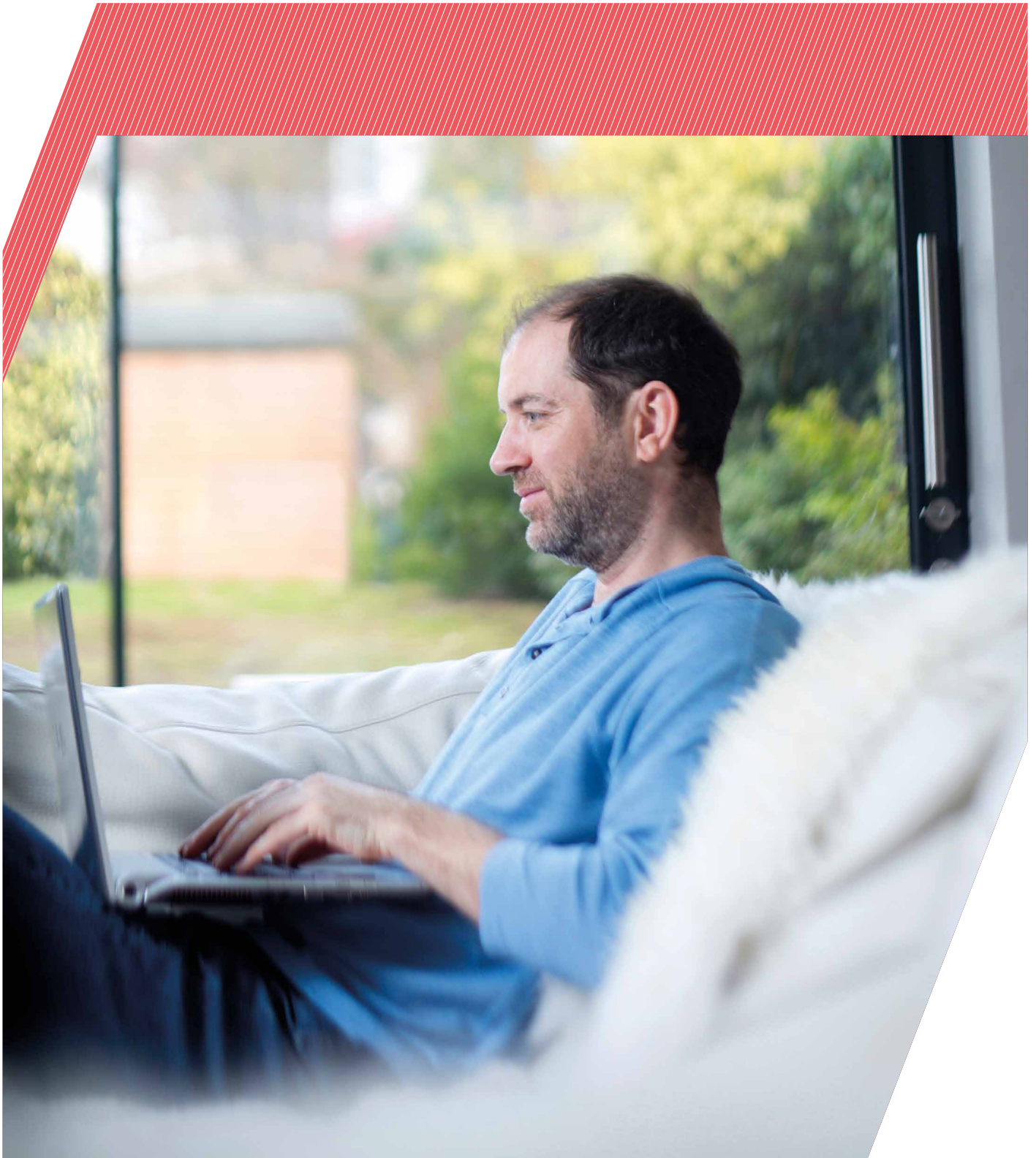


FCA Mission: Approach to Consumers



FCA Mission: Approach to Consumers

Contents

	Foreword by Andrew Bailey	4
	Executive summary	7
1	Our regulatory and legal framework	12
2	How we will act to protect consumers	17
3	Key Principles that inform our Approach to Consumers	23
4	How we will deliver our Approach to Consumers	27
5	Delivering our Strategy	33
	Annex A Feedback Statement	36
	Annex B Our consultation questions	44

Foreword

by Andrew Bailey



As a public body our aim is clear: to serve the public interest by improving the way financial markets work and how firms conduct their business. The FCA serves the public interest through the objectives given to us by Parliament. We have a single strategic objective to ensure that relevant markets function well – and 3 operational objectives to advance:

- securing an appropriate degree of protection for consumers
- protecting and enhancing the integrity of the UK financial system
- promoting effective competition in the interests of consumers

One of our operational objectives is to secure appropriate protection for consumers of regulated financial services, and our Mission, published in 2017, made it clear that consumer protection lies at the heart of what we do.

Our Future Approach to Consumers consultation paper, published in November 2017, was the start of a discussion with our many stakeholders on our Approach to regulating for retail consumers. We received a wide range of responses from consumer organisations, financial services firms, trade bodies and individual consumers. We have used the responses to inform this document, our Approach to Consumers and feedback statement.

In this Approach document we set out our vision for well-functioning markets for consumers. These indicators link with the conditions we want to see when competition is working well and when we observe market integrity.

Underlying our Approach is the decision-making framework set out in our Mission 2017, which explains how we will identify, diagnose, and remedy harm or potential harm to consumers, and evaluate our impact. That framework involves making choices and judgments about where and how we should act to tackle the greatest areas of harm and have the biggest impact.

To make the right choices, we seek to understand the everyday lives of consumers, their needs and how they act and behave when they are dealing with financial services. And we will ensure that we understand how the financial services markets are changing and evolving and what challenges and opportunities they may present for consumers now and in the future.

To achieve the outcomes we have set out in our vision, we will take action. We will address harm, or potential harm, by using the most effective powers and tools in the circumstances.

In this document we explain how we use our resources to protect consumers. We will review and adapt these to ensure we are achieving the greatest impact for consumers as firm practices, consumer experiences and the wider economic and technology environment continue to evolve.

In response to our consultation on our Approach, some stakeholders have raised concerns that our current regulatory framework does not provide adequate protection for consumers. They have called for the introduction of a 'Duty of Care' on firms when dealing with consumers. In response, alongside this Approach document we are issuing a discussion paper to help us better understand whether there is a gap in our regulatory and legal framework, or the way we apply it in practice, that could be addressed by introducing a new duty.

Having considered feedback on the revised definition of who is a vulnerable consumer proposed in our Approach to Consumers consultation, we are reverting to the original definition from Occasional Paper No 8 Consumer Vulnerability. To provide clarity on our expectations of firms and ensure good outcomes for consumers we will be consulting on guidance for vulnerable consumers early next year. This guidance will give us a basis to monitor and assess firm practices, supporting the work we do through both supervisory and enforcement channels, allowing us to take appropriate action when necessary.

These work streams are the first phase of putting our strategy into practice. They will play an important role in informing how we will use our range of powers to deal with these issues. They will also help to ensure that firms and consumers are clear about our expectations and how we will regulate to protect consumers. By providing greater clarity on the areas we consider important, how

we will prioritise and how we make decisions, we expect the industry to respond with a change in their approach too.

We welcome views, continuing discussion and communication on how we can achieve our vision and deliver our consumer protection objective even more effectively for consumers now and in the future.



Andrew Bailey,
Chief Executive,
Financial Conduct Authority

//

**We will address harm,
or potential harm, by
using the most effective
powers and tools in the
circumstances**

//



Executive summary

The FCA Mission

In April 2017 we published our Mission¹, which explained how and why we prioritise, protect and intervene in financial markets. Its publication marked our intention to be more transparent about the way we work and explained how we are accountable for the way we carry out our role.

Our Mission explained how we serve the public interest, and deliver public value to wider society through our regulation. We said we would publish a number of documents giving further detail about how our approach will be reflected in our wider work.

One of these documents was our Future Approach to Consumers, which we published and consulted on in November 2017.

Having considered the wide-ranging comments we received from stakeholders, this paper, our Approach to Consumers, sets out:

- our vision for well-functioning markets that work for consumers
- our relevant regulatory and legal framework
- when and how we will act to protect consumers

- our policy positions on key issues
- our strategy for ensuring we advance our consumer protection objective with the greatest impact

Our Vision

This Approach to Consumers document sets out the conditions for consumers we want to see when competition is working well and when we observe market integrity. As such our 3 operational objectives, which underpin our single strategic objective of ensuring that relevant markets function well and are given to us by the Financial Services and Markets Act 2000 (FSMA)², are interconnected and contribute to protecting consumers from harm:

1. protect consumers – we secure an appropriate degree of protection for consumers
2. protect financial markets – we protect and enhance the integrity of the UK financial system
3. promote competition – we promote effective competition in the interests of consumers

Our aim is to make markets work well for consumers. We therefore need to ensure that we have markets in which firms are competing vigorously for consumers' business, and where consumers are well-informed and empowered to make decisions; this in turn increases competitive pressures on firms. We know however that in some circumstances, competition alone may not be sufficient to make markets work well and achieve the necessary outcomes for consumers. When this happens, we will intervene as necessary to protect consumers.

Our vision underpins our consumer work. It allows us to measure our progress in working towards ensuring that regulated financial services markets work well for consumers. This diagram sets out 4 outcomes we expect to see if this vision is achieved:

1 The Mission: www.fca.org.uk/publication/corporate/our-mission-2017.pdf

2 Our strategic and operational objectives are set out in section 1B of the Financial FSMA. Section 1F of FSMA defines 'relevant markets', which generally includes regulated financial services markets,

Our vision is for a well-functioning market that works for consumers.

When competition is working well and when we observe market integrity we will see:

Consumers can buy the products and services they need because they are sold in a way that is clear, fair, not misleading and has a good choice architecture (sales, disclosure or marketing environment that helps consumers to make good decisions).

In markets with effective choice architecture, we see the following:

- Where consumers are active and able, it is easy for them to get relevant information and to switch to better products.
- Where consumers intend to be more active and able, they are supported to become so.
- Where consumers cannot be active and able, or face constraints in being so they are matched with products that better meet their needs wherever possible.

