Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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

Consumer Insight
Financial Conduct Authority
25 the North Colonnade,
London E14 5HS

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Dear Sir / Madam,

FCA Mission: Our Future Approach to Consumers

The Financial Services Consumer Panel welcomes the opportunity to respond to the FCA's *Future Approach to Consumers*.

We support the intentions set out in Andrew Bailey's foreword. *Financial Lives* is a rich source of data about consumers, which has been woven into an interesting narrative. But it is not clear who is the audience for the Approach, nor how it will, in practice, change the way the FCA regulates. When it was published in 2012, the FSA's "*Journey to the FCA*" set out what difference it would make. If the Approach to Consumers had been published two years ago, what would be different today?

The Panel still believes that consumer outcomes should be integrated into all the 'Approach' documents. Not to do so risks reinforcing 'silo' thinking. The FCA should start with the harm or potential harm and ask itself which of its tools is best suited to addressing the problem. The Approach sets out a range of analytical tools on p35. The subsequent paragraphs on remedies refer to authorisations, but do not mention the FCA's competition powers. If the Approach to Consumers is supposed to be an overarching document then it would be helpful if it said a lot more about when and why the FCA plans to use the powers at its disposal. It should also say why it does not use some powers more often, such as product intervention, banning misleading financial promotions (and naming the firms involved), taking action for breach of principles for businesses 6, 7 and 8, and establishing consumer redress schemes.

It is unarguable that "markets can only work well if consumers are treated fairly". Yet the Approach does not say what 'fair' looks like. For example, does the FCA consider the large differences in the way insurers treat their front- and back-book customers to be fair, as judged against the current principles? If the FCA were to be clearer on what treating customers fairly looks like, then it could be more proactive in preventing harm from happening in the first place, and enforce more rigorously against breaches of the principles. At present, the only way to get a judgement on fairness is for a consumer to take a complaint to the Financial Ombudsman Service (FOS), which does take account of fair consumer outcomes. Quite apart from the stress on consumers, this runs counter to the preventative approach signalled in the Mission.

We understand that the FCA does not want to reduce the principles to detailed rules. But there is nothing in the Approach that sets out the link between 'tick box' compliance with the rules and adherence to the principles. The FCA could make the principles actionable, and let the courts decide what 'fair' means. Or it could spell it out itself. Otherwise how does the FCA propose to make the principles bite?

We were surprised to see no mention of Brexit in the section on 'regulating for the future', given the potential impact on consumers of the UK leaving the EU. While the UK's future relationship with the EU remains unclear, there are some known risks to consumers, and the FCA should set out what these are and how it will mitigate them. Not to do so makes the FCA look out of touch.

There is also no mention of SMEs, who under FSMA are just as much consumers as individuals. The FCA has clearly been thinking about SMEs as consumers: it recently followed up its 2015 discussion paper with a consultation on widening access to the FOS. This also made wider reference to SMEs as consumers, and in particular, said "*When we consider new rules and guidance in future we will consider whether there is a case for micro-enterprises to be treated differently to larger businesses, or similarly to individual consumers*". SMEs are vulnerable to poor treatment by their banks. The Treasury and BEIS Select Committees have both recently launched inquiries into SME finance and the adequacy of regulation. Against this background, the FCA's silence on this group of consumers is baffling.

Finally, we are not clear what 'access' means. The Approach refers to consumers having access to those products they need. However, there are very few products that consumers 'need'. Many may be beneficial, but few are essential. Some consumers have arguably had too much access to credit products, causing them to become over-indebted. Meaningful access is not indicated simply by a consumer having a financial product or being able to get one, but requires the product to deliver real benefits.

Q1. While having regard to the general principle that consumers should take responsibility for their decisions, do you agree that there are circumstances where consumers cannot be expected to take responsibility? What do you think these circumstances are? How could – and should – the FCA intervene in these cases?

