

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

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Submitted online

Dear Sir / Madam,

**Financial Services Consumer Panel response to the Treasury Committee's call for evidence on the future of financial services**

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. We wish to be clear from the outset than when we refer to 'consumers' below, we refer to both individuals and SMEs. Likewise, when we comment on the regulatory framework, we comment on how it applies to both individuals and SMEs.

We welcome the opportunity to input to the Treasury Committee's (the Committee's) call for evidence on the future of financial services. Ultimately, the outcomes we'd like to see in financial services are:

- Firms act in consumers' best interests.
- Firms which do not, or are unlikely to, act in this way should not be admitted to the market. If they are already in the market, they should be robustly sanctioned or barred.
- Consumers know when they are (and are not) protected and what "protected" means.
- Consumers are protected from new and emerging harms because regulation keeps up with technological change and regulators have the ability to act swiftly.
- Consumers get prompt and commensurate redress when firms don't meet the best interests standard.
- Innovation is supported and encouraged insofar as it benefits consumers. New products and services should be appropriate and come with suitable protections.
- Regulation recognises the wider socio-economic and demographic context it exists in. This includes the diversity of consumers' lives, their relative skill and knowledge compared to firms, the complexity of products available to them, and the impact of non-financial policies on them.

These outcomes are entirely consistent with a strong financial services market that earns and retains the confidence of consumers and investors, and is attractive to firms across the world.

To be clear: we do not think these outcomes are being achieved at the moment and the coronavirus pandemic has only made this more apparent. We have heard that consumers are being asked to pay the same – or more – for insurance that offers them less cover than before<sup>1</sup>. Cynically targeted digital advertising continues to reach consumers at a time when, for many, new vulnerabilities have arisen and existing vulnerabilities are

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<sup>1</sup> For example, in travel insurance: <https://www.travelweekly.co.uk/articles/395992/which-demands-probe-into-travel-insurance-covid-cover> and in health insurance: reported to the Panel that health insurance premiums have been maintained or increased, despite the coronavirus pandemic preventing full cover being provided as all elective operations were cancelled for a prolonged period.

heightened<sup>2</sup>. This means that when markets begin to recover, there is a greater risk of consumers using unsuitable products to get out of debt or investing in products that are unsuitable for them. We are concerned that banks have treated SMEs poorly by adding unreasonable barriers to accessing vital government support<sup>3</sup> and exploiting new lending relationships for commercial gain<sup>4</sup>. And all the while new products are popping up – some within the regulatory perimeter, others outside it; some bringing genuine benefit for consumers, others seeking to exploit them. Regulation is playing catch up to poor practice, technological change and financial innovation. Meanwhile, consumers are suffering harm.

On the questions at the centre of the Committee’s call for evidence:

- The Government’s primary objective for negotiating new trade agreements and granting access to UK markets must be to **maintain high standards of protection for UK consumers**.
- We support improved scrutiny and accountability in the regulatory framework. We’re cautious about creating new agencies and processes, but **the consumer voice needs to be hard-wired into every part of the framework** to correct the huge imbalance of representational resources the industry currently enjoys. This directly impacts on market inefficiencies and consumer detriment, as identified above.
- We think **regulatory duties and objectives should be re-visited**. The hierarchy of objectives and “have regards” in legislation creates complexity across the regime, and makes it more difficult for regulators to focus on their paramount function of protecting consumers by ensuring markets work in their interests.

To develop this third point, **the cornerstone of a regulatory framework which addresses these problems and achieves the outcomes above is a duty of best interests**. We set out more detail of what we mean by this in our response to Question 14 below. Fundamentally, we believe there should be duty of best interests enshrined in primary legislation, from which all other regulatory objectives, principles and powers flow. In the meantime, we believe that the FCA should be encouraged to:

- authorise firms more discerningly;
- supervise firms more vigorously; and
- use its extensive powers to enforce and correct market failings more rapidly.