Products: High-quality, good value products and services that meet consumers' changing needs.

In markets where consumers are offered good products and services, we see the following:

- A range of products offered by a range of suppliers.
- Good quality products and services that meet consumer needs.
- Competitively priced products that are value for money.

Where markets are working well for consumers we will see:

Inclusion: Where the financial needs of all consumers, including vulnerable consumers, are taken into account when accessing financial products.

In markets where consumers are fairly included, we see the following:

- Fair treatment and fair risk pricing mean consumers are not unduly excluded.
- All consumers can access basic financial services.
- The needs of all consumers, including vulnerable consumers, are taken into account.

Protection: Consumers will be appropriately protected from harm.

In markets where consumers are well protected, we see the following:

- Consumers are not exposed to deceptive or unfair practices by financial services firms.
- Consumers are provided with the appropriate level of protection against fraud and scams.
- When things go wrong, there are mechanisms in place to support redress.
- Where appropriate, consumers are prevented from taking out products that carry a high risk of harm.

We will work towards achieving this vision by making effective use of our powers and tools, to achieve the greatest impact and setting clear expectations of firms about how they engage with and treat their customers.

Our regulatory and legal framework

We have a number of powers and tools that we can use to ensure consumers of financial services are appropriately protected. We need to, and will, use the full range of our powers and tools when discharging our functions to protect consumers from harm.

We have the power to make rules applying to firms for both their regulated and unregulated activities. A number of our Principles for Businesses, for example, encompass the unregulated activities of firms. Our focus is primarily on regulated activities when advancing our operational objectives of consumer protection and promoting competition in the interests of consumers. The unregulated activities of a firm may be relevant and, in some circumstances, we may take action or refer matters to other bodies that have relevant responsibilities in these areas.

How we will act to protect consumers

Different groups of consumers have different needs, which change over their lifetime and vary across the wide ranging and sophisticated financial services sectors. As a regulator, we want to ensure our work reflects the diverse needs of the UK population and that we tackle the areas of greatest harm.

We will act, within the scope of our regulatory remit, where our intervention is necessary to secure an appropriate and proportionate level of protection and redress for consumers across the UK. We will intervene where consumer harm or potential harm may be widespread and prevalent, for example, where we see that markets are not working well for consumers and competition alone will not be sufficient to deliver good outcomes for consumers.

We will ensure an appropriate level of protection for all consumers, focusing our efforts on tackling the greatest areas of actual or potential harm, for example where:

- firms are exploiting consumers' behavioural biases or vulnerabilities
- consumers suffer harm as a result of scams or unauthorised firms

Achieving our vision requires the co-ordination and collaboration of many parties. To ensure we have the best insights and intelligence and that we achieve the greatest impact, we will work collaboratively and in partnership with Government, policy-makers, consumer bodies, industry, regulators, charities and other stakeholders in the national and international consumer landscape.

Evaluation

Evaluation is central to our decision-making framework because it helps us understand the impact of our work. Understanding whether our past interventions have been effective and what impact they have had is an important part of developing a strong evidence base to guide our decisions. This is both for our decisions about which issues to prioritise and our decisions about how best to intervene to tackle harm.

Key principles that inform our Approach to Consumers

Firm and consumer responsibility

The diversity of consumers active in UK financial markets and the vast range of financial products, services and firms mean that we need to make complex and finely balanced judgements about what is reasonable to expect of different types of consumers and providers in any given situation. In line with our regulatory principles³, we expect consumers to take reasonable responsibility for their choices and decisions.

We also know that some consumers' differing levels of financial capability, financial resilience or level of confidence in managing their money and finances⁴, coupled with behavioural biases, make it difficult for regulators and firms to set a universal expectation of consumers.

We have regard to the general principle that consumers should take responsibility for their choices and decisions but we know that there are very real factors that might limit their ability to do so. We expect all firms to exercise extra care where consumers may be vulnerable and pay attention to the indicators of potential vulnerability.

In response to our consultation on our Approach, some stakeholders have raised concerns that our current regulatory framework does not provide adequate protection for consumers. They have called for the introduction of a 'Duty of Care' on firms when dealing with consumers. In response, alongside this Approach document we are issuing a discussion paper to help us better understand whether there is a gap in our regulatory and legal framework, or the way we apply it in practice, that could be addressed by introducing a New Duty.

³ The FCA's 8 regulatory principles, to which the FCA are required to have regard when discharging its general functions (which includes making rules, guidance and general policies), are set out in section 3B Financial Services and Markets Act 2000

⁴ Section 1 C (2) (b) of FSMA requires us to have regard for the differing degrees of experience and expertise that different consumers may have.

Vulnerable consumers

Consumer needs vary across the range of financial services sectors. Consumers will also have different needs, and some may be more vulnerable than others. This may be due to their circumstances, their financial capability or resilience, or because of the particular issue or practice they are facing.

We know that potential harm does not develop into real harm for the majority of people who could be at risk. We expect firms to pay attention to indicators of potential vulnerability and to have policies in place to deal with consumers who may be at greater risk of harm. For example, we will intervene by taking enforcement action where vulnerable consumers are deliberately exploited.

In our Future Approach to Consumers consultation paper, we built on our initial definition of a vulnerable consumer from Occasional Paper No 8 Consumer Vulnerability, and provided an updated version of the definition. The updated definition aimed to capture the dynamic nature of potential customer circumstances and indicate our expectations of firms.

Some respondents to the consultation on our Approach considered that the original definition, set out in Occasional Paper No 8 Consumer Vulnerability, had already been adopted and put into practice by many organisations. They felt that the revised wording risked narrowing the definition and shifting the responsibility more towards the consumer to self-identify a vulnerability.

We have listened to the feedback received from our stakeholders (as explained in the accompanying feedback statement, Annex A). We recognise that the original definition of a vulnerable consumer provides a

sound basis that allows stakeholders to develop and adapt it according to their specific business. So, we have decided to revert to the original definition of a vulnerable consumer from Occasional Paper No 8 Consumer Vulnerability, which is:

//

Someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.

//

To provide clarity on our expectations of firms and ensure good outcomes for all consumers, particularly vulnerable consumers, we plan to consult early next year on guidance for firms on the identification and treatment of vulnerable consumers.

The guidance intends to explain our expectations and help firms meet them. We will use the guidance, once issued, to inform our supervisory and enforcement work and we will monitor how firms are supporting vulnerable consumers, and making practical changes to secure necessary improvements.

Access and exclusion

Some consumers can find that they are inadvertently excluded from participating in financial services due to their particular characteristics or circumstances, or that firms do not wish to service them due to the perceived risk that they represent. When a consumer faces barriers accessing financial services, this undermines their ability to take responsibility for their own financial security, which in turn, potentially damages their longer-term well-being.

In a market-based economy, consumers do not have an automatic right to receive products and services. Similarly, firms do not have an obligation to provide them unless the law creates specific universal obligations. For example, with post or some telecoms services, or in the context of financial services, certain institutions must offer payment accounts with basic features.

The FCA does not have a specific responsibility to ensure access for all consumers. However, we do have regard to how easy it is for consumers to access financial services when advancing our competition objective and also when applying our competition duty.⁵ As a public sector body, we also have obligations under section 149 of the Equality Act 2010.⁶ For example, we must, in the exercise of our functions, have due regard to the need to eliminate discrimination, harassment and victimisation, we also consider whether market failures may lead to a lack of access and whether interventions may be necessary to improve or remedy the situation.

⁵ Sections 1E and 1B(4) of FSMA

⁶ www.legislation.gov.uk/ukpga/2010/15/contents

How we will deliver our Approach to Consumers

The rate of societal, technological and economic changes has increased rapidly. Consumers have different needs and are driven by different and complex motivations. Behavioural research shows us that consumers are not always economically rational and that behavioural biases can be exploited, leading to harm.

There are many factors which can influence the decisions consumers make: how complex the deals or offers are; inertia; marketing; and the impact of firms' communications all play a role in consumer decision-making. We observe that consumers' needs and experiences are becoming increasingly complex.

Our Approach will be grounded on the understanding of the dynamic economic environment for financial services, behaviour and experiences of consumers, and the ever-changing landscape for financial services firms and consumers today.

We will therefore base our Approach on 3 strategic themes: regulating for the real world; regulating for vulnerable and excluded consumers; and regulating for the future:

- **Regulating for the real world:** We regulate on behalf of all consumers, regardless of ability, sophistication or vulnerability. This means that we need to stay one step ahead on data and analysis, and design remedies around real, rather than ideal behaviour.
- **Regulating for vulnerable and excluded consumers:** Our Mission makes clear we intend to prioritise the needs of the most vulnerable and least resilient groups. We will collect information to diagnose and monitor potential harm, working with other organisations and using our ability to bring different bodies together where we do not have the power to address problems alone.

- **Regulating for the future:** We are committed to supporting innovation, as well as people who are negatively affected by change, making sure we stay one step ahead and prepare for key shifts that increase the risk of harm or affect how consumers engage with financial services.

Delivering our strategy

This Approach explains the framework that the FCA will use to deliver its consumer protection objective when carrying out its functions. It is a platform on which we will take action and continue to build, to ensure that our consumer insights, our policies and rules, and our interventions all make a difference and deliver the right outcomes for consumers both now and in the future.

The aim of our strategy is to ensure that the practical application of our powers and tools achieve good high-impact outcomes for consumers. We will use our powers and tools to reduce and address actual and potential harm to ensure markets work well. And in moving towards our vision we will aim to achieve even greater impact through our work.

Chapter 1

Our regulatory and legal framework

The financial products and services firms provide, and the way they provide them, play a fundamental role in individuals' lives. It is essential that the relevant markets function well, and deliver good outcomes for all consumers. When they do not work well, or where consumers are at risk of harm, unfair terms or treatment, we have a number of powers and tools that we can use to ensure consumers of financial services are appropriately protected.

To deliver our objectives, Parliament has given us a range of tools. We will use the full range of tools when protecting consumers from harm, selecting the most effective to achieve the necessary impact depending on the circumstances.

This section sets out the framework in which we operate and outlines our main powers and rules for protecting consumers from harm.

