

Telephone: 020 7066 9346  
Email: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)

Clerk to the Treasury Committee  
House of Commons  
London  
SW1A 0AA

8 February 2017

Dear Sir/Madam,

## **ACCESS TO BASIC RETAIL FINANCIAL SERVICES**

### **Introduction**

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the call for evidence from the Treasury Committee on access to basic retail financial services. The Financial Conduct Authority (FCA) is required to set up and maintain a panel to represent the consumer interest. The Panel represents the interests of all groups of financial services consumers and operates independently of the Financial Conduct Authority. The emphasis of its work is on activities that are regulated by the FCA, although the Panel may also look at the impact on consumers of activities that are not regulated but are related to the FCA's general duties.

Financial products are too complex and confusing, given the fairly straightforward needs of most consumers. Consumers should be able to access the products and services they need at a fair price in a market where competition works in their interests. The UK is still some way from achieving this outcome despite numerous inquiries and efforts to promote access and inclusion over the last 15 or so years.

The problems are clear and well understood; the problem is that nobody has responsibility for solutions. The Financial Inclusion Commission<sup>1</sup> called for a senior 'Minister for Financial Health' to take the lead on financial inclusion within Government. We agree. We also believe the FCA should have a much stronger access and inclusion objective. The Financial Services and Markets Act (FSMA) merely says that the FCA 'may' have regard to *'the ease with which consumers who may want to use [regulated financial services], including consumers in areas affected by social or economic deprivation, can access them'*. This subsection sits under the FCA's duty to promote competition, so the FCA cannot have regard to access in pursuit of its other objectives, notably consumer protection. Although the FCA has done some excellent work on access, the statute limits its freedom to act.

Moreover, the FCA's "Treating Customers Fairly" principle has not delivered fair outcomes to either consumers or the UK taxpayer. We are calling for a legal duty of care<sup>2</sup> to reduce the conflicts of interest that have given rise to so much recent mis-selling and other conduct failures. A legal duty of care could act as a preventative measure, reducing the need for subsequent regulatory intervention. It would also go some way to rebalancing the information and bargaining power asymmetries between firms and consumers and could even help to reduce the amount of detailed regulation. In these ways a legal duty of care would help to ensure that financial markets work well, and much better than at present.

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<sup>1</sup> [http://www.financialinclusioncommission.org.uk/pdfs/fic\\_report\\_2015.pdf](http://www.financialinclusioncommission.org.uk/pdfs/fic_report_2015.pdf)

<sup>2</sup> [https://fs-cp.org.uk/sites/default/files/duty\\_of\\_care\\_briefing\\_-\\_jan\\_2017.pdf](https://fs-cp.org.uk/sites/default/files/duty_of_care_briefing_-_jan_2017.pdf)

We have only addressed those subjects where we have substantive comments to make:

### **Competition in retail banking**

Competition only works if people switch to a better deal, or if firms genuinely believe they can. This fact seems to have escaped the Competition and Markets Authority (CMA) in its retail banking market investigation<sup>3</sup>. The Panel would like to see a full investigation of the true cost and profitability of free-if-in-credit bank accounts and related products, which the CMA failed to produce. Otherwise it is impossible to gauge whether the current account market, in particular, is competitive. Cross-subsidisation, coupled with murky pricing structures and contingent charges, obscures the true cost. The Panel commissioned research on cross- subsidisation<sup>4</sup> in 2014 which concluded that amongst the biggest losers in the personal current account market were those with high balances not earning interest; and people who used overdrafts.

The CMA's analysis exposed the fact that the treatment of customers, whether good or bad, has little or no bearing on a firm's market share. This may be in part because consumers and small businesses do not view their banking services like commodities. They don't want to switch constantly; they just want better service from their existing bank. It is certainly the case that consumers regard all major banks' offerings as the same. In research the Panel commissioned last year<sup>5</sup> the phrase "all as bad as each other" cropped up frequently.

For these reasons, the Panel also wants to see regulators place far more emphasis on supply-side remedies in market studies and competition inquiries, including, where appropriate, outcome control remedies<sup>6</sup>. For too long, competition remedies have placed too much emphasis on demand side remedies, which place unrealistic expectations on consumers in regard to information disclosure or switching.

### **Financial Exclusion**

As the FCA's recent Occasional Paper<sup>7</sup> demonstrates, problems with access to financial services affect many different types of people, across the income range. Some issues fall into a black hole between the financial regulator's objectives and the government's responsibility for public policy, and as a result they continue to cause consumer detriment. To overcome this 'responsibility vacuum' the Panel wants to see a stronger access and inclusion statutory objective for the financial regulator, together with clear Ministerial responsibility. This is needed urgently, as new access issues emerge all the time. These include forced bank account closures, the threatened loss of free-to-user cash machines, and the expectation that all consumers will want, and be able, to use digital financial services.