The FCA’s prompt and effective actions in response to the coronavirus pandemic have shown that it can be fleet of foot when it needs to be. We strongly believe faster responses to emerging consumer harms are something the FCA should be encouraged to deliver, and an adapted regulatory framework which is focused firmly on protecting the consumer will allow them to do this with greater confidence.

Our responses to some of the Committee’s specific questions are included at Annex A below.

Yours sincerely,

Wanda Goldwag  
Chair, Financial Services Consumer Panel

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<sup>2</sup> <https://www.fca.org.uk/publications/research/financial-lives-2020-survey-impact-coronavirus#lf-chapter-id-the-impacts-and-experience-of-covid-19-consumers-with-characteristics-of-vulnerability>

<sup>3</sup> One instance of public note was with Clydesdale: <https://www.gov.uk/government/news/cma-stops-clydesdale-bundling-business-accounts-with-loans> . Also reported to us from our own networks are instances of SMEs being asked to use personal assets as security to access the support schemes, despite the government guarantee.

<sup>4</sup> <https://www.fca.org.uk/publication/correspondence/dear-ceo-ensuring-fair-treatment-corporate-customers-preparing-raise-equity-finance.pdf>

## **ANNEX A – Responses to questions**

**Q1. How can the UK financial services sector take advantage of the UK's new trading environment with the rest of the world?**

**AND**

**Q3. What should the Government's financial services priorities be when it negotiates trade agreements with third countries?**

The Government's primary objective in new trade agreements should be to maintain high standards of protection for UK consumers. From the perspective of financial services consumers in the UK, a good trade agreement would therefore be one which:

- secures outcomes for UK consumers aligned with internationally-recognised benchmark principles<sup>5</sup>:
  - **Access** – Can people get the goods and services they need or want?
  - **Choice** – Is there any? Can consumers affect the way goods and services are provided through their own choice?
  - **Consumer influence and representation** – Do consumers have a say in how goods or services are provided?
  - **Quality** – What are the key quality risks – technical, service, ethics?
  - **Redress** – If things go wrong, is there a system for putting them right?
  - **Safety** – Are goods and services dangerous to health or welfare? Are standards as high as they can reasonably get?
  - **Fairness** – Are consumers subject to arbitrary discrimination for reasons unconnected with their characteristics as consumers?
- Respects the autonomy of domestic regulators to adapt their rules to tackle new risks and update their powers to prevent and remedy new types of consumer harm
- Binds the parties to international standards such as those set under Basel, IAIS, IOSCO and other multilateral frameworks, including those targeted at prevention, detection and prosecution of scams, financial crime and cyber security/data breaches.

To ensure the above conditions are met, there must be adequate scrutiny of future trade agreements, which must include sufficient consumer representation. We set out further detail on this in response to Q7-9.

**Q2. What changes should be made to the UK's financial services regulations and regulatory framework once the UK is independent of the European Union?**

As set out in our covering letter, we believe the current regulations and regulatory framework fall short when it comes to adequately protecting consumers. Exiting the European Union provides the UK with an opportunity to re-focus regulation firmly on consumers. This should be the primary objective of any changes to the regime. However, there are some areas where the EU framework goes further in terms of consumer protection than the UK's own framework, as our [research](#) in 2016 sets out. These higher standards should be maintained once the UK is independent of the EU, which should aid equivalence decisions. Essentially, we are advocating a 'highest common denominator' approach whereby the strongest consumer protections should be maintained, whether they originate from the EU or already existed in UK law. It is important to remember that high standards of consumer protection will support economic recovery and growth.

**Q4. Should the UK open its financial services markets to external competition from countries outside of Europe, or should the UK maintain the current regulatory barriers that apply to third countries?**

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<sup>5</sup> <https://www.qmu.ac.uk/media/3863/consumer-representation-in-financial-services-3-11-2017.pdf>

The Panel supports competition insofar as it benefits consumers and so only once the above principles (see Q2) are satisfied should the Government look to promote cross-border market access in the interests of competition and innovation. The UK is currently a globally competitive market for financial services and we know this brings benefits for consumers. Measures to maintain or enhance this global standing must not come at the expense of consumer protections, and there must not be different standards depending on the degree of access granted to UK firms in other countries.