Our statutory objectives

Under the Financial Services and Markets Act 2000 (FSMA)⁷, we have a single strategic objective – to ensure that the relevant markets function well – and 3 operational objectives to advance this:

1. securing an appropriate degree of protection for consumers⁸
2. protecting and enhancing the integrity of the UK financial system

3. promoting effective competition in the interests of consumers

These objectives mean that we aim to ensure that the financial services industry is run with integrity, that firms provide consumers with appropriate products and services, that firms compete to meet consumers' needs with new and better value products, and that consumers can trust that firms provide accurate information and treat them fairly.

When carrying out certain functions, including making rules and general guidance, we must act to advance one or more of our operational objectives. In addition when advancing the consumer or integrity objective, we must, so far as it is compatible with this, discharge our general functions in a way which promotes effective competition in the interests of consumers (the 'competition duty').⁹

Where directed, we are also required to have regard to the Government's economic strategy when carrying out our work.¹⁰ In addition, we are required by section 3B of FSMA to have regard to the 8 Principles of good regulation¹¹ when exercising our general functions.

Our Rules and Guidance

We have the power to make rules applying to firms for both their regulated and unregulated activities.¹² Our focus is primarily on regulated activities when advancing our operational objectives of consumer protection and promoting competition in the interests of consumers. The unregulated activities of a firm however may be relevant and, in some circumstances, we may take action or refer matters to other bodies that have relevant responsibilities in these areas.

Our regulation is outcomes-focused and is based on a combination of

⁷ Section 1B of FSMA 2000

⁸ The meaning of 'consumer' is limited in this context and the emphasis is on persons who use, may use, or have used, regulated financial services or have invested, or may invest, in relation to financial investments.

⁹ Section 1B(4) of FSMA 2000

¹⁰ See section 1JA FSMA 2000

¹¹ www.fca.org.uk/about/principles-good-regulation; section 3B Financial Services and Markets Act 2000

¹² A number of our Principles for Businesses, for example, encompass the unregulated activities of firms

the Principles¹³, other high-level rules and, where necessary, detailed rules and guidance. The rules are contained in the FCA's Handbook¹⁴, which sets out rules for regulated firms to which they must adhere. For example, the consumer credit source book (CONC) sets out rules on the fair treatment of customers in arrears or default.¹⁵

There are also a number of high-level rules in the FCA Handbook which require a firm to 'act honestly, fairly and professionally in accordance with the best interests of its client'. These 'client's best interests' rules derive from EU directives and apply to: designated investment business¹⁶, mortgage activities¹⁷ and, from implementation of the Insurance Distribution Directive in October 2018.¹⁸ There are also more specific "best interest rules" in our Consumer Credit Sourcebook (CONC).¹⁹ The main regulated areas where there are no such 'client's best interests' rules are accepting deposits and carrying out contracts of insurance.

Principle 2: Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.

Principle 6: Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 7: Communications with clients – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

Principle 8: Conflicts of interest – A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

Principle 9: Customers: relationships of trust – A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

The Principles²⁰ apply to almost all firms for, generally, their regulated activities²¹ and are high level statements of the core obligations of firms, and act as an overarching framework to govern the actions of firms. A breach of one or more of the Principles for Businesses will make a firm liable to disciplinary action.²² Where appropriate, a firm can be disciplined on the basis of a breach of the Principles alone.

A number of our Principles for Businesses can be used to address harm to consumers. For example, the obligation set out in Principle 6 of the Principles for Businesses 'to pay due regard to the interests of consumers and treat them fairly'.

We also issue guidance containing information and advice across a range of matters, such as for the operation of FSMA and our Handbook rules or for our functions. Principle 6 of treating customers fairly is, for example, supported by 6 customer outcomes that underpin that obligation. Our predecessor, the Financial Services Authority (FSA), issued these outcomes in 2006 to explain this long-standing Principle and help ensure that firms focus on what it is intended to deliver. The FSA provided examples of good and bad practice, a guide to help firms develop management information and measured firms' progress on this Principle and the associated outcomes (which became embedded in our core supervisory work).

These outcomes set the baseline of our expectations of how firms should treat consumers and we use them to inform our assessments of firms' conduct. These outcomes also provide the basis of what consumers can expect to see when firms are treating them fairly and play a key role in achieving our vision (set out in the diagram on page 8).

13 Set out in PRIN 2.1 in the FCA's Handbook

14 www.handbook.fca.org.uk/

15 CONC 7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors www.handbook.fca.org.uk/handbook/CONC/7/3.html?date=2016-03-21

16 COBS 2.1.1R, there is also an obligation in COLL 6.6A in relation to duties of Authorised Fund Managers

17 MCOB 2.5A.1R

18 COBS 2.1.1 and ICOBS 2.5.-1R from implementation of the Insurance Distribution Directive on 1 October 2018.

19 For example, at CONC 2.5.8R, 3.8.3G, 6.7.19R, 8.3.2R and 8.6.1R.

20 www.handbook.fca.org.uk/handbook/PRIN.pdf

21 PRIN 3.1.1R and 3.2.1AR which notes that they can also apply in some other circumstances. Their application is also subject to exemptions and modifications, such as compliance with EU law.

22 PRIN 1.1.7G

Outcome 1: consumers can be confident they are dealing with firms where the fair treatment of customers is central to the corporate culture

Outcome 2: products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly

Outcome 3: consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale

Outcome 4: where consumers receive advice, the advice is suitable and takes account of their circumstances

Outcome 5: consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect

Our Competition powers

We are one of the very few financial regulators in the world with a core objective to promote competition. We can carry out market studies and investigate markets where competition may not be working well for consumers and intervene, where appropriate, for example by making rules for firms that we regulate.

We have also been given concurrent powers with the Competition and Markets Authority (CMA) for financial services. This means that we have powers under the Enterprise Act 2002²³ to investigate whether any

market for financial services is working well, expanding our powers beyond those firms and activities that we currently regulate. Under these powers we can require information and make a market reference investigation to the CMA to investigate a particular market or sector in more depth. We can also investigate and enforce against any breach of the Competition Act 1998²⁴ in financial services. We discuss with the CMA who is best placed to act and seek to reach agreement as to which authority the case should be allocated, but ultimately the decision rests with them.

Consumer protection law

We have powers under general consumer law to protect consumers from harm. We have certain powers under the Consumer Rights Act 2015²⁵ and other legislation including Part 8 of the Enterprise Act 2002²⁶ to enforce breaches of certain consumer protection laws including in respect of the Consumer Protection from Unfair Trading Regulations 2008.²⁷

We can consider the fairness of contract terms in financial services contracts issued by the firm we regulate. We can do this where the test for fairness is whether, contrary to the requirement of good faith, the term or notice causes a significant imbalance in the parties' rights and obligations to the detriment of the consumer.²⁸ Under the Consumer Rights Act 2015²⁹ and the Unfair Terms in Consumer Contracts Regulations 1999³⁰, we can also consider the fairness of the commercial practices of the

financial services firms we regulate and prohibit unfair practices whether they occur before, during or after a commercial transaction.

We also consider wider contract law in our work. This includes the enforceability of contracts and the ability of vulnerable consumers to enter into contracts.

The Equality Act

Under the Equality Act 2010³¹, the Public Sector Equality Duty³² requires us to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people who share a protected characteristic, and those who do not, while carrying out our activities. This may include considering any impact on different consumers' ability to fairly access financial services.

Broadly, this means that firms should treat everyone accessing their services and products fairly, regardless of their age, gender, race, sexual orientation, disability, gender reassignment, religion or belief and marriage/civil partnership, and guard against making assumptions about the characteristics of individuals.

Consumer redress

A strong consumer complaints and redress framework is essential to ensure consumers can have confidence that when things go wrong they will be put right. Generally, financial services firms carrying on regulated activities must establish, implement and maintain effective and transparent

23 www.legislation.gov.uk/ukpga/2002/40/contents

24 www.legislation.gov.uk/ukpga/1998/41/contents

25 www.legislation.gov.uk/ukpga/2015/15/contents/enacted

26 Part 8 of the enterprise Act 2002: www.legislation.gov.uk/ukpga/2002/40/part/8

27 Unfair Trading Regulations 2008: www.legislation.gov.uk/uksi/2008/1277/contents/made

28 Part 2 of the Consumer Rights Act 2015

29 Consumer Rights Act 2015: www.legislation.gov.uk/ukpga/2015/15/contents/enacted

30 www.legislation.gov.uk/uksi/1999/2083/contents/made

31 The Equality Act 2010: www.legislation.gov.uk/ukpga/2010/15/contents

32 Section 149

procedures for the reasonable and prompt handling of complaints.³³

When consumers have exhausted the firm's complaint processes and are unsatisfied with the result, they may, if they are an eligible complainant³⁴ and the matter falls within the scope of its jurisdiction³⁵, be able to refer their complaint to the Financial Ombudsman Service.³⁶ Where, having considered the complaint, the Ombudsman determines it fair and reasonable in all the circumstances of the case to do so, it can issue an award, including a money award, or direct a firm to take such steps in relation to the complainant as the Ombudsman considers just and appropriate. Firms are required to comply promptly with awards or directions made and a money award can be enforced through the courts.³⁷ The maximum money award which the Ombudsman may make is £150,000.³⁸

The FCA has a number of ways of providing redress to consumers:

- making rules and guidance on how particular types of complaints should be dealt with by firms
- specific statutory powers exercisable against an individual firm, such as under the CRA relating to unfair terms, and FSMA powers to order restitution
- a power to order an industry-wide consumer redress scheme, where there has been widespread or regular failure by firms
- voluntary schemes which can apply to regulated or unregulated activities of firms, and may be industry-wide or specific to an

individual firm (and might include a scheme of arrangement under the Companies Act 2006)

The complaints handling rules in DISP (Dispute resolution: Complaints sourcebook of the FCA's Handbook) are a useful mechanism through which, when things go wrong and redress is considered appropriate, we can secure appropriate redress for consumers. For example, a total of £389.6m was paid in March 2018 to customers who complained about the way they were sold payment protection insurance (PPI). This takes the amount paid since January 2011 to £30.7bn.³⁹

Another form of redress is compensation following criminal proceedings.⁴⁰ For example, in 2015 we obtained orders against 2 defendants convicted for their role in a fraudulent Ponzi scheme. Investors were told that their money would be traded on the foreign exchange markets, when in fact only 12% of the total money that investors gave was ever traded. As a result of the orders, victims of the scam received about 55% of their investment back.

