



Consultation Response

January 2017

FCA Future Mission

We hope this consultation helps the FCA to shape a vision and journey that:

- reflects the combined ambition of the FCA and wider Government for a financial services market that is world-leading, certain, stable and accessible;
- recognises the progress made by financial services firms and practitioners in working to get the best outcomes for consumers; and
- critically balances consumer needs and protection to maintain healthy market competition.

We agree that the FCA has a specific role to protect vulnerable customers, and whilst much focus of late has rightly been on retirees at risk of financial scams following the introduction of the pension freedoms, we encourage a broader approach to the issue of vulnerability in line with the FCA Occasional Paper No. 8.

About the Chartered Insurance Institute and Personal Finance Society

The Chartered Insurance Institute is the world's leading professional body for insurance and financial planning with over 126,000 members in 150 countries. The CII's Royal Charter remit is to secure and justify the confidence of the public in the profession. We do this by promoting the highest standards of professionalism for technical knowledge, client service, culture and ethical practice across the entire membership for the ultimate benefit of the public. We support our members with achieving this goal through a wide programme of activities, including advocacy, good practice guidance, Continuing Professional Development (CPD) events, publications and related tools.

The Personal Finance Society is the UK's largest professional body for the personal finance sector, with 36,951 members including 5,303 Chartered Financial Planners¹. While this membership mainly constitutes individual practitioners, including a significant share of the UK retail investment adviser population, the Society also encompasses another 678 financial planning firms that have Corporate Chartered status. Our work includes the provision of examinations (meeting 'appropriate examination standards' owned and maintained by the Financial Conduct Authority), actively promoting ongoing learning such as structured CPD and as such were one of the first issuers of Statements of Professional Standing under the FCA adviser professionalism regime.

As a professional body, the Chartered Insurance Institute including the Personal Finance Society recognises its evolving role to influence the cultural as well as technical and ethical behaviours of our members.

¹ All membership numbers as of 31 October 2016.

Our overall views

We support this fundamental review of the FCA's work going forward. Much has happened in the financial markets since the regulator first came into being following the introduction of the Financial Services & Markets Act 2000. Even since legal cut-over that created the current regulatory architecture in 2012, the market has undergone significant change with more on the horizon; more importantly, there has been much new insight on how consumers behave with financial products and services, including the impact of technology and new processes.

So this provides an opportunity to look more closely at how especially retail financial markets could best be supervised and regulated in these circumstances. Intentions around increased transparency and accountability are also welcome, as is the focus on proportionality rather than zero tolerance. We appreciate that the debate about regulation can never be resolved as there can never be a right or wrong answer to many issues. However a more consultative and less confrontational approach to the market will reap greater rewards as has been seen to be the case in the past.

As a leading professional body in this sector, the CII including the Personal Finance Society is interested in securing outcomes that best serve the public interest. These outcomes may manifest themselves in a variety of ways, including financial professions better serving their customers, designing products and services that help customers get the desired results, or developing new approaches that engage consumers who have not considered whole types of products. On the other hand, complicated rules that pose unintended barriers or complications preventing customers from accessing the intended products, or making it difficult to engage in markets are not ultimately in the public interest.

We hope the FCA will take this opportunity to fully engage with the advice profession and consider fully criticisms and perceived shortcomings, without which this new mission statement runs the risk of simply validating some sceptics' concerns that it is just an expensive paper exercise. We believe this consultation and the subsequent full and open consideration of all views across the market will help mitigate this risk.

Ensuring markets function well

As the overriding statutory objective set by Parliament, it is critical that the financial markets function well. Experience of financial regulation over the years indicates that traditional economic indicators of a well-performing market have not always resulted in a favourable outcome for consumers. We welcome that the FCA understands that for markets to work effectively, there also has to be engaged consumers particularly on the demand side, firms and employees following clear minimum standards, and well-judged timely regulation. The points made about users "being able to take decisions based on those elements of price, quality and certainty of outcome that really matter to them" are well made. However we would like this expanded to include mention that the products and services need to be directed at the appropriate consumers.