We recognise that some stakeholders are calling for UK regulators to have a statutory competitiveness objective. We are unconvinced of the merits of this objective. The FCA already has a competition objective and adding a competitiveness objective in addition to this risks diluting their critically important consumer protection objective. Competition within markets, and the competitiveness of markets, should not come at the expense of consumer protection.

**Q5. What skills and immigration policy will the UK financial services sector need once the UK has left the European Union?**

No comment.

**Q6. How can Government policy and the UK regulators facilitate the emergence of FinTech and new competition; develop new areas of growth for the financial services sector; and promote the UK as the best place to incubate new financial technologies and firms?**

The Panel supports FinTech and innovation insofar as it benefits consumers, and we fully support the FCA's Sandbox initiative in helping to bring appropriate products and services to market. We particularly welcome regulators encouraging innovation to focus on supporting those who need it most, such as consumers who are vulnerable or under-served by current financial services markets. The FCA's [`digital sandbox' pilot](#), which focusses attention on vulnerability and SME lending, is a good example of this approach.

However, innovation can also pose significant consumer risks and so FinTech does not by its nature deserve special regulatory treatment. We have seen these risks crystallise in the payday lending sector – once considered FinTech – and the unregulated buy-now-pay-later sector which the Woolard Review has now recommended be regulated<sup>6</sup>. All financial services firms – innovative or traditional – should be required to meet the same high standards of consumer protection.

This means that the FCA's perimeter needs to be more agile and responsive so it can keep up with innovation. We believe this is possible within the current framework and support Dame Elizabeth Gloster's conclusions that the FCA should use its existing powers to intervene beyond the perimeter where there are clear red flags – and it should do so quickly<sup>7</sup>. We would also like to see pre-emptive temporary bans on products or practices where it appears such products or practices could cause significant harm to consumers. These bans would be strictly time-limited to give the FCA enough time to ascertain if further action needs to be taken whilst minimising disruption to legitimate business. Using emergency powers such as this would mean that regulators have the flexibility to address emerging harm without needing to go through a lengthy legislative process. Consumer harm would be addressed more quickly and therefore ultimately be reduced.

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<sup>6</sup> <https://www.fca.org.uk/about/woolard-review-unsecured-credit>

<sup>7</sup> For examples of such powers, see p98-99 of the [London Capital and Finance report](#). See also the FCA's [perimeter report](#). For Dame Elizabeth's conclusions on the FCA's use of its perimeter powers, see Chapter 6 of the London Capital and Finance Report.

**Q7. Through what legislative mechanism should new financial regulations be made?**

**AND**

**Q8. What role does Parliament have to play in influencing new financial services regulations?**

**AND**

**Q9. How should new UK financial regulations be scrutinised?**

Broadly, we support the current division of responsibilities between Parliament, Government and regulators in terms of financial services regulation. The key to ensuring that the process continues to work well is adequate scrutiny arrangements. We would caution against any additional layers of scrutiny, such as further independent panels and independent reviews, which would add to complexity and delays in making essential changes. Instead we would prefer that existing scrutiny arrangements are enhanced.

#### *Consumer representation*

The most important way existing scrutiny can be enhanced is by improving consumer representation. Without this, regulation simply won't work for consumers. Industry stakeholders have a strong voice, both as individual firms and when they come together via trade bodies<sup>8</sup>. They also have a lot more resources at their disposal to fund lobbying activities and convene interested parties when needed. The consumer voice is comparatively weaker and more disparate, and unfortunately consumer representation is too often regarded as token. There should therefore be more opportunity for consumer representation in policy making and legislative processes to help balance the stakeholder input. To help achieve this, good consultation practice could standardise:

- a) the inclusion of more ways to respond, including streamlined approaches, to elicit consumer input;
- b) direct research and engagement with impacted groups; and
- c) more specific feedback on its response to consumer views.