The power to order an industry-wide consumer redress scheme is only available where there may have been widespread or regular failure by firms to comply with applicable requirements and where, as a result, consumers have, or may, suffer loss or damage that, if they brought legal proceedings, a remedy or relief would be available.⁴¹ Such a scheme is not available for a breach of the Principles as consumers cannot obtain a remedy in court in this situation.

Working in Partnership

We may not always be best placed to resolve the harms we see and we are part of a wider regulatory landscape that aims to protect the interests of consumers. For example, while we see that some people have low financial capability, the Money Advice Service (MAS)⁴² has the statutory responsibility for improving financial capability in the UK; and while one of our statutory objectives is to protect consumers, both the Financial Ombudsman Service and the Financial Services Compensation Scheme (FSCS) also play a vital role in protecting consumers.

We use our ability to convene key stakeholders to encourage and facilitate change and best practice. For example, our TechSprints bring together firms and other interested stakeholders to work collaboratively on shared challenges.

We use our Mission framework to seek to identify underlying harm and tackle it in an imaginative and collaborative way. As a regulator we look closely at international experience, but have also pioneered techniques, for example, the routine use of behavioural economics to inform policy. We also consider whether other domestic or international organisations may be better placed to address an identified issue, or whether joint working would be more effective than us acting alone.

33 See DISP 1.3.1R of the Dispute resolution: Complaints sourcebook of the FCA's Handbook (DISP)

34 Which includes an individual consumer or micro-enterprise – see DISP 2.7.3R in the FCA's Dispute resolution: Complaints sourcebook www.handbook.fca.org.uk/handbook/DISP.pdf

35 See DISP 2

36 The time limits within which a complaint must be referred to the Financial Ombudsman Service are set out in DISP 2.8

37 See DISP App 3.7

38 DISP 3.7.4

39 www.fca.org.uk/news/ppi-monthly-refunds-compensation

40 Confiscation orders under the Proceeds of Crime Act 2002

41 See section 404 of FSMA.

42 The new Single Financial Guidance Body (SFGB) will bring together the Money Advice Service, The Pensions Advisory Service and Pension Wise. Royal Assent for the creation of the SFGB was received on 10 May 2018 and the Government anticipates that the new body will be launched in autumn 2018.

For example, a solution introduced only in the UK may not always resolve an issue that affects international capital markets. In such circumstances, it may be appropriate to seek to resolve the problem through joined up working at the international level instead. For example, through the International Organisation of Securities Commissions (IOSCO), which acts as a forum to facilitate international cooperation. We have recently worked in collaboration with other international regulators to produce a report for IOSCO on Senior Investor Vulnerability, which discusses the challenges that exist in different jurisdictions. The report highlights solutions and examples of best practice that regulators have adopted around the world, helping us to build on our existing practices in the UK.⁴³

Similarly, in the UK landscape, we will partner with other bodies to protect consumers. For example, we work closely with the Illegal Money Lending⁴⁴ teams in taking action against unauthorised lending.

In April this year the UK Government published a Green Paper, 'Modernising Consumer Markets',⁴⁵ seeking views on how to ensure that regulatory, competition and enforcement regimes are suitable for the modern economy and the modern consumer.

We welcome this Green Paper and will work in partnership with Government, UKRN and other stakeholders to develop and implement the Government's final proposals and recommendations.

The boundaries between our objectives and other areas of public policy

Some of the work we carry out falls beyond the limits of our statutory powers and remit. We need to be clear about where we can serve the public interest as a regulator and where the issue falls outside our remit into an issue of wider public policy more suited to be led by UK Government or other organisations or bodies.

We will continue to work collaboratively with a wide range of stakeholders to ensure that even when areas are outside of our remit, we influence and inform debate and policy to ensure best outcomes for consumers.

This can require careful consideration, as shown by the example of price discrimination and cross-subsidies in financial services markets.

Price discrimination⁴⁶ occurs when different prices are charged to consumers where there are no differences in the costs to firms to provide a given product/service. Effectively, those who pay more subsidise those who pay less. Cross-subsidies occur when one group of consumers is served below an average rate of return. We consider the impact of price discrimination and cross-subsidies on different types of consumers under our competition and consumer protection objectives, taking care that any interventions avoid unintended consequences in the market.

We are more likely to intervene if the price discrimination results in harm to vulnerable consumers. However, we will not take action if the price discrimination or the solution to it is outside our remit. For example, the issue of consumers living in flood-prone areas who had difficulty getting property insurance was appropriately resolved by the UK Government working with the insurance industry to set up Flood Re⁴⁷, rather than by our regulatory intervention.

⁴³ www.iosco.org/library/pubdocs/pdf/IOSCOPD595.pdf

⁴⁴ www.fca.org.uk/publications/research/shining-light-illegal-money-lending-consumer-experiences-unauthorised-lending-uk

⁴⁵ www.gov.uk/government/consultations/consumer-green-paper-modernising-consumer-markets

⁴⁶ Technically price discrimination exists even when prices are the same but costs differ across consumers.

⁴⁷ www.floodre.co.uk/

Chapter 2

How we will act to protect consumers

Our aim is to add public value by ensuring consumers in financial services markets have an appropriate level of protection to engage in the market with confidence and to purchase the products and services they need.

Different groups of consumers have different needs, which change over their lifetime and vary across financial services sectors. As a regulator, we want to ensure our work reflects the diverse needs of the UK population and that we tackle the areas of greatest harm.

markets or firms are harming consumers and other users (actual harm), have the potential to do so (potential harm) or where markets are not working as well as they could. In considering harm, we will look at the types and characteristics of consumers affected ('user needs'),

such as vulnerability, as well as the action or behaviour itself.

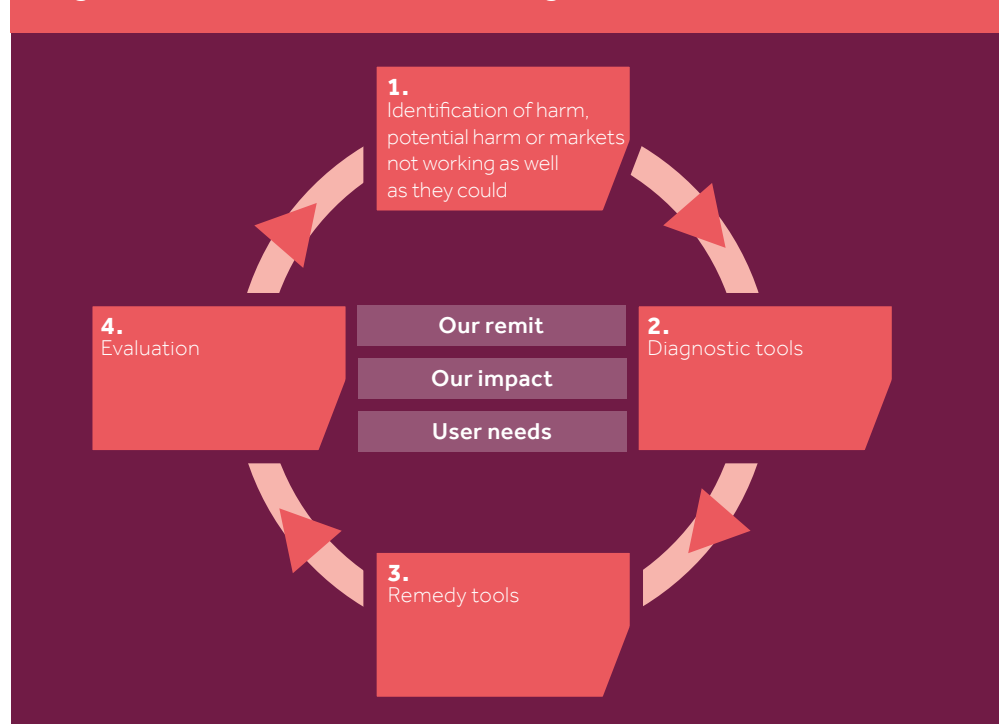
Our decision-making framework

Our Mission 2017⁴⁸ set out to provide greater clarity on how and why we prioritise, protect and intervene in financial markets. It explains our decision-making framework and how we prioritise where we use our resources to add public value.

We will use our Mission 2017 decision-making framework to help us apply our resources and interventions to achieve the greatest impact for consumers and the greatest public value. We will also use our annual business planning to identify and explain our cross-sector priorities and the key areas on which we will focus.

To apply our Mission framework, we assess where financial services

Diagram 1: The FCA's decision-making framework



Stage 1 – Identification of harm, potential harm or markets not working as well as they could

Consumers need to be confident that we can swiftly identify, reduce and prevent harm. To inform our understanding of the dynamic consumer landscape, we collect a large and diverse range of robust information and evidence from a number of sources.

This information allows us to identify instances where financial services markets or firms are harming users, have the potential to do so, or where they are working poorly and not providing sufficient benefit to users.

We use research projects such as our Financial Lives Survey 2017⁴⁹ and Calls for Input to provide us with insights and information about who might be vulnerable and where harm may be occurring, and use these to prioritise and inform our work.

We publish our Sector Views annually⁵⁰, providing the latest information and analysis of what has been happening in the external environment. These cover 4 factors:

- the macro-economic landscape
- government policy
- socio-demographic trends
- technology

We use these and other intelligence sources, such as social media monitoring tools, to gather insight and ensure we understand the most up-to-date trends and discussions among consumers and to identify emerging problems, which may indicate if we need to intervene.

Our routine supervisory and enforcement work also helps us to

identify and respond proactively to a changing environment.

We have Memoranda of Understanding (MoU) with a number of organisations both domestically, and internationally, which set out how we will cooperate and exchange information to further our objectives. These include MoUs with other regulators and organisations such as the Money Advice Service.

A number of bodies have powers under FSMA to bring 'super-complaints'⁵¹ to us about features of the market that are not working for consumers.⁵² In addition to this, we encourage all consumer bodies and the consumer panel to inform us of any problems that they are seeing which may be affecting consumers. We will make sure in return that we are clear about when and how we will take action and when it is appropriate to use our convening powers to find solutions.