For the financial services sector to function well in future, it will require stability in the institutional structure of regulation, and combining competition powers, supervision and enforcement functions within the same organisation allows for a coordinated approach to consumer protection. This said, this consultation and the FCA response to it should look to address concerns, such as the Treasury Select Committee recently highlighting issues about the perception of the enforcement function's independence.

Regulation and broader public policy: getting the balance right

There are grey areas between financial regulation and other policy – for example, those aimed at protecting vulnerable consumers. Whilst we agree that the FCA's role is not to set public policy, some issues under the public policy banner of cross-subsidy still need further exploration.

For example, whilst we have not advocated any relaxation on the ban on commission, we still see scope for exploring alternative structures to the payment of advice fees for people with straightforward needs as part of a wider response to the advice gap. Regardless of individual issues such as this, we look to the FCA to identify and clarify where it feels the Authority's remit ends and other policymakers take over.

Protecting consumers and balancing consumer responsibility

As one of the three operational objectives designed to deliver well functioning markets, we appreciate the importance of the question at the heart of the FCAs work, namely 'do we protect all consumers to some equal degree all of the time, or do we give more attention to more vulnerable consumers?' In that regard we welcome the FCA raising the concept of consumer responsibility. The topic has always a challenging one, and given all else that is ongoing in the area of consumer protection and improved regulation combined with a renewed impetus for the profession to better serve the public, we think the time might be right now to have a proper debate on it.

We note the current FCA focus on 'the appropriate degree of protection for consumers' (Our Future Mission, p.5) and agree that what is appropriate will depend to a large extent on an individual's capability. As such, we support specific attention to more vulnerable customers, especially in a world where individuals are expected to take on more responsibility for their financial wellbeing and scammers look to take advantage of this.

Good regulation is and will remain an important consumer service but we have a specific misgiving in terms of the intended and unintended poor outcomes due to over-regulation, for example the extent to which this has been partially responsible for the advice gap.

The regulator correctly highlights the challenges with retail financial markets that make the concept of consumer responsibility a difficult one. Unlike in other markets, consumers face a fundamental information and expertise asymmetry. This is made more difficult by the fact that many consumers will remain unaware of the effectiveness of what they purchased until well into the life of the product; and for many retail investments, extricating from a poorly chosen product in favour of a better one at that late stage is difficult if not detrimental. In these circumstances, absent of the usual consumer law principles of information disclosure, fit for purpose and redress that are relevant for other markets, a wholly unacceptable *caveat emptor* situation arises unless special treatment is given.

However we are concerned that the special treatment underpinning financial regulation over the past two decades has moved towards the opposite extreme of *caveat vendor*. In response to these challenges exemplified in successive mis-selling scandals over the years, regulation has become so risk averse that even following the rules can still invite subsequent compensation if conditions or circumstances change.

Meanwhile there has been less reliance on consumers taking responsibility for their actions. Both the regulator and the profession have been trying for years to better inform customers and make them aware of potential risks in the most efficient ways, and enshrine this in conduct of business rules, combined with general principles such as treating customers fairly. Yet all the evidence suggests that consumers do not read the materials provided or absorb the warnings, suggesting that in some cases consumers are still buying products they do not fully understand. While information disclosure is important in many aspects of retail financial services, repeated experiences over the last decade or more have illustrated its shortcomings:

- **Information is meaningless without explanation:** consumers have varying degrees of financial capability with which to interpret the information and disclosure provided. So the efforts to ensure disclosure of various facts that the regulator or sector think are pertinent or material are wasted on some consumers.
- **Consumers seem to be uninterested in the information:** even vital data such as commission seems to be of limited interest. The experience with the Key Facts Illustration material under the former mortgage conduct of business rules serves as a case in point, where even the regulator itself concluded in a review of "an over-reliance on written disclosure".

Serving the public and protecting consumers has become a compliance exercise, and in extreme cases this has even diminished markets or made them even less accessible. Some firms have chosen to simply not accept the risk. Or hedge that risk with extra requirements over and above the regulation, such as requiring customers to obtain professional financial advice for more situations than are necessary.