There is a huge imbalance of power and knowledge between firms and consumers in financial services markets. Product complexity is often high, prices and value are opaque, information is unclear or even misleading, and firms routinely fail to treat their customers fairly.

Consumers have a responsibility to be truthful about their circumstances. Apart from this, they should take responsibility for their decisions only if firms have complied with the principles for business. The onus should be on firms to frame decisions for customers on 'real world' behaviours and not exploit biases. If firms have not behaved in line with the principles for business and the FCA's Treating Customers Fairly (TCF) regime then the FCA should intervene using the full range of its powers.

As we said above, we believe the FCA needs to be much clearer on what consumer outcomes it considers to be fair. Firms simply ticking a compliance box to say they have followed FCA rules without taking individual consumer needs or the FCA's principles for business into account is not enough. Firms need to ensure they are also acting in accordance with the interests of the consumer.

Q2. Do you agree that firms have a responsibility to take reasonable steps to identify the signs of vulnerability, and to have processes in place to take appropriate action where they have identified a consumer with a particular need and at a particular risk of harm?

The 'Approach' redefines vulnerable consumers as '*people who can be readily identified as significantly less able to engage with the market and/or people who would suffer disproportionately if things go wrong'.* The Panel is still not convinced that a new definition of 'vulnerable consumer' is needed, given the amount of work the FCA has already done in this area.

We understand that the FCA has used the answers consumers gave to the Financial Lives survey to set the new definition. However, health and resilience are not necessarily good examples of categories for 'potentially vulnerable' consumers. For example, some people would say they struggle with day to day activities because of physical illness, but this is a different kind of vulnerability from memory loss or depression.

The definition of financial capability in *Financial Lives* is not the same as that used by the Money Advice Service, which is generally accepted internationally. Moreover, *Financial Lives* relies on self-reporting of confidence. On p10, the FCA asserts that 'those who have low financial capability or literacy may be targeted by scam artists'. That may be true, but it would be helpful if the FCA produced more evidence on the victims of scams and fraud. Scam artists often target indiscriminately (e.g. phishing). Authorised push payment fraud victims may be moving house and transferring money to what they believe is their solicitor. Victims of investment scams may be wealthy and over-confident. A more nuanced analysis is needed.

Whatever the technical problems with the definition, it is simply unworkable. Few instances of vulnerability will be 'readily' identifiable, and the FCA acknowledges it will be challenging for firms to identify vulnerability (p14). The upshot is likely to be a 'tick box' response from firms – e.g. bereavement services that don't actually work for the bereaved – while much bigger problems go unaddressed.

We believe the starting point should be the European Commission definition of vulnerable consumer[1], which explicitly acknowledges the market environment as a source of vulnerability, alongside personal characteristics and situations. This approach would offer an alternative way of identifying and addressing vulnerability to harm while at the same time preventing firms focusing on some groups of consumers to the possible detriment of others who are not badged as 'vulnerable'.

This is really another way of saying that firms should treat *all* customers fairly. This includes taking account of the particular needs of consumers who are in a vulnerable position. As the 'Approach' says vulnerable consumers should be helped and protected but should also be able to participate in the same market as everyone else.

Q3. Which consumer issues do you think sit directly within the FCA's remit, and which are more a matter for Government? Are we right to commit our resources to working with other organisations, such as firms, other regulators, Government, courts, consumer groups etc., where improved consumer outcomes may require action that is not within the FCA's regulatory toolkit?

The FCA should set out those areas for which it is able to change anything. Some issues are clearly for the government, for example, social policy issues relating to intergenerational fairness. While we understand it is tempting to fill the policy vacuum left by Brexit, the FCA needs to prioritise the important activities within its remit above those where its ability to changes things is very limited. That said, we agree that the FCA should continue to work collaboratively with government and other regulators, and use its convening powers to work with others and produce evidence to present back to government.

The reference to the FOS and FSCS in relation to consumer protection (p16) seems strange, as they don't protect consumers in the same way as the FCA. If the FCA focussed on preventative regulation, fewer consumers would need redress.

