

# Consultation Response

## Financial Conduct Authority: Our future Mission

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## About this consultation

The Financial Conduct Authority (FCA) wants to provide guidelines to explain how they interpret their objectives and choose their business plan priorities. The future Mission document explains the FCA's approach and asks the key questions they need to answer as a conduct regulator. These include questions relating to consumer responsibility and vulnerability, their role in encouraging change and innovation in the industries they regulate, how they identify harm and then decide what action to take to address it, and the interaction between regulation and public policy. It also focuses on the tools the FCA uses to deliver their competition policy, firm supervision and enforcement work.

## Key points and recommendations

- We strongly agree that, in some circumstances, it is more efficient for the regulator to play a stronger role in enforcing market discipline, by stopping unsuitable products from entering the market and by stopping excessive charging.
- We recommend that the FCA measures its performance against key consumer principles, applying them in a practical supervisory tool in the same way as the Principles for Business.
- In defining harm, the FCA should take into account consumer vulnerability and prioritise tackling harm affecting consumers in vulnerable circumstances. However, to look only at vulnerability risks missing major systemic issues such as mortgage endowments. FCA should not assume that 'competition is for rational consumers and protection is for vulnerable consumers' – we hope to see an approach that looks at how competition and protection can work for all consumers, whatever their level of vulnerability.
- We strongly welcome FCA's consideration of its role in relation to social policy and believe that it has an important part to play in raising (publicly if necessary) issues relevant to its work where it believes action is needed but where it does not itself have a mandate to intervene.
- We would like to see a stronger 'inclusion' objective for the FCA, but even without such an objective think it can and should play a stronger role in promoting access, particularly in relation to banking.
- The implications of big data, dynamic pricing and increased segmentation are very worrying for disadvantaged or disengaged consumers, and the FCA needs to go beyond simply being 'transparent' to consider the implications for its competition and consumer protection objectives.
- As part of its work on innovation, the FCA should consider how it uses its tools and facilities (such as the regulatory sandbox) to meet the needs of all consumers, not just the fortunate early adopters, and particularly those in vulnerable circumstances.

- We welcome FCA's work on fair treatment of long-term customers and hope that they will apply the lessons learnt to both new business models, particularly new retirement income models, but also to old ones (such as savings accounts) which may become increasingly important.
- We recommend that the FCA publishes a full consultation on a possible duty of care. If the FCA believes that a duty of care is unnecessary, then we believe that the onus is on the regulator to show how it plans to deal with some of the challenges that the Financial Services Consumer Panel has highlighted.
- We welcome and support FCA's approach to disclosure. The FCA should not shy away from intervention where it proves too difficult for consumers in the target market to understand the essential features of a product.

## Introduction

Age UK is the country's largest charity dedicated to helping everyone make the most of later life. The Age UK network includes over 150 local Age UKs reaching most of England. We provide information and advice to around 5.9 million people each year through web-based and written materials, and individual enquiries by telephone, letter, email and local face-to-face sessions. We work closely with Age Cymru, Age NI and Age Scotland.

We welcome the FCA's consultation on its role and business priorities, and particularly the opportunity for an open discussion around issues such as consumer vulnerability and whether there is a need for a duty of care. Below we have listed those questions on which we have comments to make, grouping these together under the headings used in the paper.

## Ensuring markets function well

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

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

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

As past experience has shown only too often (mortgage endowments, pension charges and many more examples) individual due diligence is a very imperfect tool in consumer markets. This is certainly the case where consumers are 'vulnerable', but also applies to consumers generally, because in such a complex marketplace, where switching is often difficult, there are still major imbalances of power between provider and consumer.

The imbalance in power has been recognised in changes to insurance law around disclosure of material information and in moves to cap pension early exit fees and default

fund charges. While enforcing good practice, improving transparency and ongoing supervision are all vital, we strongly agree that, for some products, it is more efficient for the regulator to play a stronger role in enforcing market discipline, by stopping unsuitable products from entering the market and by challenging and if need be stopping excessive charges.