So perversely the very process of protecting consumers from all eventualities has created more regulation, effectively reduced their access, has brought about a less effective, and less confident market; the sum total of which is surely against the public interest.

We are not in any way advocating a return to US-style *caveat emptor* for financial services, or any reduction of the consumer protection provisions. Neither are we suggesting any insight or answers on what areas consumers must exercise responsibility. Instead we simply propose that the FCA take this opportunity to begin a debate on how this balance consumer responsibility could be struck.

We also believe that this is the right time to have this debate. In December 2008, the then Financial Services Authority published a discussion paper on this topic², stemming from a recommendation of the National Audit Office on the regulator:

“The FSA should identify the responsibilities it wants consumers to take on when interacting with the financial services markets and how its financial capability programme, alongside other regulatory activity, will help to equip consumers for these responsibilities. It is also important that the FSA, in consultation with stakeholders, begins in good time to develop its strategic priorities and approach for financial capability beyond 2010-11.”

The discussion paper attracted considerable criticism at the time in part due to debates ongoing at the time about the handling of the payment protection insurance debacle and the Retail Distribution Review that was at its peak. No further action was taken by the FSA following the discussion paper.

However now, with the lessons learned from those and other initiatives, a newly revitalised regulator prepared to consider new approaches to regulation could perhaps restart that debate. Much progress has been made in recent years by both the regulator and the profession towards enhancing the consumer interest:

- New initiatives led by the FCA to improve the way financial services are disclosed to consumers, including the use of efficient disclosure documents and summary material; including form and content rules to ease comparability;
- New insight on financial regulation towards protecting consumers with streamlined conduct of business rules, for example understanding the limitations on the reliance of written disclosure and using behavioural psychology to help consumers better comprehend what they read in the new disclosure material;
- Efforts by the sector to make more transparent and meaningful the language and terminology used by the sector to communicate with customers, such as the ABI’s initiative;
- Initiatives led by the CII and Personal Finance Society to ensure more ethical conduct by professionals at all levels in the financial services value chain; finally and perhaps most importantly
- Efforts led by the Treasury and Department for Work & Pensions to revitalise public financial guidance led by a single guidance organisation which when this comes into being could equip consumers to exercise more responsibility when transacting in the market.

All these activities are effective initiatives themselves in improving the way the sector treats consumers; and they could also be viewed as elements against which a consumer responsibility debate can be balanced. In other words, in the context of better regulation in the public interest, only now (unlike in 2008-2009), with these and other work

² Financial Services Authority, Discussion Paper DPo8/5, *Consumer Responsibility*, December 2008, www.fsa.gov.uk/pubs/discussion/dpo8_05.pdf

strands under way could a proper debate on consumer responsibility take place. Some questions the debate could tackle might include:

- What would consumer responsibility look like? What should consumers be expected to exercise responsibility on?
- Would this be a product-based description or a life-cycle one, or one based around information and understanding?
- How would it be proved that consumers did or did not behave responsibly in the transaction?
- Would this apply to vulnerable consumers? What exceptions or allowances should be taken for them? How would these be delivered?

We look forward to the FCA taking an active stance here, and encouraging all stakeholders to see the debate as integral in delivering effective and streamlined proposition for the market.

Consumer redress

It is important that consumers can have confidence in the market and the FCA, FOS and FSCS are important pillars in underpinning this. More effective and open communication between the FCA and FOS in particular is critical going forward. Any changes to FCA rules must be communicated to FOS and understood at all levels within the ombudsmen, especially those involved in investigations. Continuity in this respect will also support the challenge the FCA has in having an adequate dialogue with over 56,000 firms.

Vulnerable consumers

We welcome the FCAs pledge to intervene sooner to protect particularly vulnerable customers, including retirees coping with pension freedoms that could be open to abuse by scammers. That said, we encourage a broader approach to the issue of vulnerability. Whilst the FCA Occasional Paper No. 8 (Feb 2015) was a good start and welcome positive approach and positive contribution to the debate, we would broaden the definition to include any consumer who cannot, or perceives they cannot, currently afford regulated advice which includes a personal recommendation based on the best course of action open to them as potentially vulnerable.