Working with our Consumer Network and our consumer partners helps us to hear the voices of more hard-to-reach consumers. This includes those who may be less able or confident to engage with us. Our UK outreach programme allows our senior directors to meet with organisations that work with consumers around the country, such as debt advice charities, student money advisors and local financial capability forums, to hear some of the issues being experienced by consumers across the UK. Our Consumer Network also keeps us in close contact with a range of consumer organisations including Which?, MoneySavingExpert, Age UK, Citizens Advice, as well as the Consumer Council of Northern Ireland, Money Advice Scotland and Citizens Advice Cymru.

Diagram 2 – Sources of information:

Day to-day supervisory contact with firms

Calls from consumers and firms to our Contact Centre

Analysing intelligence from whistle-blowers

Analysing complaints data

Social media scanning software

Working with our Financial Lives Survey 2017

Intelligence and information from our Consumer Network including super complaints

Regional-visits

Sector Views

Market studies

Commercial third party data and information

However, identifying potential harm does not necessarily mean that we will act. Our finite resources require us to prioritise which actions we take.

49 www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf

50 FCA, *Sector views*, 2017 www.fca.org.uk/publication/corporate/sector-views-2017.pdf

51 www.gov.uk/government/publications/what-are-super-complaints/what-are-super-complaints

52 The Government is responsible for deciding which bodies are qualified to bring super-complaints. These are currently Which? Consumer Council Northern Ireland, Citizens Advice and the Federation of Small Businesses (FSB).

Stage 2 – Diagnostic tools

After identifying potential harm, we aim to diagnose its cause, extent, potential, development and impact. We have a number of different tools available to us to improve our understanding of an issue and gather new information if needed. Market studies can help us understand whether a market is working well for consumers.

Our recent Asset Management Market Study⁵³ found that price competition is weak in a number of areas of the asset management industry. It found that fund manager governance bodies do not typically focus on value for money. The study includes remedies such as protection to investors who are less able to find better value for money, measures to drive competitive pressure on asset managers, and proposals to improve the effectiveness of intermediaries.

Our recent Asset Management Market Study found that price competition is weak in a number of areas of the asset management industry. It found that fund manager governance bodies do not typically focus on value for money. The study includes remedies such as protection to investors who are less able to find better value for money, measures to drive competitive pressure on asset managers, and proposals to improve the effectiveness of intermediaries.

We also use thematic reviews in our supervisory work to assess a current or emerging risk arising from an issue or product in a sector or market. We can gather information about particular aspects of a regulated firm's activities using our information

gathering and investigation powers.⁵⁴ This includes appointing or requiring a firm to appoint an independent third party to produce a skilled person's report, also known as a section 166 report.⁵⁵

Stage 3 – Remedy tools

Once we understand the potential or actual harms and their drivers, we decide which one or more of our wide range of tools to use.

We can address issues with individual firms by using our supervisory and enforcement tools. Where a problem is systematic or market wide, we can make rule changes or market-wide interventions. Our interventions can range from light touch, such as issuing consumer warnings about certain markets or products (for example, our recent warnings about the dangers of crypto currencies⁵⁶) through to direct interventions against individual firms, or across a market to protect consumers from practices that carry a risk of harm (for example the payday loan cap⁵⁷, which limited the total amount that payday lenders can charge consumers).

Where we will intervene to protect consumers

We will act, within the scope of our regulatory remit, where our intervention is necessary to secure an appropriate and proportionate level of protection and redress for consumers across the UK. We will intervene where consumer harm is, or may become, widespread and prevalent. For example, where we see that markets are not working well for consumers and competition alone will not be sufficient to deliver good outcomes for consumers.

We will ensure an appropriate level of protection for all consumers, focusing our efforts on tackling the greatest areas of actual or potential harm, for example where:

- firms are exploiting consumers' behavioural biases or vulnerabilities
- consumers suffer harm as a result of scams or unauthorised firms

Set out below is a summary of our tools and how we use them to protect consumers. As with all our Approach documents, we do not see our powers and tools operating in isolation. For example, we have used our competition powers to identify issues that have been remedied through the use of, what we often label our consumer protection policies, or through enforcement action.

Authorisations

We protect consumers by preventing harm. We use our Authorisation process primarily to prevent consumer harm from occurring by ensuring that firms and relevant individuals meet minimum standards. For firms that wish to be authorised under FSMA these are the Threshold Conditions.⁵⁸ If firms appoint individuals into certain key roles, those individuals must also meet a separate set of minimum standards known as the Fit and Proper Test. Firms and individuals must demonstrate to us that they meet the minimum standards and will continue to meet them for as long as they are authorised.

53 www.fca.org.uk/publications/market-studies/asset-management-market-study

54 Part XI of FSMA

55 Sections 166 and 166A of FSMA

56 www.fca.org.uk/news/news-stories/consumer-warning-about-risks-investing-cryptocurrency-cfds

57 www.fca.org.uk/news/statements/statement-cap-cost-payday-loans

58 Set out in Schedule 6 to FSMA. The exact threshold conditions differ according to whether the person is seeking authorisation only from the FCA or is also a PRA authorised firm.

The Threshold Conditions include a firm satisfying us that:

- there is no impediment to our ability to supervise it effectively
- it has appropriate financial and non-financial resources
- people in senior roles are suitable and 'fit and proper'
- its business model is appropriate

We also use authorisation to improve conduct and culture in firms. To be a fit and proper person, individuals must demonstrate honesty and integrity, they must be financially sound, and they must have the necessary competence and capability to carry out the role.

We will refuse to authorise a firm if it does not satisfy us that it meets and will continue to meet these minimum standards. For example, when we took over the regulation of consumer credit firms in 2014, many debt management firms were unable to meet our minimum standards. Our assessment of some firms in this sector was that they were particularly likely to cause harm, particularly to already vulnerable consumers. So, we refused to authorise them; others chose to leave the market. Those that remain have had to show that they meet our threshold conditions in order to be authorised.

Our Approach to Authorisations provides more detail on how we do this.⁵⁹

Supervision

We protect consumers by consistent monitoring and engagement with the firms we regulate. The focus of our supervisory work is to maintain continuous oversight of regulated firms to identify, reduce or prevent harm to consumers and markets.

To do this, our supervisors take a forward-looking and strategic approach. We aim to mitigate conduct risks before they cause significant harm to customers or markets.

We have a pro-active intelligence-driven and data-led approach, and we take prompt and incisive action once harm has been identified. For example, we seek to ensure that financial promotions to consumers are not misleading, and that contract terms are not unfair to consumers. Our supervisory regime allows us to maintain a dialogue with firms. This ensures that we can address potential or actual consumer harm early on through informal engagement or, where necessary, conduct warnings. Our supervision work has, for example, resulted in payday lenders paying over £300m redress to customers.⁶⁰

Firms' culture and governance is a continuing priority for us across all sectors. Culture and governance can either drive or mitigate harm to consumers and markets, leading to positive or negative outcomes. The introduction of the Senior Managers and Certification Regime (SM&CR)⁶¹ for deposit takers requires senior managers to have a clear statement of the activities for which they are responsible. This adds a layer of responsibility to senior staff in financial services firms, which aims to improve culture among senior staff within firms. The SM&CR will also help us to hold specific people to

account for key decisions. We expect its introduction to bring a necessary and significant change, improving culture and accountability.

Our Approach to Supervision provides more detail on how we supervise firms.⁶²

Enforcement

We protect consumers by taking action when firms break the rules.

We take action against firms and individuals where their behaviour fails to meet our standards, is dishonest or illegal. Our aim is to prevent consumer harm and damage to market integrity, or to reduce further harm if it has already happened. Investigating misconduct fairly and promptly and holding those responsible to account helps us to maintain public confidence in the integrity and fairness of UK markets.

We also tackle the consequences of misconduct including, where possible, seeking redress for those harmed. We explain where and why we have taken action. This ensures our actions are transparent and fair and that those we regulate can use this information to evaluate and improve their own conduct.

To prevent or stop serious harm occurring we use a wide range of enforcement powers – criminal, civil and regulatory – to protect consumers and to take action against firms and individuals that do not meet our standards. This includes, where possible, seeking redress or remedy for those harmed.

For example, we used our powers to require restitution using section 384 of FSMA for the first time in March 2017. In this instance, a firm agreed to pay compensation to investors for giving a false or misleading

59 www.fca.org.uk/publications/corporate-documents/our-approach-authorisation

60 www.fca.org.uk/publication/feedback/fs17-02.pdf

61 www.fca.org.uk/firms/senior-managers-certification-regime

62 www.fca.org.uk/publications/corporate-documents/our-approach-supervision

impression of its expected trading profit. We used the power again in February 2018 leading to a credit card lender repaying an estimated £168,781,000 in compensation for failing to disclose the full price of an add-on product to a credit card.

Our Approach to Enforcement provides more information on our enforcement activities.⁶³

Competition

We protect consumers by ensuring markets work well. We are one of the few financial regulators with a primary objective to promote effective competition in the interests of consumers. We also have concurrent powers with the Competition and Markets Authority (CMA) for financial services. This means that we also have powers under the Enterprise Act 2002 to investigate whether any market for financial services is working well. This expands our powers beyond those firms and activities that we currently regulate. Under these powers we can require information and make a market reference investigation to the CMA to investigate a particular market or sector in more depth. We can also investigate and enforce against any breach of the Competition Act 1998 in financial services. We discuss with the CMA who is best placed to act and seek to reach agreement as to which authority the case should be allocated to, but ultimately the decision rests with them.

Our work across wholesale and retail markets aims to promote innovation and keep markets open and competitive, delivering benefits to consumers and the wider economy.

As part of a market study, we may consider taking action and implement remedies where our

analysis identifies competition problems or other issues that are leading to consumer harm.

For example, after taking over regulation of consumer credit in 2014, we carried out a credit card market study⁶⁴ to better understand the market and to identify levels of problem debt and assess if competition was working well for consumers. We found significant concerns about the scale, extent and nature of persistent credit card debt and firms' limited incentives to reduce this. This resulted in a series of remedies to help consumers in persistent debt. This included requiring firms to take an escalating set of steps designed to encourage customers to repay debt more quickly and avoid getting into persistent debt in the first place. Where customers were not able to repay their debt in a reasonable period, firms would be required to offer forbearance which could include reduced interest, fees or charges.