There could also be a stronger consumer voice in industry, via firms' own governance procedures. This could include requiring firms to demonstrate how they have sought to incorporate the consumers' voice into their strategies, or proactively inviting challenge from consumer representatives when setting the strategy and business plan for the firm (an approach used in the water sector).

#### *Parliamentary scrutiny*

In terms of Parliamentary scrutiny, it is ultimately for Parliament to decide what the arrangements for this are. It is difficult for us to comment without seeing specific proposals, however, any scrutiny arrangements must include sufficient consumer representation and be adequately resourced.

**Q10. What progress has the Government and regulators made in facilitating key financial services equivalence agreements with third countries; and would an alternative mechanism serve the interests of the UK market better?**

No comment.

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<sup>8</sup> For example, note the number of industry bodies that met with HM Treasury in 2020. There are no consumer organisations listed. See: [https://www.gov.uk/government/collections/senior-officials-expenses?utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_source=36c57e57-f72a-45bb-82d3-f5c430465758&utm\\_content=daily#2020](https://www.gov.uk/government/collections/senior-officials-expenses?utm_medium=email&utm_campaign=govuk-notifications&utm_source=36c57e57-f72a-45bb-82d3-f5c430465758&utm_content=daily#2020)

### **Q11. How should financial services regulators be funded?**

Here we refer the Committee to our [response to the Financial Ombudsman Service's \(FOS\) Plan and Budget 2021/22](#). In this response, we agreed that a sustainable and effective funding model was essential, and the funding composition of the FOS should therefore be reviewed periodically. We have also called for a wide-ranging review of the Financial Services Compensation Scheme (FSCS), including how it is funded, in our [response to the FCA's Call for Input on the Consumer Investments Market](#). The primary objective for these reviews should be to ensure that both bodies are sufficiently resourced to deliver good outcomes for consumers. In the long term, the costs of both the FOS and FSCS can be reduced by better prevention of poor conduct and swifter action against bad actors. Our proposed duty of best interests (see Q14) would help to achieve this.

### **Q12. Should the mandate and statutory objectives of the financial services regulators change to include wider public policy issues?**

Whilst responsibility for wider public policy issues sits squarely with Government and Parliament, there is clear interaction with regulation. We have previously discussed this in our response to the FCA's consultation on Intergenerational Differences<sup>9</sup> and the coronavirus pandemic has brought further examples to the fore<sup>10</sup>. Therefore, HM Treasury could consider introducing regulatory principles that clarify the intersection between financial services regulation and social policy. Too often the FCA is put in the position of making social policy judgements, which should be the preserve of Government. That is not to say regulators have no role – we very much support the recommendation in the Woolard Review that the FCA should provide data to Government that shows the impact of social policy on regulated sectors<sup>11</sup>.

### **Q13. How important is the independence of regulators and how might this best be protected?**

Independence is key to the execution of regulatory functions and must be protected from undue political interference, which creates instability for firms and consumers. The effective accountability and scrutiny arrangements discussed elsewhere in this response ensure that this independence is exercised appropriately.

### **Q14. How can the balance between lighter touch regulation and prudential safeguards be best secured?**

We support regulation that is necessary to maintain prudential soundness and high standards of conduct; laxity on either side leads to consumer harm. The primary aim of all regulation – conduct and prudential – should be to protect consumers. Given the complexities of financial services and the asymmetries faced by consumers, we think it is unlikely that regulation which achieves this aim will ever feel 'light touch'. Ultimately, we believe this is the right thing as the global financial crisis in 2008-2009 showed us that light touch regulation can lead to extensive consumer harm<sup>12</sup>.