***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?***

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

We would like to see FCA measure their performance against key consumer principles. The consumer movement has adopted various principles which consumer industries should meet such as: **access** to goods and services that will meet consumer needs; **value** for money; a real **choice** of goods and services; **safety** and security; **redress**; **information**; and a **right to be heard**. We think these would provide a useful framework against which to assess performance and to assess the state of the market. The FCA should translate and apply these principles as a practical supervisory tool in the same way as the Principles for Business, and they would also help to flesh out either the 'Treating customers fairly' principle or a Duty of Care.

***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?***

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

In defining harm, the FCA should also take into account the type of consumers involved, and place a higher priority in tackling harm affecting consumers in vulnerable circumstances. This could be justified under the 'Proportionality' principle.

## **Regulation and broader public policy – getting the balance right**

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

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

We strongly welcome the FCA's consideration of its role in relation to social policy and believe that there are areas of public policy in which it has an important part to play. At the very least, its experience as a regulator should inform policy-making through research, raising issues it encounters privately with Government and firms, but it should also be prepared to make public statements, if there are public policy issues relevant to its work where it does not have a mandate to intervene. We are pleased that it has raised the following issues in the consultation paper.

## **Access**

We agree that the FCA has a role in promoting access of essential financial services (or services of general economic interest) but feel that these are too narrowly defined in this section. For example, basic bank accounts only deal with some issues of exclusion from banking – many people are ‘under-banked’, for example older people who have bank accounts but who are unable to use them effectively and safely because, for example, they are housebound. Age UK would favour a stronger inclusion objective for the FCA, but even without that we think a stronger role in promoting fairer access is justified under both the FCA’s public sector equality duty and its duty to have regard to ease of access in furthering its competition objective.

## **Price discrimination**

We think that the advent of big data, dynamic pricing and increased segmentation on financial markets, while beneficial for some consumers, could lead to real unfairness for those who are more disadvantaged and/or disengaged. We agree that this could lead to a threat to FCA objectives, particularly ‘Treating consumers fairly’, and how this interacts with the competition objective. We suggest that the FCA needs to go beyond simply being ‘transparent’ in how it makes judgements, to consider how these new business models meet the needs of all consumers, including those in vulnerable circumstances. There are implications for both its competition and its consumer protection objective.

While we welcome the FCA’s work on GI pricing, it need to look more broadly at the implications across the financial services market. The complexity of new pricing models could also make issues around supervision and redress more difficult, for example if systems are not adequately documented and there is a weak audit trail. We note a major telecoms provider has recently been fined by Ofcom because of fundamental billing errors where it had initially declined to reimburse individual customers because of difficulties tracing them.

## **Technological change**

We agree that the FCA has a role in promoting innovation in the interests of users. However, in doing so, it should consider how innovation affects all users – not just those fortunate early adopters – under its public sector equality duty. In particular we are concerned that costs of maintaining legacy systems will fall increasingly heavily on longer-term customers and those in vulnerable circumstances – creating a conflict with its role in promoting access. As in the pricing issue, FCA should have a role in the social policy debate around what levels of cross-subsidy are acceptable. More positively, the FCA could also use its tools and facilities (such as the regulatory sandbox) to encourage

inclusive design or innovations specifically aimed at consumers for whom existing options result in limited access or exacerbate vulnerable circumstances.

### **Long-term products**

We welcome FCA's recent work on the fair treatment of long-term customers and urge them to continue this. We would like to see them applying the lessons learnt in considering whether new business models meet consumer needs, for example new retirement income products developed in response to pensions freedom and choice. However, we think this also has challenges for ongoing supervision – and to products which are not normally seen as 'long-term'. For example, recent research by the PLSA found that 19 per cent of people who withdraw pensions savings saved or invested it all in a different vehicle (often bank accounts), while 57 per cent saved some and spent some. This makes fair treatment of long-standing bank savers even more important.