Within such a broad based definition, we would also emphasise specific consumer groups including older consumers and those with mental capacity issues - both clearly have a particular need for financial advice in respect of both increased complexity of issues and the challenge of cash flow/asset management over longer time periods, brought about as a result of government policy such as Pensions Freedoms and the funding of social care following the 'postponement' of the 'care cap' to April 2020.

The concept of consumer responsibility as a general principle of good regulation is welcome but this needs to be set against recognition of different consumer groups.

We also draw to the FCA's attention that the CII has just completed the first phase of research into the risks facing women, the findings from which include women having less financial resilience to bounce back from financial shocks and being more likely to be trapped in poverty in later life.

Transparency, disclosure and intervention

We encourage the FCA to play a greater role in helping consumers understand and access the right services for their needs by encouraging transparency across the Financial Services Market and further influencing how they make decisions.

In respect of the latter, encouraging insurers to improve their renewal communications and initiatives like the 'Smarter Consumer Communications' project and The FAMR Financial Advice Working Group task force looking at the design and testing of a set of rules of thumb and nudges are good examples we point to.

We believe however, that there is an increasing case for greater transparency in respect of costs which are being indirectly borne by the consumer of regulated services regarding the funding of regulatory, FSCS and 'free' information services. We note that the paper acknowledges regulatory costs feed through to consumer fees and suggest that if the FCA is serious about reducing the cost of, and increasing access to financial advice for consumers, it needs to reduce this burden as well as follow through on its stated aim to increase transparency generally. Regulation must be proportionate and the cost of regulation transparent, rather than embedded in adviser fees making the cost of advice disproportionately expensive.

Supervising firms

In recent years, the financial advice sector in particular has made great strides in improving professional standards, conduct and culture within firms which has been acknowledged by both the FCA and government since the introduction of the Retail Distribution Review.

We accept that regulated firms will inevitably fail, especially where markets are competitive but we look to the FCA to ensure that regulation is proportionate to the risks involved and doesn't inadvertently contribute to such failings, as well as overseeing firms exit the market in an orderly way, minimising any associated disruption and harm to consumers.

Enforcement

We fully endorse the benefits of working with firms to agree lessons learned and ways forward where breaches of rules are such that they do not necessitate formal investigations and public sanction. More fundamentally, we suggest the FCA needs to clarify the role of enforcement as a process of investigation rather than a pre-punishment stage, and ensure that the stages in process of investigation are transparent.

We look forward to continuing to work with the FCA in communicating examples of good practice to the financial adviser market as we continue to lead the profession for the good of the consumer.

Responses to specific questions

Q1: Do you think our definition of a well-functioning market is complete? What other characteristics do you think we should consider?

Confidence and trust are essential ingredients in building an efficient, resilient and fair financial system that meets the financial needs of consumers. However, confidence and trust cannot be prescribed in legislation and attempts to do so can lead to over-regulation, unnecessary compliance costs and a lessening of competition. Furthermore, participants, including consumers, have a responsibility to accept the outcomes of their financial decisions, whilst financial firms should have regard to these information imbalances in treating their customers fairly.

In respect of the retail market, in addition to consumers being able to make well-informed decisions and the availability of redress when things go wrong, the ongoing existence of unlimited liability is counter-productive in as much as it is a contributing factor to limiting access to advice at a price that many consumers with a clear need are prepared to pay.

Q2: Do you think our approach to consumer loss in well functioning markets is appropriate?

Yes. Treating participants in a market fairly should not involve shielding consumers from all responsibility for their financial decisions or attempts to create a market where consumers will never lose or regulated firms never fail. It should involve a preventative approach.

Q3: Do you think we have got the balance right between individual due diligence and the regulator's role in enforcing market discipline?