Our Approach to Competition provides more information on our competition activities.⁶⁵

Policy

We protect consumers by putting in place the necessary rules and guidance. We use our policy-making powers to maintain and implement a framework of rules and guidance that reduces harm and makes markets work better.

We make policy interventions to protect consumers from practices that cause actual harm or that carry a high risk of harm. This can include rule changes, publishing guidance, or communications with firms or customers such as sending a 'Dear

CEO' letter or issuing customer warnings about particular products.

For example, following our 2015 Market Study on General Insurance add-ons⁶⁶, we created new rules, which banned opt out selling and improved the information to customers buying add-ons. We also found consumers were significantly overpaying for Guaranteed Asset Protection (GAP) insurance sold alongside motor vehicles. Motor dealers had a strong point of sale advantage and consumers were unaware of lower priced products elsewhere. We introduced rules to improve consumer outcomes and help consumers make more considered purchasing decisions. These require a deferral between the introduction and sale of the GAP product, and introduced mandatory information disclosure by add-on sellers to consumers. Work evaluating the impact of our GAP intervention is ongoing but current evidence suggests that add-on GAP sales are much lower than they would have been had we not intervened.

We are required to publish a cost benefit analysis (CBA) of any proposed rules. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so, and if not possible, we provide estimates of outcomes in other ways. Our proposals are based on carefully weighing up the different options and reaching a judgement about the appropriate level of consumer protection, considering all the other impacts we foresee. For major interventions, we may carry out evidence-based cost benefit analyses and user testing.

63 www.fca.org.uk/publications/corporate-documents/our-approach-enforcement

64 www.fca.org.uk/credit-card-market-study/credit-card-market-study-home

65 www.fca.org.uk/publication/corporate/our-approach-competition.pdf

66 www.fca.org.uk/publications/market-studies/general-insurance-add-ons-market-study

Other Interventions

We protect consumers by encouraging and facilitating best practice. We seek to encourage firms to develop or change conduct in a market through our wide range of publications: consultations, policy papers, decision-making documents and research. These can raise awareness of issues, accelerate voluntary activity by firms in the sectors to address particular problems or raise standards in the sector. Our recent Occasional Papers on Consumer Vulnerability⁶⁷, Access to Financial Services⁶⁸ and Ageing Population⁶⁹ are good examples that have led to further action, for example, the establishment of the UK Finance (formerly BBA) Financial Services Vulnerability Taskforce.⁷⁰

Consumer communications

We protect consumers by making people better informed. Effective communications can help improve consumer choice and decision-making. First, by providing information about products and services in a manner that is both engaging and comprehensible, and second, by providing information at the appropriate time and through appropriate channels.

We use a wide range of methods for communicating with different audiences. For example, our Scamsmart⁷¹ campaign informs consumers of the dangers of pension and investment scams and how to protect themselves, and our loan fee fraud campaign which targets vulnerable consumers.

Stage 4 – Evaluation

We create public value when the benefits of our actions outweigh the costs. The benefits and costs of regulatory action cannot always be easily quantified, and the issues we face are often too complex to reduce regulatory judgement to simple numerical analysis.

Evaluation is central to our decision-making framework because it helps us understand the impact of our work. This includes both our decisions about which issues to prioritise, and our decisions about how best to intervene to tackle harm.

For example, in 2014 and 2015 we applied a broad range of our regulatory tools to take action in the high-cost short-term credit market (commonly referred to as payday lending). This is a market that serves a large portion of potentially vulnerable consumers. We imposed a price cap on payday lending, alongside improving standards through our authorisations process and new regulations to protect over a million borrowers from spiralling fees and charges on their debts. Our July 2017 review of these interventions found improved outcomes for consumers – consumers pay less, repay on time more often and are less likely to need help from debt charities.⁷²

The review also found the need to look at a wider range of high-cost credit products where we found evidence of potential consumer harm. In May 2018, we published proposals for further changes to the rules to protect consumers, including some of the most vulnerable in society, in other

high-cost credit markets, namely rent-to-own, home-collected credit, catalogue credit and store cards and overdrafts.⁷³ We also have very strong evaluation data from our ScamSmart campaign.

We recently published a discussion paper⁷⁴ setting out our framework for measuring the impact of our interventions using ex post impact evaluations. Understanding whether our past interventions have been effective and what impact they have had is an important part of developing a strong evidence base to guide our decisions.

67 www.fca.org.uk/publications/occasional-papers/occasional-paper-no-8-consumer-vulnerability

68 www.fca.org.uk/publications/occasional-papers/occasional-paper-no-17-access-financial-services-uk

69 www.fca.org.uk/publication/occasional-papers/occasional-paper-31.pdf

70 www.bba.org.uk/news/reports/improving-outcomes-for-customers-in-vulnerable-circumstances/#.Wx-PcFK0Xct

71 www.fca.org.uk/scamsmart

72 www.fca.org.uk/publication/feedback/fs17-02.pdf

73 www.fca.org.uk/publications/consultation-papers/cp18-12-and-cp18-13-consultations-high-cost-credit-and-overdrafts

74 www.fca.org.uk/publications/discussion-papers/dp18-3-ex-post-impact-evaluation-framework

Chapter 3

Key Principles that inform our Approach to Consumers

The diversity of consumers active in UK financial markets and the vast range of financial products, services and firms means that we need to make complex and finely balanced judgements about what is reasonable to expect of different types of consumers and firms in any given situation.

We are required by FSMA to take into account that consumers should take reasonable responsibility for their choices and decisions. The precise degree of reasonableness will depend on the circumstances. Under section 1C(2)(e) of FSMA⁷⁵, when considering what degree of protection for consumers may be appropriate when engaging our consumer protection objective, we must have regard to the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate having regard to the degree of risk involved in relation to the investment or other transaction and the capabilities of the consumers in question.

Firm Responsibility

Firms are responsible for making sure all their customers are treated fairly. This also applies to firms that do not have direct contact with retail customers. We expect all firms to frame decisions for customers based on real consumer behaviour and not to mislead them or exploit behavioural biases.

In line with our regulatory principles⁷⁶, we expect consumers to take reasonable responsibility for their choices and decisions. We expect firms to frame decisions for all customers (their 'choice architecture') based on real world consumer behaviours and not to exploit biases. We also expect them to exercise extra care where consumers may be vulnerable. Best practice should take on board positive uses of behavioural research to help customers achieve better outcomes.

We recognise that it may be challenging for firms to identify vulnerability in some cases. For example, where consumers do not recognise that they are experiencing difficulties or are very reluctant to discuss personal matters. We therefore set out below our plans to consult early next year on guidance for firms on the identification and treatment of vulnerable consumers.

Consumer Responsibility

Consumers should take reasonable responsibility for their choices and decisions. However, we know that some consumers' low levels

⁷⁵ www.legislation.gov.uk/ukpga/2000/8/contents

⁷⁶ The FCA's 8 regulatory principles, to which we are required to have regard when discharging its general functions (which includes making rules, guidance and general policies), are set out in section 3B FSMA 2000

of financial capability, financial resilience or level of confidence in managing their money and finances, coupled with behavioural biases, make it difficult for regulators and firms to set a universal expectation of consumers. We also know that certain firm practices will affect the degree of responsibility a consumer can be expected to take.

Our consumer protection objective, section 1C(2)(b) of FSMA requires us to have regard to the differing degrees of experience and expertise that different consumers may have. We will take these factors into consideration when determining the precise level of responsibility a consumer should be expected to take for their decisions. We will make use of our wide range of diagnostic tools to determine which practices and products may have potential to cause harm. We will consider where behavioural biases are exploited or where consumers, particularly vulnerable consumers, are at risk of the greatest harm if things go wrong and take action as necessary.

In response to our consultation on our Approach, several stakeholders expressed the view that there is a need to rebalance the responsibilities between consumers and firms through the introduction of a Duty of Care. In response, alongside this Approach document we are issuing a Discussion Paper to better understand the concerns, and whether there are potential deficiencies in our powers or the way we use them and, if so, how best we might address these.

Vulnerability

Consumer needs vary across the range of financial services sectors. Consumers will also have different needs, and some may be more vulnerable than others. This may be because of their circumstances, their financial capability or resilience, their physical or mental health, or because of the particular issue or practice they are facing.

Consumers who are vulnerable may be significantly less able to represent their own interests than the average consumer, and more likely to suffer harm. Vulnerability can affect the way people interact with any market, but it is particularly challenging in financial services, partly because of the long-term nature of commitments and the complexity of the products and information.

We know that potential harm does not develop into real harm for many of the people who could be at risk. Ensuring that the needs of vulnerable consumers are met requires a careful balancing act. Firms, wider stakeholders and the FCA are involved in delivering an approach that ensures vulnerable consumers are helped and protected and can engage with, and benefit from, financial products and services and participate in the same way as everyone else.

As set out in our Occasional Paper No 8 Consumer Vulnerability, any consumer can become vulnerable at any time in their life, for example through serious illness, loss of income or bereavement. Our 2017 Financial Lives research⁷⁷ shows that 50% of UK adults (25.6m) display one or more characteristics that signal their potential vulnerability, and may be at increased risk of harm, would suffer disproportionately if harm occurred, or be less able to engage with financial services.

Some respondents to the consultation on our Approach considered that the original definition of a vulnerable consumer set out in Occasional Paper No 8 Consumer Vulnerability had already been adopted and put into practice by many organisations. They felt that the proposed definition⁷⁸ risked narrowing the definition and shifting the responsibility more towards the consumer to self-identify.

Our expectations of firms for the identification and treatment of vulnerable consumers remain the same: we have listened to feedback received from our stakeholders (as explained in the accompanying feedback statement, Annex A). We recognise that the original definition of vulnerability in Occasional Paper No 8 Consumer Vulnerability, provides a sound basis that allows stakeholders to develop and adapt it according to their specific business. So, we have decided to revert to the original definition of a vulnerable consumer from that paper which defines a vulnerable consumer as:

//

Someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.