### **A 'duty of care'**

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

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

We agree that recent changes in public policy and the marketplace – such as the pension freedom and choice reforms and increased price discrimination - have put more responsibility on individual consumers and increased the need for a greater and more innovative regulatory response. There are two problems we see with 'Treating Customers Fairly': first that from a consumer perspective, it does not appear to have been used to create systemic change in the market, and second that it is not actionable (so consumer cannot accelerate regulatory action by pursuing legal claims themselves). Although few consumers are in a position to take legal action, recent research by the FCA on 'creating and sustaining cultures of compliance' suggests that how you signal the duties of firms to staff is important and a new 'duty' could help with that – as well as potentially signalling to consumers what standard of care they should expect.

We recommend that the FCA publishes a full consultation document on the duty of care. If the FCA believes that a duty of care is unnecessary, then the onus is on the regulator to show how it might deal with some of the challenges that the Consumer Panel have highlighted using its existing powers.

Partly this is about spotting the 'real-life issues' early and being prepared to act on them. Quite often these involve business models where the imbalance of power between provider and consumer has gone beyond an acceptable level, such as endowment mortgages and PPI, which started out as models that could be justified in some circumstances, but where later the norm became widespread mis-selling and unfair profit-

taking. The FCA should apply a tougher, more fundamental test of consumer fairness to all firms not only at authorisation but also as an ongoing, focused supervisory strand rather than as something incidental. This will require business models to be assessed on an ongoing basis, rather than just at outset.

Examples of the sort of issue that we would like to see FCA tackle more vigorously, either through implementing a duty of care or a more vigorous approach to 'Treating customers fairly' are:

- 'push authorisation payments', where what was envisaged originally as a convenient system for consumers has become exploited by fraudsters and where banks have little incentive to change their systems
- the practice of downgrading savings accounts interest rates – a long-running issue that exploits the most vulnerable consumers

Other issues where the FCA needs to send out strong signals are around the area of price discrimination – or what could be seen as unfair exploitation of customer's individual data. FCA has rightly identified this as a significant issue, and we suggest that they set out how they would use their existing powers and supervisory and enforcement processes to tackle abuse in a way that would be equivalent to having a duty of care.

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

Not necessarily. In certain circumstances the vulnerability of the consumer and the imbalance of power may be more important factors. For example, payday lending is not particularly complex (in fact it is sold as a straightforward and easy way of borrowing) but this relative simplicity is outweighed by the vulnerability of the target market and the imbalance of power between consumer and provider.

## **Vulnerable consumers**

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

The vulnerability of the consumer is an important consideration and we welcome the work FCA has done to encourage firms to consider this aspect. However, to look at only at vulnerability risks missing major systemic issues such as mortgage endowments. There are some market abuses which the regulator should tackle because the firm is breaching the spirit of 'Treating customers fairly', whoever the customer is. FCA should not assume that 'competition is for rational consumers and protection for vulnerable consumers' – we

hope to see an approach that looks at how competition can be made to work for all consumers, whatever their level of vulnerability.

There is also the question of adequate protection and defining and identifying vulnerability. Whilst we expect that few will disagree that those in vulnerable circumstances may require additional protection (and indeed consider it a natural part of treating customers fairly), there is likely to be wider variation in how this should be delivered and to what level. We would welcome further discussion on detail in this area to ensure that the general agreement delivers concrete results for consumers.

## **The role of disclosure in consumers' choices**

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

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

We welcome and support FCA's approach to disclosure, which firms have too often used simply to shift responsibility on to consumers. Market transparency is essential (for example requiring firms to publish data on charges) – but FCA needs to take a pragmatic approach to the detailed information given to individual consumers, and focus on what is effective. FCA should not shy away from intervention where it proves too difficult for consumers in the target market to understand essential features of the product.

## **Enforcement**

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

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

No. While enforcement is hidden in this sort of 'privacy', consumers will always ask why FCA is not using its enforcement powers fully and call for a stronger 'duty of care'.