCA will take the opportunity to make this directory genuinely useful to consumers, and that it will test it accordingly.

Q1: Do you have a clear understanding of the Threshold Conditions that firms and individuals must meet for authorisation? If not, in which areas would you like us to be more specific?

Ensuring that firms meet Threshold Conditions plays a critical role in preventing consumer harm and ensuring that markets work well. The Approach document provides a useful introduction to how the FCA applies the Threshold Conditions to firms applying for authorisation. However, it needs to go further, and give greater prominence to some issues:

- **Business Model Threshold Condition:** The 2012 Financial Services Act introduced a new Business Model Threshold Condition. It would be helpful to see more information about how the FCA interrogates and analyses firms' business models to determine whether they meet the needs of consumers and do not place

² <https://www.fca.org.uk/news/statements/fca-statement-proposals-introduce-public-register>

the firm, or the wider financial system, at risk. We would also like to understand what factors the FCA takes into account when assessing business models, and how they assess firms against particular harms that have been identified in the market.

- **Assessing culture** – The FCA should be more explicit about how it takes firms’ culture into account. One way to do so would be to add a Threshold Condition focused specifically on culture. While culture can be difficult to assess, we are encouraged by the work of Supervision in this area and its approach to evaluate a firm’s culture using four types of lever: sense of purpose; the tone from the top; governance structures; incentives and capabilities³. We encourage Authorisations to adopt a similar framework.
- **Definition of “high risk”** - The Approach document states “*we give greater scrutiny to those firms that pose a higher risk of harm to consumers and to market integrity.*” It is not clear how the FCA determines what it considers to be ‘high risk’ and how it applies this in practice. For example, is it related to the history of the firm/individuals, the type of consumer being served, the products being offered, the business model proposed, a combination of these, or something different?
- **Interim authorisations** – The Approach document provides no information about when the FCA may grant firms interim authorisation to conduct business, and how the FCA makes such assessments. We would like more information about why the FCA decides to grant interim authorisations and how it mitigates risks to consumers and to market integrity.

We also think Authorisations should publish more information about its activities, including the number of individuals or firms that have been refused authorisation, and whether this was due to concerns expressed by the FCA or the PRA. In addition, we would welcome more information about the role of the Regulatory Decisions Committee (RDC) where it has overruled the FCA’s decision to refuse a firm’s application for authorisation, including the reasons for overturning the decision.

We have concerns over firms’ use of the term ‘FCA regulated’ when this applies to only a negligible portion of their activity. This gives consumers a false degree of confidence in the firm and also potentially damages the reputation of the FCA. This is contrary to the requirements set out in the General Provisions Sourcebook. The FCA should enforce this more robustly and set out what is required of firms during the authorisations process.

The FCA also uses the Threshold Conditions to determine whether individuals within firms are ‘fit and proper’. We have a number of suggestions for how the FCA should improve the assessments they carry out on individuals. In particular, the FCA should:

- consider the overall composition of the Board when approving individuals and also an individual’s record of challenging decision-making. In the ‘Journey to the FCA’ document, the FSA stated “*We think it is vital for firms to have balanced and effective boards, with a competent senior executive team. We will therefore*

³ <https://www.fca.org.uk/news/speeches/culture-conduct-extending-accountability-regime>

consider the appropriateness of an individual's appointment to a board within the context of the board's overall composition⁴." We would welcome information about how Authorisations factors this into assessments of an individual's suitability, and how they monitor this activity to ensure that the composition of a firm's board is suitably diverse.

- take into account the track record of the individual in ensuring customers are treated fairly, one of the five conduct rules which are a key element of the SM&CR. The Approach could helpfully set out specific examples of how the FCA has taken this into account since it was introduced.
- consider the track record of individuals associated with the failure of banks. Currently, such individuals remain authorised despite their role in previous banking failures because the 'fit and proper' test only requires the FCA to take account of an individual's involvement in businesses placed in insolvency, liquidation or administration rather than firms which have been bailed out or which have been subject to fines or other enforcement activity.
- be clearer that it will consider the track record of individuals in firms undertaking unregulated activities when taking decisions about authorisations.
- provide more detailed information about how it ensures that conduct-related skills and experience are taken into account when assessing PRA-designated senior function applications. There is no information on how the FCA seeks to do this, or on how many occasions senior individuals have had their authorisations rejected because of concerns expressed by the FCA.

Q2. What are your views on our approach to supporting firms and individuals to meet the minimum standards and promoting competition? How could we improve it?

Q3. Do you think we have suggested the correct commitments to make to firms making authorisation applications? If not, what other commitments could we make?

We agree that it is appropriate for Authorisations to provide clear information to firms about the minimum standards, what is expected of them, and the timescales within which the Authorisation Division will deal with applications or variations. However, the desire to improve efficiency should not diminish the application of robust standards. Some friction is essential to ensure that the Authorisations Division has sufficient time to scrutinise the firm properly and make an informed assessment of its application. This is important to protect consumers. But it also ensures firms already authorised are treated fairly and unsuitable firms do not enter the market and undermine market integrity and trust.

As well as making commitments to firms, the FCA should set out an equivalent commitment to consumers, in line with its consumer protection objective and obligation to serve the public interest.

⁴ <https://www.fca.org.uk/publication/corporate/our-approach-authorisation.pdf>

Q4. Do you think we have prioritised the right strategic goals? If not, what additional strategic goals do you think would add most public value to our work?

The goals focus too much on delivering benefits to firms, namely: improve the support we provide to firms to enable them to meet minimum standards, improve our service focus, and become more digital and innovative. There should be an overarching strategic goal: to act as a robust gateway which applies rigorous standards to protect consumers and achieve good customer outcomes, and to maintain trust in the integrity of the market.

We also think that an additional strategic goal should be to understand why firms and individuals who were authorised by the FCA subsequently treated customers unfairly or engaged in misconduct. The FCA should consider systematically whether evidence was available at the time of authorisation which was overlooked or not acted upon and where this derived from (e.g. from applicant's history or from interviews conducted with them). This would enshrine a culture of continuous learning and improvement within Authorisations, making sure it learns lessons from past experience.

On monitoring and measuring effectiveness, again the Approach focuses on improving the process for firms rather than keeping unsuitable individuals and firms out of the market. There are only two mentions of consumers. The document states that the FCA uses authorisation primarily to prevent harm from occurring. The FCA should provide information about how it measures and evaluates this.

We encourage Authorisations to think creatively about how it monitors activities and measures its effectiveness. Undertaking market intelligence and analysing complaints provides only a partial picture since those who have a poor experience may not make a complaint.

Yours faithfully

Sue Lewis
Chair, Financial Services Consumer Panel