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

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Dear Sirs,

**Building the UK financial sector's operational resilience**

The Financial Services Consumer Panel welcomes the opportunity to respond to this discussion paper.

In an ideal world, all financial services firms would have resilient operating systems in a zero-failure regime. When systems fail, it can have disastrous consequences for consumers who need to withdraw or transfer cash, pay bills, or pay for goods or services. A 'zero failure' regime is not achievable, but the aim should be to minimize the impact on consumers.

We agree that focusing on continuity of service and outcomes for consumers is preferable to a systems-based approach. However, yet more tick box compliance should be avoided. This just serves to limit liability on firms and not improve consumer outcomes.

There should be more regulatory scrutiny over the way boards and senior management gain assurances over the operational resilience of their firm. "Go – no go" decisions to upgrade systems should be based on the potential risk to consumers. Boards and senior management should give sufficient weight to the impact of those risks crystallising, rather than focusing on the probability of the risks materialising.

If firms had a duty of care[1] towards their customers, this should lead to explicit mitigation of the risks associated with system failure. Automatic redress for consumers affected by failures would also ensure firms gave more weight to the impact of potential risks, and may mean they draw different conclusions about how to manage those risks or whether to proceed with system upgrades.

Many firms' legacy systems have proved vulnerable in recent times. Lack of capital investment in systems creates operational and cyber-security risks that put consumer assets at risk. However, longstanding concerns about the security, resilience and integrity of critical systems also apply to new technologies. The boards and senior management of small fintech firms need also to manage risks to generate good consumer outcomes. Smaller firms with less developed resilience structures may need to be subject to greater regulatory scrutiny than larger firms. Financial regulators also need assurance about unregulated firms which may undermine delivery further up the supply chain. Firms should be able to explain their due diligence when partnering with contractors and should demonstrate they have recognised and managed the associated risks.

Operational failures can also impact pricing and valuation of assets. Consumers must be treated fairly when that happens.

[1] https://www.fca.org.uk/publications/discussion-papers/dp18-5-duty-care-and-potential-alternative-approaches

Ultimately, sometimes things will go wrong. How firms treat their customers, and communicate how they will put things right, is essential to ensure trust in financial services. The new requirement on firms to display information about the number of major operational and security incidents they have experienced does not go far enough[2]. An unplanned outage for one hour, for example, will impact consumers differently to an outage that lasts a full day or more, yet they are reported the same. Firms are reluctant to admit when things go wrong, so regulators will need to be prescriptive and specify the number of days within which they should communicate the issues and any associated risks.

Finally, firms should be clear what level of disruption in each of their functions, they and their customers could tolerate and regulators should ensure firms could operate within those tolerances, with frequent scenario testing.

Yours faithfully

Sue Lewis
Chair, Financial Services Consumer Panel

[2] https://www.gov.uk/government/news/banks-scored-on-quality-of-service