### **SMEs**

Existing consumer protections often treat individual consumers of financial services differently from small business consumers. There appears to be an assumption that a consumer, merely because he or she is engaged in business, is in some way more financially literate or sophisticated and thus less deserving of protection than an individual consumer. The Panel believes that deeming a firm to be 'sophisticated' is not appropriate.

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<sup>3</sup> <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>

<sup>4</sup> [https://www.fs-cp.org.uk/sites/default/files/pca\\_literature\\_review\\_report\\_final\\_20140911.pdf](https://www.fs-cp.org.uk/sites/default/files/pca_literature_review_report_final_20140911.pdf)

<sup>5</sup> [https://www.fs-cp.org.uk/sites/default/files/fscp\\_banking\\_culture\\_-\\_report\\_-\\_final.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_banking_culture_-_report_-_final.pdf)

<sup>6</sup> <http://www.staticwhich.co.uk/documents/pdf/the-role-of-demand-side-remedies-in-driving-effective-competition-456067.pdf>

<sup>7</sup> <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-17.pdf>

We have urged the FCA carry out a segmentation of SMEs, similar to its segmentation model of individual consumers. This should look at the differences between businesses of different sizes, and whether there are specific consumer protection issues relating to different ways of conducting business (e.g. sole trader, partnership or limited company).

We believe the FCA should also look into the extent to which women and particular ethnic groups may be over-represented in certain types of SME, to assess any implications for its public sector equalities duty.

We support the idea of a financial services tribunal system to provide small businesses with an effective redress system, as set out in our response to the FCA's Mission consultation.<sup>8</sup>

### **Basic bank accounts**

Implementation of the Payment Accounts Directive (PAD) gives consumers a clear legal right of access to a basic bank account. Although it is welcome that the major banks have agreed to provide 'free of charge' basic bank accounts, we are sceptical that voluntary industry agreements ever fully work in consumers' interests. In this case, we would like to see:

- More cost transparency in basic bank accounts. If they are free to users, then who is paying, and how? This is not to argue against a progressive cross subsidy, but it needs to be transparent.
- An obligation on designated providers to migrate existing basic bank account holders on to a new PAD-compliant basic bank account. Some consumers have been left languishing in non-PAD-compliant basic bank accounts, presumably on less favourable terms and potentially facing fees or charges on their account.
- Strict criteria applied to the migration of basic bank account customers to a standard account, when this is against the customer's wishes. PAD sets out very strict criteria for closing a basic bank account but not the migration of customers to standard accounts. Firms are allowed to 'migrate' customers to a standard account (where fees and charges can be applied), if their circumstances change. Some consumers will value the simplicity of a basic bank account, and the security of knowing they will not risk using an unarranged overdraft, or face any unexpected fees or charges.

### **Consumer Credit**

While some consumers are unable to access the credit products they need, others have been granted credit when they should not have been.

In the short time that it has regulated consumer credit, the FCA has made significant progress in protecting some consumers from harm. However, the high-cost credit Call for Input<sup>9</sup> (as well as the FCA's Credit Card Market Study<sup>10</sup> and CMA's personal current account study<sup>11</sup>) identifies practices across the credit market that result in consumer detriment for a significant minority of individuals and their families.

Rather than focusing on specific credit sectors, we think the FCA should ensure that it has a consistent approach *across* consumer credit markets. Poor conduct and business models are prevalent across all parts of the market. Only by taking a holistic approach can the FCA minimise the 'waterbed effects' that can be damaging to consumers and time-consuming for the FCA to identify and supervise. The emergence of new forms of

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<sup>8</sup> [https://www.fs-cp.org.uk/sites/default/files/fscp\\_response\\_fca\\_mission.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_response_fca_mission.pdf)

<sup>9</sup> <https://www.fca.org.uk/publication/call-for-input/call-input-high-cost-short-term-credit.pdf>

<sup>10</sup> <https://www.fca.org.uk/publication/market-studies/ms14-6-3-credit-card-market-study-final-findings-report.pdf>

<sup>11</sup> <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>

rolling credit that are still high cost, but fall outside the narrow definition of high-cost short-term credit, is one example.

Mainstream credit products can also be more expensive than payday loans, but are not subject to the rules for high-cost short-term credit, including the 0.8% daily interest charge cap. Unarranged overdrafts are the most egregious example. We believe the CMA should have recommended that unarranged overdraft charges be capped at the net additional administrative costs incurred by the banks.

In addition, we want to see the regulator and firms working much harder to prevent over-lending in the first place, and a requirement on firms to identify and help 'financially fragile' customers before the harm is done. Consumers should be able to 'opt-in' if they want an unarranged overdraft.

