

Money and Mental Health response to HM Treasury's consultation on the Financial Services Future Regulatory Framework Review

Introduction

The Money and Mental Health Policy Institute is a research charity established by Martin Lewis to break the vicious cycle of money and mental health problems. We aim to be a world-class centre of expertise developing practical policy solutions, working in partnership with those providing services, those who shape them, and those using them, to find out what really works. Everything we do is rooted in the lived experience of our Research Community, a group of 5,000 people with personal experience of mental health problems.

In this document, we respond to Questions 2, 4, 6, 8 and 9. Our response will focus on the future regulatory framework as it relates to the Financial Conduct Authority (FCA).

Question 2: What is your view of the proposed post-EU framework blueprint for adapting the FSMA model? In particular:

- What are your views on the proposed division of responsibilities between Parliament, HM Treasury and the financial services regulators?
- What is your view of the proposal for high-level policy framework legislation for government and Parliament to set the overall policy approach in key areas of regulation?
- Do you have views on how the regulators should be obliged to explain how they have had regard to activity-specific regulatory principles when making policy or rule proposals?

We welcome the proposal that FSMA should include policy framework legislation for key areas of regulated activity. It is appropriate that government sets the purpose and approach of regulation in key areas at a high level and that, beyond this, regulators independently interpret their duties and create specific regulatory policy as they see fit. To ensure relative stability for regulators, legislation should explicitly require government to create policy frameworks that are long-term, while allowing some flexibility to make adjustments, for instance in light of significant developments in a market or emerging regulatory challenges.

One risk with the introduction of activity-specific regulatory principles is that regulators would be uncertain on how to manage potential tensions between these principles, their statutory objectives and general regulatory principles. To mitigate this risk, government should clearly articulate how it expects regulators to manage potential tensions between their objectives and should carefully consider how any new activity-specific regulatory principles interact with other responsibilities. In some cases, it may be appropriate to provide specific guidance on how to manage such tensions.

Regulators should be required to develop metrics to evaluate their performance against objectives set in activity-specific policy frameworks. This would help regulators to understand



the impact of their policy-making in a specific area and could also be used to demonstrate compliance with activity-specific regulatory principles.

Question 4: Do you have views on whether the existing statutory objectives for the regulators should be changed or added to? What do you see as the benefits and risks of changing the existing objectives? How would changing the objectives compare with the proposal for new activity-specific regulatory principles?

We support the call in Fair By Design’s consultation response for the introduction of a cross-cutting duty requiring that the FCA ‘must have regard’ to financial inclusion. Access to financial services is essential for participation in modern society and people who are excluded or unable to access financial services at a fair price are often vulnerable to significant harm as a result. For instance, people without a bank account will often pay more for their energy bills than people who can pay by direct debit, which puts additional pressure on household budgets and can be a significant source of stress. We believe that a cross-cutting duty is appropriate, given the scale and persistence of financial exclusion, and its impact across financial markets.

A cross-cutting duty would ensure that financial inclusion is a key consideration across FCA policy-making, while still allowing the FCA flexibility to interpret how this duty applies in different contexts and what action is appropriate. Without action, we are concerned that the FCA does not sufficiently focus on financial inclusion, and that fair access to financial services is subordinate to other objectives.

Question 6: Do you think the focus for review and adaptation of key accountability, scrutiny and public engagement mechanisms for the regulators, as set out in the consultation, is the right one? Are there other issues that should be reviewed?

We welcome the proposed review of key accountability, scrutiny and public engagement mechanisms. Effective scrutiny is essential for good regulation, and the Future Regulatory Framework review provides a welcome opportunity to assess how well current arrangements are working and to improve the system. We also agree with HMT’s rationale that a review is appropriate and necessary given the proposed expansion of regulators’ responsibilities.

We would like to highlight that effective public engagement is particularly important for the FCA. Understanding the views and experiences of a broad range of consumers is essential to achieving its consumer protection objective. Improvements to public engagement should help the regulator to better understand conduct and outcomes in the markets it regulates, and greater consumer involvement in the FCA policy-making process could help the regulator to make more effective policy. Fundamentally, much of the FCA’s work is about people and their experiences in financial markets, so the closer the regulator can be to consumers the more effective it is likely to be. Please see more detail on effective public engagement in our response to Question 9.

Question 8: What are your views on how the policy work of HM Treasury and the regulators should be coordinated, particularly in the early stages of policy making?

Effective coordination between regulators and HMT is essential. Without effective coordination there is a risk of both parties taking independent action on similar topics, or that issues at the border of regulatory and HMT remits are neglected or not addressed in an effective, joined-up manner.

We welcome HMT's proposal that early consultation between regulators and HMT is formalised, to ensure that this consistently occurs. However, we recommend that the operational independence of regulators is explicitly recognised in any agreement to formalise this process. As acknowledged in paragraph 3.31 of the consultation document, early consultation should not give ministers a veto or the ability to constrain regulator's policy discretion.

We also welcome HMT's proposal to introduce more systematic engagement between HMT and regulators on the regulatory perimeter. There is considerable innovation in financial service markets. This yields many benefits, but it also tests the approach and parameters of financial regulation. Innovation is likely to produce new financial service models that sit outside of current regulatory boundaries, as we have seen with unregulated 'buy now, pay later' products.¹ Alongside these, there will also be products that blur the boundary between markets, for instance offers that bundle financial services and other utilities, or intermediaries that can be used to manage a portfolio of products. Consumers are particularly likely to experience harm when using products and services without sufficient consumer protection or regulatory oversight. This means it is essential that the regulatory perimeter keeps pace with change and that the FCA is equipped to respond to changes in the market. Government should also be mindful that open data initiatives in financial services and other sectors could quickly transform the pace and scale of innovation at the regulatory perimeter.