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<sup>9</sup> [https://www.fs-cp.org.uk/sites/default/files/fscp\\_response\\_to\\_intergenerational\\_differences.pdf](https://www.fs-cp.org.uk/sites/default/files/fscp_response_to_intergenerational_differences.pdf)

<sup>10</sup> For example, the relationship between credit forbearance and housing policy; or lending to SMEs and employment.

<sup>11</sup> <https://www.fca.org.uk/about/woolard-review-unsecured-credit> p37

<sup>12</sup> See for example, <https://dro.dur.ac.uk/8662/1/8662.pdf> and [https://d1wqtxts1xzle7.cloudfront.net/41039247/Gieve\\_and\\_Provost\\_2012.pdf?1452507231=&response-content-disposition=inline%3B+filename%3DIdeas\\_and\\_Coordination\\_in\\_Policymaking\\_T.pdf&Expires=1613328471&Signature=qSOk5t~r1DXlpskx9QKrFY7Au~P5nYZtSWrLrKI~Aqiksfln4sos7exKXo2E9r62HdGb7nxic-awj3UsHsnBGB~mi5OPM0ulhuMXdhqYEiyg6-ylzYzg6kl8E74jvuqZcpc21ECNB9Fg5zQVwmTgHbf-A86ilwisMWPjhWjp3gAu8UCGkMdwFqljly5kpv-9XsmHfUZ5I93a6ppTYm5PyfyJwqB~oWxjO0BBAXWetFx4vblodViOU2AYLixHpr2TWiN-](https://d1wqtxts1xzle7.cloudfront.net/41039247/Gieve_and_Provost_2012.pdf?1452507231=&response-content-disposition=inline%3B+filename%3DIdeas_and_Coordination_in_Policymaking_T.pdf&Expires=1613328471&Signature=qSOk5t~r1DXlpskx9QKrFY7Au~P5nYZtSWrLrKI~Aqiksfln4sos7exKXo2E9r62HdGb7nxic-awj3UsHsnBGB~mi5OPM0ulhuMXdhqYEiyg6-ylzYzg6kl8E74jvuqZcpc21ECNB9Fg5zQVwmTgHbf-A86ilwisMWPjhWjp3gAu8UCGkMdwFqljly5kpv-9XsmHfUZ5I93a6ppTYm5PyfyJwqB~oWxjO0BBAXWetFx4vblodViOU2AYLixHpr2TWiN-)

Regulators have been given a number of powers, duties and 'have regards' to ensure they deliver on their objectives and strike the right balance. However, regulators appear reluctant to make full use of their toolkit which threatens the over-riding job of consumer protection. This could be addressed by introducing a 'duty of best interests' which puts consumers at the pinnacle of regulation and therefore gives regulators the confidence to use whatever tools necessary to secure the highest standards. The single over-arching duty would require firms to act in the best interests of their customers. We expect the FCA to publish a consultation on their work on a new consumer principle later this year, which will undoubtedly be helpful, but not sufficient given that statutory change is required. **We therefore call for a statutory duty on firms to act in the best interests of consumers.**

**Q15. How should consumer interests be taken into account when considering potential regulatory changes?**

As we have mentioned above, consumer interests should be the primary consideration when assessing potential regulatory change. Effective consumer representation, as described in response to Q7-9, will help ensure this is the case.

**Q16. What are the strengths and weaknesses of the European Union model of scrutinising financial services legislation?**

**AND**

**Q17. Should the UK seek to replicate the EU's model for drafting and scrutinising financial services regulation?**

The European model for scrutinising financial services legislation involves a complex bureaucratic structure which requires sufficient, and sufficiently expert, resource. It is also time-consuming and does not allow for the agile, rapid response to issues that the Panel is calling for. We are not convinced that such a model would be viable in – or right for – the UK. However, there is one area where we could learn from the EU model, and that is in terms of consumer representation in the scrutiny process. In considering the suggestions made elsewhere in this response to improve consumer representation, we would encourage the Committee to look to the EU model for consumer representation which is more developed than the UK approach.