On credit cards, there is no incentive on firms to stop lending to borrowers who persistently make minimum repayments<sup>12</sup>. Where firms have over-lent, they (rather than the borrower) should experience financial detriment, for example by being required to enable borrowers to pay down their debt at a lower interest rate. We also believe that firms should freeze interest while a repayment plan is worked out.

### **Simple Products**

We are disappointed by the ABI's recent decision to discontinue its work on the Simple Products initiative, which followed the 2013 Sergeant Review<sup>13</sup>. This follows on from the demise of earlier attempts at simplification, including 'stakeholder' products and CAT standards. Industry will not produce straightforward, easy to understand, value for money products because it does not make enough money out of them. The stakeholder pension was moderately successful, but only because it was in effect forced on the industry by the FSA making a rule (known as 'RU64'<sup>14</sup>), saying that, in order to sell a pension more complicated or expensive, the seller had to explain to the customer why the additional costs and features were justified. The Stakeholder Child Trust Fund was also successful, possibly because the options were clearly set out for parents and the charges were capped, at 1.5%.

Meanwhile, the problems all these initiatives were intended to fix are getting worse. Financial products are more complex. There is generally too much choice, rather than too little. Terms and conditions are lengthy and incomprehensible, and many products have hidden fees and charges. One thing is clear: industry will not solve these issues without intervention, whether it is a regulatory 'RU64' type approach, or a statutory duty of care to force firms to ensure their customers understand what they are buying and what it will cost them.

### **Innovation and fintech**

We support the introduction of open APIs, which will allow consumers to access their information simply. There are security and privacy issues to overcome, a task made more difficult as there is not one regulator responsible for addressing the data concerns. We want to see far greater regulatory co-ordination, and a wider public debate to foster better understanding of issues that affect every consumer. At the same time, we want to see the government tackle the problem that 'open banking' will not reach those who are digitally excluded, and could significantly disadvantage those who choose not to share their data. In future, people unwilling to share their data may be denied access to

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<sup>12</sup> FCA Credit Card Market Study found that in 2014 around 6.9% of cardholders (about two million people) were in arrears or had defaulted; a further two million people had persistent levels of debt that some may have been struggling to repay; and a further 1.6 million people were repeatedly making minimum payments on their credit card debt, while also incurring interest charges (i.e. excluding those on 0% interest deals).

<sup>13</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/191721/sergeant\\_review\\_simple\\_products\\_final\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191721/sergeant_review_simple_products_final_report.pdf)

<sup>14</sup> [http://www.fsa.gov.uk/pubs/cp/cp05\\_08.pdf](http://www.fsa.gov.uk/pubs/cp/cp05_08.pdf)

certain products and services. The right to withhold personal data without discrimination is a matter of public policy, and needs to be tackled sooner rather than later.

Once consumers have allowed access to their data by a third party, they will no longer be in control of how it is used. Consumers may be unaware that firms are using personal data gained from social media and other sources to make decisions about the price and availability of financial products, and even selling it to third parties. This could lead to firms 'red lining' consumers on the basis of factors unrelated to risk.

Big Data offers insurers opportunities for increasingly individualised risk assessments, which could have a significant impact on risk pooling and individual premiums. This potential demutualisation of risk will affect different segments of the market in different ways. The use of individualised risk assessments means that some people are likely to be excluded completely. Others will pay much higher premiums. Conversely of course, some consumers should pay lower premiums because their individual risk, or the average risk in their pool, is lower.

The same logic applies to credit products. While the use of personal data may help some people with 'thin' credit files get access to credit, others will be excluded, or offered credit only at exorbitant prices. If these riskier consumers are to get access to 'affordable' loans, the loans will need to be subsidised and the money has to come from somewhere, whether it is other customers or the taxpayer.

This demutualisation of risk is a public policy issue. The government recognised this in setting up Flood Re and there may be other products, over time, where a degree of mutualisation may be socially desirable in order to enable affordable access to essential financial services. Again, this is an issue that we believe should be debated now, not when a significant number of people have already experienced difficulties with access.

## **Cyber Security**

Increasingly, we hear of people who have been scammed into transferring money to another, often fraudulent, bank account. When consumers are subject to sophisticated scams and are tricked into transferring money to fraudsters via push payments, banks do not provide the levels of protection that they typically provide for other types of payment, or other fraudulent activity.

Consumers' funds are often transferred, via the fraudulent account, overseas or elsewhere before they can be traced. Because the consumer authorised the payment, they are rarely able to get their money back. However, consumers are also unable to complain to the receiving bank, even though that bank is allowing a fraudster, through his or her account, to facilitate fraud. There is currently little or no protection in place for consumers, and no process by which they are able to complain or seek help to get their money back. As these scams get more sophisticated, and as more and more transactions are carried out online by authorised push payments, this problem is likely to increase.

Yours sincerely

Sue Lewis  
Chair, Financial Services Consumer Panel