//

⁷⁷ www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults

⁷⁸ 'People who can readily be identified as significantly less able to engage with the market, and/or people who would suffer disproportionately if things go wrong'

Guidance for firms

We expect firms to pay attention to indicators of potential vulnerability when they arise and to have policies in place to deal with consumers who may be at greater risk of harm.

To provide clarity on our expectations of firms and ensure good outcomes for consumers, particularly vulnerable consumers, we plan to consult early next year on guidance for firms on the identification and treatment of vulnerable consumers.

This guidance will give us a basis to monitor and assess firm practices. It will support the work we do through both supervisory and enforcement channels and will allow us to take appropriate action when necessary.

Understanding vulnerability is central to how we make decisions. To better understand the drivers of vulnerability and to better target our interventions, we have expanded on the risk factors for vulnerability as identified in our Occasional Paper No 8 Consumer Vulnerability.

Diagram 3 – Drivers of vulnerability

Health	Resilience
Life events	Capability

These categories are not definitive or exhaustive but are intended to help us and firms to identify and understand the situations, both permanent and transient, that can indicate potential vulnerability in financial services.

We analysed the answers consumers gave to specific questions on our Financial Lives Survey 2017 to understand how many display one or more of these indicators and could be considered as potentially vulnerable.⁷⁹

- 1. Health** – health conditions or illnesses that affect ability to carry out day to day tasks. 5% of UK adults say their ability to carry out day to day tasks is reduced a lot by health conditions or illness.
- 2. Resilience** – low ability to withstand financial or emotional shocks. 30% of UK adults have been identified as having low financial resilience.
- 3. Life Events** – major life events such as bereavement or relationship breakdown. 19% of consumers say a major life event has happened to them or their partner in the last 12 months.
- 4. Capability** – low knowledge of financial matters or low confidence in managing money. 17% of UK adults have low financial capability.

UK adults of all ages and backgrounds can have characteristics of potential vulnerability. Our analysis of Financial Lives shows some groups, such as people over 65 or under 24, unemployed people and those with no formal qualifications, are more likely to display the characteristics of potential vulnerability compared with the general population. We recognise that consumers who display indicators of potential vulnerability may not necessarily suffer harm.

We do expect firms to pay attention to indicators of potential vulnerability when they arise and to have policies in place to deal with consumers who may be at greater risk of harm. We will intervene where vulnerable consumers are deliberately exploited, including if necessary by taking appropriate supervisory or enforcement action.

⁷⁹ For more information please see the Methodological Notes in the Financial Lives Survey Report 2017 – www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf

We expect firms to ensure that the design and implementation of products and services take account of any potential negative impact to vulnerable consumers and to make changes that reduce that harm.

We intend that our guidance will explain our expectations and help firms meet them. We will use the guidance, once issued, to inform our work and will monitor how firms are supporting vulnerable consumers, and making any necessary changes to gain improvements.

Access and Exclusion

Some consumers can find that they are inadvertently excluded from participating in financial services due to their particular characteristics or circumstances, or that firms actively do not wish to service them due to the perceived risk that they represent. When a consumer faces barriers accessing financial services, this undermines their ability to take responsibility for their own financial security. This in turn potentially damages their longer-term well-being.

In a market-based economy, consumers do not have an automatic right to receive products and services. Similarly, firms do not have an obligation to provide them unless the law creates specific universal obligations. For example, with post or some telecoms services – or in the context of financial services, certain institutions must offer payment accounts with basic features.

We also consider whether market failures may lead to a lack of access and whether interventions may be necessary to improve or remedy the situations.

The FCA does not have a specific responsibility to ensure access for all consumers. Although under our

statutory competition objective and competition duty we have regard to how easy it is for consumers to access financial services and a responsibility for ensuring markets work well for consumers.

As a public sector body, we also have obligations under section 149 of the Equality Act 2010. These are to have due regard in carrying out our functions to the need to eliminate discrimination, harassment, victimisation and other conduct prohibited under that Act, advance equality of opportunity between people who share a relevant protected characteristic⁸⁰ and those who do not and foster good relations between people who share a relevant protected characteristic and those who do not.

Ultimately any decision to place additional economic obligations upon firms to deliver access would be a matter for UK Government and Parliament. But we will look particularly at cases where markets do not provide access to certain kinds of services, or to particular groups of consumers. We will seek to develop practical strategies to tackle access problems, working with firms and stakeholders to do so. For example, we recently published a Feedback Statement following our Call for Input on Access to Insurance⁸¹, which looked at the challenges for firms and consumers in providing and accessing fairly-priced cover for people with pre-existing medical conditions. We are working with stakeholders to improve both signposting to specialist providers and consumer education and awareness.

⁸⁰ The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage or civil partnership status.

⁸¹ www.fca.org.uk/publications/calls-input/access-travel-insurance-cancer

Chapter 4

How we will deliver our Approach to Consumers

Our Approach to Consumers provides a platform for a proactive strategy to achieve our vision of a well-functioning market that works for consumers. So far, we have set out the main powers and tools that are available to us to protect consumers from harm and how and when we will use them. We have set out where we will intervene to protect consumers, how we will prioritise our decisions and our positions on some key issues. We will now explain our strategy for delivering our vision.

In our Future Approach to Consumers paper, we set out the background of what we know so far and our insights into how consumers in 2017 were interacting with financial services. These insights were mainly taken from our Financial Lives Survey 2017 along with other sources.

We observed key trends and challenges in 3 particular areas:

The changing economic environment for financial services

The UK population is getting older and it is projected that by 2040 nearly 1 in 7 people in the UK will be over 75.⁸² We are buying houses later and fewer of us are doing so. For example, between 1991-2014, the percentage of 25-34 year olds who owned their own homes fell from two thirds to just over one third.⁸³

The changing landscape for financial services firms

The pace of change and innovation in markets is varied. Over the last decade, Fintech has been growing rapidly and bringing new firms into the market.

Information asymmetries and behavioural biases are influencing consumer behaviour in some markets. Our Credit Card Market Study⁸⁴ found that biases tend to lead consumers to over-borrow and to under-repay.

Consumers today

Many consumers have low financial resilience, and not just those on a low income. 14.5million British adults had no spare money to put aside as rainy day savings in any of the previous 12 months.⁸⁵

82 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535187/gs-16-10-future-of-an-ageing-population.pdf

83 www.ons.gov.uk/peoplepopulationandcommunity/housing/articles/ukperspectives2016housingandhomeownershipintheuk/2016-05-25

84 www.fca.org.uk/credit-card-market-study/credit-card-market-study-home

85 www.stepchange.org/Mediacentre/Pressreleases/NosavingsforalmostthirdofBritslast12months.aspx

Many consumers are not opting for advice. Since the Pensions Scheme 2015 introduced pension freedoms, many consumers have opted for income drawdown. The proportion of drawdown bought without advice has risen from 5% before the freedoms to 30% now.⁸⁶

In this chapter we set out 3 themes that respond to the environment and the trends we see and underline our approach to protecting consumers: regulating for the real world; regulating for vulnerable and excluded consumers; and regulating for the future.

Regulating for the real world: we regulate on behalf of all consumers, regardless of ability or vulnerability. We need to stay one step ahead on data and analysis, and design remedies around real, rather than ideal consumer behaviour.

Regulating for vulnerable and excluded consumers: we will prioritise the needs of the most vulnerable and least resilient groups. We will collect information to diagnose and monitor potential harm, working with other organisations and using our ability to bring different bodies together

where we do not have the power to address problems alone.

Regulating for the future: we recognise that financial services are changing and adapting with increasing technological advancements and a shifting financial landscape. We commit to support innovation as well as those who are negatively affected by change. We will make sure we stay one step ahead and prepare for key developments that increase the risk of harm or affect how consumers engage with financial services.

Figure 4: Our plan for how we will work



86 www.fca.org.uk/publications/market-studies/retirement-outcomes-review

Regulating for the real world

Behavioural research shows us that consumers are not the economically rational 'super consumers' our models might predict. Regardless of capability, sophistication or vulnerability, all consumers experience situations that challenge them or might cause them harm.

We will continue to build an understanding of psychology and behavioural economics into regulation and policymaking; to take account of real consumers, their preferences and the issues they face in making choices. This includes investigating and testing nudges and effective defaults, continuing to build on behavioural analysis (for example in Market Studies) and evaluating the impact of our actions.

We recently carried out behavioural trials with a number of credit card firms to test the effect of different ways of presenting repayment options on encouraging ('nudging') people making low repayments to repay more where they can afford it. We have now completed our behavioural trials work and are currently considering the results and options such as how repayment options or increases to minimum repayments are presented to consumers.

Staying one step ahead on data and analysis

We will use data more effectively to identify consumer harm and will harness technological change and academic evidence for the benefit of consumers. This includes analysing rich micro-data about the context in which consumers make choices and their behaviour. For example, we have used current account and credit reference agency datasets to assess potential harm from unarranged overdrafts.

We will scrutinise our data sources to ensure we are using them as widely and thoroughly as possible, and in new ways to diagnose and investigate harm. Where we need to fill gaps, we may ask firms to report additional data. This work will help to ensure we remain in a strong position, recognising that the firms we regulate monitor and use data in increasingly sophisticated and targeted ways, and that we must do the same.

In our 2018/19 business plan⁸⁷ we explain that innovation, big data, technology and competition are cross-sector priorities for us. For example, experiments we are conducting with advanced analytics over this year include automated evaluation and detection of misleading advertising and automated detection of unauthorised business activity on the internet through a variety of new technologies.

In March 2017, we partnered with Money and Mental Health (MMH) to hold our third TechSprint.⁸⁸ This TechSprint event supported our commitment to help consumers in vulnerable circumstances, including those with mental health problems, receive fair treatment from their financial services providers. Over 100 developers, mental health and technology experts from over 30 organisations took part in the TechSprint – hosted by PwC. There was a strong focus from all teams on designing concepts that encouraged people to continue to manage their own finances but put in place safeguards to help them when they felt they needed it most.

87 www.fca.org.uk/publication/business-plans/business-plan-2018-19.pdf

88 www.fca.org.uk/events/techsprints/financial-services-and-mental-health-techsprint

Designing remedies around real behaviour

Consumers can find large amounts of information and details about product features, risks, benefits, costs and terms, overwhelming and more than they can mentally process. This potentially leads to poor decisions or disengagement. As an example, in our general insurance add-ons Market Study⁸⁹ we tested consumers' understanding by asking simple questions about their cover. The results showed that those who had bought their insurance as an add-on got 54% of questions incorrect or stated they were not sure of the answer.