No. The balance that should be drawn between individual due diligence and subsequent responsibility for their decisions and the respective duties of advisers and other financial services providers within the financial services market has been a constant theme for decades.

We believe to date that a greater focus on enforcing market discipline in terms of consumer redress has had clear and direct unintended consequences. Where firms within the retail market continue to have unlimited liability and no long stop rule, we will continue to see a corresponding limit on access to advice as well as the growth in non advised offerings as well as scams. In addition, the advice sector continues to raise concerns about rising levies and FSCS funding which urgently needs to be addressed to reduce the unfair impact on advised consumers.

Q4: Do you think the distinction we make between wholesale and retail markets is right? If not, can you tell us why and what other factors you believe we should consider?

Yes.

Q5: Do you think the way we measure performance is meaningful? What other criteria do you think are central to measuring our effectiveness?

We agree that being able to explain how the FCA is delivering against its objectives is an essential part of being an open and transparent regulator, but that good outcomes in terms of a well functioning market are often less easily linked to regulatory influence than for example enforcements.

As such, in addition to measures of operational efficiency, intervention impact assessments and measuring outcomes in markets, we would recommend that external independent reviews of overall effectiveness be commissioned on a biennial (every two years) basis and made available to all market participants.

Q6: Do you think the way we interpret our objective to protect and enhance the integrity of the UK financial system is appropriate? Are there other aspects you think we should include?

Yes

Q7: Do you think our intervention framework is the correct one?

Whilst the FCA's primary focus should remain on regulated activities, we endorse the interpretation involving intervention against unregulated activities on a case by case basis where they have potential to impact on consumers and their trust in the wider financial system.

Q8: Where do you believe the boundary between broader policy and the FCA's regulatory responsibility lies?

We agree with the need to root responses in a clear framework to ensure consistency when deciding where the FCA's role ends and that of broader public policymaking takes over.

An approach to identifying key issues where such clarity is needed and to scope out the FCA's regulatory responsibilities rather than high level principles that distinguish between broader policy and regulatory responsibility seems pragmatic.

Q9: Is our understanding of the benefits and risk of price discrimination and cross subsidy correct? Is our approach to intervention the right one?

Yes. We agree that intervention should take place where price discrimination and cross subsidy become central to how a market works.

Q10: Does increased individual responsibility increase the need and scope for a greater and more innovative regulatory response?

Yes in terms of a more innovative response but not necessarily a greater response in terms of quantity. For example, just as the government has seen it appropriate to empower the public to have greater freedom over their pensions, allowing them to accept more responsibility for their choices and decisions, so the public must be allowed greater freedom and choice of how they wish to receive savings, investment advice and guidance. The need to simplify has been evident for many years: past attempts to introduce simplification and bridge the gap between full regulated advice and simplified advice needs has led to the introduction of labels such as ‘basic’, ‘simplified’, ‘streamlined’, ‘focused’ and ‘gated’ advice, all of which have added to both industry and consumer confusion, ironically pushing more consumers towards unregulated ‘advice’ and scams.

As highlighted in our response to the recent HM Treasury consultation *Amending the definition of financial advice* we see a clear need for a greater and more innovative response from regulator (and government), for example in respect of a more consumer intuitive financial advice and guidance landscape.³ Specifically, this should involve the removal of the number of labels used to describe advice as well as a more intuitive description of public financial guidance, ‘extended guidance’ and financial advice (see figure below). There is already a regulatory requirement to describe what service is being offered and at what price, which are the factors that are the most relevant for consumers and together with a more innovative approach to the advice and guidance landscape, should create much needed and intuitive clarity through simplicity for the consumer.



We would also suggest that increased responsibility increases the need for regulatory protection for more vulnerable consumers. For example, the increased need to protect older consumers from the combined impact of pension freedoms (including a range of issues from ongoing advice needs over many years to the attention of scammers), the rising state pension age, the lack of a cap on the costs of care and all at a time when cognitive impairment typically increases.