Q4. Do you agree with the aspirational vision and outcomes that we explore? Are there any further barriers or risks to us achieving it?

The Approach sets out the four 'outcomes' the FCA expects to see (p33). It is not clear how these relate to the six consumer outcomes that underpin the TCF regime, listed on p13.

There is nothing about transparency in the vision. For a market to work well for consumers, prices should be transparent, as should the basis for risk pricing. The third box refers to 'fair' risk pricing, but it is not possible to judge whether a consumer has been 'fairly' turned down (or charged too high a price) for insurance or a loan without knowing how the assessment was made. This becomes more important with 'big data', which can be used to exclude people for reasons unconnected with the risks they pose.

Another outcome might be that consumers know where to go for advice or guidance, and use it when they need to.

On the first box, if competition is working well, consumers will move to products or services that are better value, or to firms that treat them well. They will understand the information firms give them (rather than just getting 'relevant' information). It isn't clear what is meant by supporting consumers to be active and able, nor matching them with products that better meet their needs (is this about defaults?). There is no mention of how markets should work for those consumers who *choose* not to be active. Should markets also work well for inert consumers? If so, how?

[1] http://ec.europa.eu/consumers/consumer_evidence/market_studies/vulnerability/index_en.htm

The second box refers to 'high quality, good value' products. It is difficult enough for consumers to get clear and accurate information about prices; impossible for them to judge quality and value. The FCA needs to spell out clearly how it will regulate to ensure firms deliver value.

Consumer protection is a bit lost in the bottom box on p33. The first bullet point could also say that consumers are not exposed to exploitation of behavioural biases. The third should just say that 'consumers can get redress', it is not sufficient to have a 'mechanism' in place. The fourth point says that "Where appropriate, consumers are prevented from taking out products that carry a high risk of harm". When is it *not* appropriate to prevent consumers from taking out products that carry a high risk of harm?

The FCA should consider diversity more. The FCA often says it sees no issues with Equalities legislation. However, it has not backed this up with any analysis. The FCA should analyse the impact of its actions on different groups. As *Financial Lives* shows, there can be some stark differences between groups. We would like to hear more about how the FCA will consider these differences in its policy development and supervisory activities.

Q5. What further metrics would you use? Are there any specific data sources or tools that may be of benefit?

The FCA should focus on consumer outcomes, and use the data from its Financial Lives survey and elsewhere to highlight real consumer experiences. It should draw on Money Advice Service research and data, particularly on financial capability and debt.

The FCA should also be clearer about whether it offers good value for money. The National Audit Office (NAO) said it found it difficult to gather information on this[2]. It should be possible to measure the cost of interventions against changes in consumer outcomes and firm behaviour.

Increased transparency (less use of S348) would help measure value for money. In many cases we believe that the FCA could be more transparent if it wanted to be. For example, when the FSA wanted to publish firms' complaints data it created rules that required firms to publish the information. It was then able to repackage and publish the information as it was already in the public domain. The FCA should consider adopting this open approach more widely.

We also believe that the FCA should commission and publish independent evaluation of its interventions.

Delivering better consumer outcomes should not just be about 'diagnosing and remedying'. Where things do go wrong, it should be possible to measure what percentage of consumers entitled to redress get compensation.

Q6. Do you agree with this framework? Would you like us to consider any additional or alternative factors in how we regulate:

a. **for all consumers**

b. **for the most vulnerable or excluded, and**

c. **to meet the challenges of the future?**

The FCA should not separate the needs of vulnerable consumers with the needs of "all" consumers. It should ensure that firms know their customers; sell products and services that consumers can understand, value, and afford; be alert for signs of financial fragility; and always signpost to sources of information and support as necessary.

Yours faithfully

Sue Lewis
Chair, Financial Services Consumer Panel

[2] https://www.nao.org.uk/wp-content/uploads/2016/02/Financial-services-mis-selling-regulation-and-redress.a.pdf