We recommend that HMT also explores processes for coordination on policy issues that straddle regulatory and government policy. As recognised in the FCA's Approach to Consumers document, the regulator regularly works on complex issues that cannot be effectively addressed by regulatory policy alone.² Often, certain aspects of a problem may sit beyond the regulator's remit. For instance, there is considerable action that the FCA could take to improve access to insurance products, but for certain categories of risk there may be insufficient incentive for the market to provide cover. In such cases, there may be a role for government to play in reaching a solution. As an example, in 2016, the government introduced 'Flood Re' to ensure that people living in homes at high risk of flooding could still access insurance.

To support this, we recommend that HMT develop clear protocols for raising and collaborating on issues that sit across both regulatory and government policy, so that complex issues at the

¹ Financial Conduct Authority. The Woolard Review - A review of change and innovation in the unsecured credit market. 2021.

² Financial Conduct Authority. FCA Mission: Approach to Consumers. 2018.

regulatory perimeter are not overlooked. For this process to be effective, the regulator must feel empowered to express its expert, independent view, including on government policy, as it pertains to outcomes in financial services markets. HMT should explore what conditions are required for the regulator to act in this constructive way.

Question 9: Do you think there are ways of further improving the regulators' policy-making processes, and in particular, ensuring that stakeholders are sufficiently involved in those processes?

We support HMT's view that "meaningful engagement by stakeholders helps support the policy-making process, making it more likely that finalised proposals are effective, understood and accepted as reasonable by stakeholders". The key challenge is to ensure that regulators consistently engage with a sufficiently broad range of stakeholders and understand the perspectives and experiences of diverse consumers.

Statutory panels

The Financial Services Consumer Panel (FSCP) plays a particularly crucial scrutiny role. Consumer organisations have limited capacity to engage with regulatory policy-making and the FCA may struggle to drive consistent engagement from individual consumers. The FSCP is therefore a vital safeguard, ensuring that the FCA is always presented with an independent consumer perspective. For the FSCP to be effective, it needs to be as representative as possible. Its members should be drawn from different backgrounds, representing or with access to a wide range of consumers, whether individually, through their networks or through research. As part of this review, HMT should analyse the composition of the panel over time and explore how the panel can better understand the views and experiences of underrepresented consumer groups, such as through working with specialist charities or commissioning research. Understanding a range of consumer views and experiences is essential for the panel to work well, so HMT should ensure that this aspect of the panel's work is funded appropriately.

Public consultation

A well-designed public consultation process can help regulators to gather insight, test policy proposals and lead to more effective decision-making. On the other hand, poorly-designed consultation can deter input or waste scarce time and resources for firms, consumer organisations and the regulator. FCA consultations are often long, complex and difficult to engage with for non-expert audiences - even when addressing topics of broad public concern - which can lead to missed opportunities to gather useful input. If the regulator is committed to meaningful consultation, it must develop more accessible ways for consumers and consumer organisations to engage, particularly at the early stage of policy-making. This should include direct engagement with consumers and efforts to understand the views and experiences of vulnerable or marginalised groups.

As part of this review, HMT should look at the volume of consultation responses the FCA receives from firms, consumer organisations and consumers, to understand how well this process currently reaches different groups. HMT should consider steps that other public bodies take to make consultation processes more accessible, such as the Work and Pensions Select Committee publishing consultations in a range of accessible formats, including EasyRead.³

The FCA rightly undertakes cost-benefit analysis as part of its consultation process, to help evaluate the impact of proposed action. But this analysis can suffer from a lack of detail on costs and benefits to consumers, which can lead to a disproportionate focus on costs to firms and reinforce status quo bias. Potential consumer outcomes will often be less certain than a more precise estimate of a compliance cost and the emphasis in the Better Regulation Framework is on the direct impact on business. But relative uncertainty and the need to consider effects on firms should not diminish efforts to reduce harm and pursue the regulator's consumer objectives. Regulators' analysis should always consider harm holistically, including non-financial detriment such as the impact of problems with financial services on consumers' mental health or relationships. Likewise, the cost of intervention should be weighed relative to the current and continued harm that occurs while action is not taken.

More systematic review of regulator rules

Review of regulation could help regulators to understand how to act more effectively and ensure that regulation continues to deliver its desired outcomes as firms react to policy, and technology and business models change over time. However, regulators manage a number of competing priorities, so there is a balance to be struck between introspection and focusing resources on taking action in fast-moving markets. As with impact assessments, the emphasis in post-implementation reviews (PIRs) is on the impact of measures on business. Relying on PIRs to adequately assess the ongoing effect of policies risks prioritising the considerations of affected firms over those of consumers.

Intelligence is key to understanding efficacy. To effectively monitor the impact of its action over time, the FCA needs access to granular data on consumers' experiences and outcomes. This would also improve the FCA's ability to identify signs of problems earlier. The Financial Lives survey provides a valuable broad overview of various aspects of consumers' experience of financial services. The FCA should complement this by routinely gathering in-depth insight into the views of more vulnerable or 'hard to reach' consumer groups. In-depth analysis is essential to better understand the experience of diverse consumer groups and whether FCA regulation is driving the desired outcomes for them. In particular, this approach would help the FCA to evaluate whether vulnerable consumer groups experience outcomes that are as good as those for other consumers, a key consumer policy aim.⁴

³ See for example:

<https://committees.parliament.uk/committee/164/work-and-pensions-committee/news/120249/call-for-evidence-for-disability-employment-gap-inquiry-in-multiple-formats/>

⁴ Financial Conduct Authority. GC19/3. Guidance consultation Guidance for firms on the fair treatment of vulnerable customers. 2019.