³ See, Personal Finance Society, Response to the HM Treasury Consultation on Amending the Definition of Financial Advice, 15 Nov 2016. www.thepfs.org/44510

Q11: Would a Duty of Care help ensure that financial markets function well?

On balance we agree that a Duty of Care is unnecessary given existing FCA rules and Principals including Treating Customers Fairly. That said, there is an increasing need for clarity in respect of the respective responsibilities of consumers, intermediaries and product providers responsible for the sale of products in the face of the ongoing imbalance of information between clients and financial services firms, the increasing complexity of financial products and the increased responsibility being placed by government on consumers. If an explicit duty of care allows the regulator to be more explicit about these respective responsibilities then more analysis of the merits of such a proposal would be supported.

That said, we note that as recently as 2015 the Financial Services Consumer Panel has stated a Duty of Care “would act as a driver to change firm culture to behave more responsibly and put the customer first” (<https://fsconsumerpanel.wordpress.com/tag/duty-of-care/>). We suggest such sentiment fails to recognise (unlike both the FCA and government) that the financial advice sector in particular has made great strides in improving professional standards, conduct and culture within firms up to and since the introduction of the Retail Distribution Review.

Q12: Is our approach to offering consumers greater protection for more complex products the right one?

Given the current state of general consumer financial capability, it is appropriate that the FCA gives greater protection for riskier, more complex products as well as greater protection to consumers who as a cohort have less capability.

Q13: Is our regulatory distinction between consumers with greater and lesser capability appropriate?

Yes.

Q14: Is our approach to redress schemes for issues outside our regulatory perimeter the right one? Would more specific criteria help firms and consumers?

Yes, in the absence of an ability to impose a formal and binding redress mechanism on unregulated activities themselves.

Q15: What more can we do to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention?

We agree that the FCA should ensure that redress schemes are set up where possible to deliver redress faster than available through the courts and is clearer at the start about how long the redress exercise will take, who it will cover and its basis within FCA powers.

Q16: Is our approach to giving vulnerable consumers greater levels of protection the right one?

Yes. Vulnerable customers clearly need more support than other more sophisticated clients; we see that in the differentiation between retail and professional clients today. Whilst firms might in theory choose to de-risk and only serve non-vulnerable customers with mainstream products, there is little evidence that this is a likely outcome.

That said, greater clarity around the definition of vulnerable consumers and the expectations on firms in response would be welcomed, accepting that any approach needs to remain flexible in the face of emerging and changing patterns of consumer vulnerability.

Q17: Is our approach to the effectiveness of disclosure based on the right assumption?

Broadly yes. As previously stated, we have a general misgiving towards the high regulatory emphasis on information as a proxy for consumer protection. While information disclosure is important in many aspects of retail financial services, repeated experiences over the last decade or more have illustrated its shortcomings.

As such, deployed principals such as transparency, nudging, the way choices are presented and the application of learning from behavioural economics have an important role to play in a developing approach to more effective disclosure.

However, we would suggest that language used across the Financial Services market continues to undermine improved approaches to both verbal and written disclosure and recommend increased and co-ordinated focus across the market to standardise the language used so consumers can understand and compare products and appreciate risk more easily without having to decipher technical terms. Such focus should support the working assumption that clients have no industry knowledge and that their inherent understanding of financial matters is weak.

Specifically, we suggest the FCA actively seeks out and supports the co-ordination of industry initiatives to simplify and demystify consumer communications and language used. Indeed we see merit in the statement made within FCA FS16/10 'Smarter Consumer Communications' that the FCA might consider introducing standardised language across the industry if serious progress isn't made during 2017 but would suggest such action is only taken following extensive consultation.

Q18: Given the evidence, is it appropriate for us to take a more 'interventionist' approach where conventional disclosure steps prove ineffective?

Yes, where as stated there is clear evidence that groups of consumers (or significant numbers of consumers) are making poor choices, where it is clear other measures will not work and where such 'intervention' doesn't have a negative affect on other consumers who choose well or harm innovation in the market.

Q19: Do you think our approach to deciding when to intervene will help make FCA decisions more predictable?

Yes, combined with greater transparency in respect of 'when' and 'how' (the FCA's ability to solve the problem')

Q20: Are there any other factors we ought to consider when deciding whether to intervene?

Aligned to the transparency around the things the FCA chooses to do and those it doesn't, we would encourage the FCA to increase its engagement with and listening to financial advisers who can play a vital role in whistle blowing as well as the detection of scams. We are encouraged by the FCA working with the Personal Finance Society on a new campaign against pension and investment scams, and look forward to seeing the results of this campaign in terms of concrete actions taken by the FCA.

Q21: What more do you think we could do to improve our communication about our interventions?

We note that the FCA's communications are designed to ensure that both the regulated industry, and financial consumers understand the FCA and its work. Communications aim to promote understanding of the FCA's (role, priorities, policies, and) interventions, and correct misconceptions, to the benefit of the regulated industry and financial consumers.

We support the stated components of good communications as outlined within the FCA document 'Press Office Handbook – September 2015', in particular the two way nature of communication. In this respect we see an increasing need for FCA communications to be geared towards consultation, listening too and taking account of the legitimate interests and concerns of the regulated industry as well as those of consumers.

Q22: Is there anything else in addition to the points set out above that it would be helpful for us to communicate when consulting on new proposals?

Some have suggested that the impact of the FCA's competition powers has not yet been understood by firms so clearer communication in this respect should be considered.

In terms of the content of communication when consulting on new proposals, we continue to encourage the FCA to be as specific as possible in terms of 'what good looks like' in respect of market process and outcomes, as the vast

majority of firms will pay less attention to ‘what bad looks like’ as they will not intuitively see this as something relevant to their firms approach to market or its consumers.

Q23: Do you think it is our role to encourage innovation?

Yes, given that technology and innovation is reshaping the delivery and consumption of financial services and products and that the FCA’s overarching statutory objective as a regulator is to make financial services markets work well. We agree with Christopher Woolard (22/9/16 BBA FinTech Banking Conference) that the challenge arising is how the FCA ‘promotes competition, free up the forces that drive innovation in the interests of consumers, but without falling into the trap of picking winners’.

Project Innovate and the regulatory sandbox are welcomed as they should reduce the time(and cost) of getting innovative ideas to market, provide greater access to finance and enable products to be tested and introduced and allow the FCA to work with innovators to ensure consumer safeguards are built into new products and services. This said, in the continued absence of certainty in respect of the regulatory future treatment of consumer outcomes, its usefulness is critically undermined and a key barrier faced by firms providing advice . We suggest such certainty is a core component in ‘freeing up the forces that drive innovation in the interests of consumers’.

Q24: Do you think our approach to firm failure is appropriate?

Yes, in terms of the approach to firms leaving the sector. But in terms of a healthy and competitive financial advice market, the uncertainty caused by open-ended liabilities is a major preventative for advisory firms becoming tradable assets and hinders firms’ ability to attract new sources of capital. Ironically, the ongoing approach to open-ended liability is likely to be a contributory factor itself in the ultimate failure of some firms and the resultant detriment clients of that firm may suffer.

Q25: Do you think more formal discussions with firms about lessons learned will help improve regulatory outcomes?

Yes. Were the FCA (and FSA) have worked with the Personal Finance Society in recent years to communicate ‘good practice’ with our members via our quarterly face to face events, feedback has been extremely positive.

Q26: Do you think that private warnings are consistent with our desire to be more transparent?

Transparency should be an objective in pursuit of the strategic and operational objectives of the FCA. Where such objectives can best be met by processes such as ‘private warnings’, then a desire to be more transparent should not get in the way. That said, the FCA has publically acknowledged the need to evolve both its role and relationship with the market and increased overall transparency is a critical step in that journey.

If on balance the FCA sees merit in ‘private warnings’ then it should communicate that merit to the market with specific, un-attributable, examples.

26 January 2017

Contact:

Laurence Baxter
Head of Policy & Public Affairs
020 7417 4783
laurence.baxter@cii.co.uk