We will continue to design remedies based on how individuals in markets behave in practice, rather than just according to conventional economic theory. This may mean designing remedies beyond issues of 'disclosure' (the product information that firms give potential and current customers) and considering how we can drive improvements in communications, sales and marketing environments to enable customers to buy the products and services that they need.

Prioritising situations where consumer mistakes are predictable, prevalent, pervasive and problematic

We will seek to act as necessary where we see errors made by consumers that are predictable (so that we can act), prevalent (affecting many people), pervasive (long-lasting) and problematic (causing harm). Situations designed to exploit consumer limitations, such as unfair terms hidden in lengthy disclosure documents or misleading advertising, may lead consumers into making decisions that they

might otherwise not have made. Firm activities that exploit behavioural biases may limit effective competition and harm consumers. We will continue to take account of behavioural biases in our work and explore remedies that improve competition and protect consumers as they are, rather than as we might like them to be.

Regulating for vulnerable and excluded consumers

We are clear that we will prioritise where there is the greatest harm, including by taking action to protect the most vulnerable and least resilient groups. 50% of UK adults are potentially vulnerable and 8% are 'in difficulty' now, having failed to pay bills or credit commitments in 3 or more of the last 6 months.⁹⁰

We also know that some consumers suffer exclusion from financial products or services, which can have a significant impact on their life. 1.3 million people (3%) in the UK have no form of bank account.⁹¹ An increase in digital services such as online banking, and the closure of physical bank branches, can mean that some consumers, particularly vulnerable and elderly consumers, may find themselves excluded.⁹² Banking firms are closing branches due to falling branch interactions, and to cut costs. Branch interactions fell by 42% between 2011 and 2016, to 278m, according to the UK Finance 2016 'Help at Hand' report.⁹³ The decision to close branches is a commercial decision for firms and not a regulatory matter. However, we expect the process to be orderly and for banks to treat customers fairly. For example, by notifying branch users well in advance and explaining how the bank will continue to provide

banking services. We will continue take action on exclusion issues when appropriate, and work with other stakeholders to reduce the harm that exclusion may cause.

Focus on the most vulnerable and least resilient groups

We will take into account the immediate situations of consumers when we identify vulnerability. We will also consider the wider impact harm may have on the financial and emotional wellbeing of vulnerable consumers. Low financial resilience worsens other potential vulnerabilities and can trap individuals in negative cycles. So, we will focus our work on sectors and products which are predominantly used by consumers with low resilience, for example, high-cost short-term credit. We will also prioritise the most vulnerable and least resilient groups of consumers in our supervisory, enforcement and redress work to ensure they are protected from harm and receive appropriate redress when things go wrong.

Collecting better information on harm

We will use research projects such as our Financial Lives Survey 2017 and Calls for Input to ensure we have regular and adequate information about who might be vulnerable and where harm occurs. As part of our partnership working, we will also continue to work with consumer groups to collect valuable on-the-ground information on key issues affecting vulnerable and excluded consumers.

⁸⁹ www.fca.org.uk/publications/market-studies/general-insurance-add-ons-market-study

⁹⁰ www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf

⁹¹ www.fca.org.uk/publication/research/financial-lives-survey-2017.pdf

⁹² The House of Lords Select committee on Financial Inclusion recognised that the growing number of bank closures is contributing to financial exclusion for vulnerable consumers.

⁹³ www.bba.org.uk/news/reports/help-at-hand/#.Wx-6xIK0Xct

Developing remedies across organisations

We cannot protect vulnerable and excluded consumers on our own. We will work increasingly in partnership with others, particularly in areas on the perimeter of our regulatory remit and other areas of public policy. We will provide evidence and input into public policy thinking and remedies in partnership with the Treasury, the Department for Business, Energy and Industrial Strategy, the CMA and others. We will also work with the Consumer Protection Partnership, the UK Regulators Network (UKRN), our consumer network, MAS, UK Government departments and agencies depending on the issue.

The recent Consumer Green Paper⁹⁴, identified possible ways for regulators and UK Government to work together to support vulnerable consumers and clarify their roles and responsibilities. We welcome the Green paper and will work with Government, UKRN and other stakeholders to develop and implement the Government's final proposals and recommendations.

We will also continue to work closely with the police and agencies to deal with criminal activities and fraud which cause harm to consumers and risks to our statutory objectives.

Regulating for the future

Demographic and social changes such as an ageing population⁹⁵, rising retirement ages⁹⁶ and a younger generation that is struggling to enter the housing market⁹⁷ and is more accustomed to debt, may change what consumers need and want from financial products and services. The home ownership rate at the age of 30 for Millennials⁹⁸ is 42%, whilst in comparison the home ownership rate for the generation above, Generation X⁹⁹, was 59% at age 30.¹⁰⁰ Further, the average student debt held at the time of starting to repay in 2006 was £9607, whilst in 2017 this had risen to £32,220.¹⁰¹ These changes to the consumer landscape often result in a change in consumer needs, and the way people interact with financial services. We have to adapt to this when considering our regulatory approach.

Technological innovation and change is transforming the financial services market for consumers. For example, increasing numbers of consumers can access services through mobile and digital devices which bring convenience and choice but can leave some consumers excluded.

Over the last decade, financial technology solutions (Fintech) have been growing rapidly. Fintech is bringing new firms into the market and developing far more efficient ways for consumers to save, borrow and invest. The increase in data sharing brings about both pros and cons. The introduction of Open Banking for example will increase consumer choice, and allow for more relevant product offerings, but data sharing remains a concern for many consumers.

This evolving environment has ramifications for public policy, regulators and firms, who will need to adapt their products and services and how they interact with consumers. The UK's withdrawal from the European Union will inevitably have an impact on the economic environment, and we will need to adapt and prepare for the changes this will bring about.

Adapt to the new environment

As technological and demographic changes continue, there may be elements of regulation that are no longer relevant or as effective as they were. Our understanding of these complex issues is evolving. We need to continually assess and adapt our rules and guidance, our standards and our working practices to ensure that regulation remains fit for purpose and provides an appropriate basis for regulating the industry, protecting consumers from harm and encouraging the development of well-functioning markets that deliver good outcomes for all.

For example, we participate in the Crypto asset Taskforce that was announced by UK Government as part of its wider Fintech strategy. The Taskforce's objectives include exploring the impact of crypto assets, the potential benefits and challenges of the application of distributed ledger technology in financial services, and assessing what, if any, regulation is required in response.

94 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699937/modernising-consumer-markets-green-paper.pdf

95 Government Office for Science, Future of an ageing Population, 2016 www.gov.uk/government/uploads/system/uploads/attachment_data/file/535187/gs-16-10-future-of-an-ageing-population.pdf

96 Age UK, Changes to State Pension age www.ageuk.org.uk/money-matters/pensions/changes-to-state-pension-age/

97 ONS, UK Perspectives 2016: Housing and home ownership in the UK, May 2016 <http://visual.ons.gov.uk/uk-perspectives-2016-housing-and-home-ownership-in-the-uk/>

98 A Millennial is defined as anyone born between 1981-2000

99 Generation X is defined as anyone born between 1966-1980

100 Ready for Ageing? report. Select Committee on Public Service and Demographic change, 2013. <https://publications.parliament.uk/pa/ld201213/ldselect/ldpub-lic/140/140.pdf>

101 www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/mid2012tomid2016

Preparing for the future

We will continue to liaise with firms and other external stakeholders to ensure that we and the industry are as prepared as possible for any market shifts. This includes those arising from initiatives such as Open Banking and the Second Payment Services Directive (PSD2). Some of the consumer-focused aims of PSD2 include promoting the development and use of innovative online and mobile payments and services, protecting consumers by making payments safer and more secure, and encouraging lower prices for payments.

Following these initiatives, to address current and potential future concerns about data use and security, we have published information on our website¹⁰² to help consumers understand the changes, their rights and how they can protect themselves. The opportunities and challenges arising from the use and sharing of consumer data remains a key area of focus for us. We will continue to monitor and adapt our regulatory approach to ensure that firms use data fairly and that harm is mitigated.

We encourage future innovations to address the needs of consumers through our RegTech events, Advice Unit and Regulatory Sandbox programmes. These aim to bring together and support new innovative products and services that seek to address the varying needs of consumers.

We will also continue to work with other international regulators and bodies to adapt to the evolving international landscape including assessing the impact on consumers of EU Withdrawal. We continue to work with firms to understand the impact of their plans for EU withdrawal on consumers across all financial sectors. This includes seeking to ensure that consumers

will be informed of any changes that affect them in a way that is easily understood.

Exploring and analysing impact in context

We will continue to gather and analyse a range of market intelligence and publish our Sector Views annually¹⁰³, providing information and analysis of what has been happening in the external environment. These cover 4 factors: the macro-economic landscape, government policy, socio-demographic trends and technology. We also gather information from consumer organisations on issues arising from their direct work with consumers. We will use these and other intelligence sources to identify emerging or current problems and take necessary action.

We use a wide range of data and analytic techniques in our day-to-day work in order to explore and understand new and emerging future issues. We have used data science and advanced analytics to interrogate data from our Financial Lives Survey in combination with other data sets to build a richer understanding of consumer preparedness for retirement and potential vulnerability across different regions of the UK. New forms of technology are also allowing us to better understand how new products and services are being marketed to consumers and to proactively identify unauthorised business activity.

¹⁰² www.fca.org.uk/consumers/account-information-and-payment-initiation-services

¹⁰³ FCA, *Sector views*, 2017 www.fca.org.uk/publication/corporate/sector-views-2017.pdf

Chapter 5

Delivering our Strategy

As a regulator, we need to ensure our work reflects the diverse needs of UK consumers. We remain committed to delivering good practical outcomes for all consumers and serving the public interest through effective regulation. This means prioritising areas where we see the greatest risks of potential or actual harm to consumers, acting within our statutory powers and objectives, and making sure that markets work well.

Delivering an appropriate degree of consumer protection

In this complex and ever-changing environment, our role requires us to achieve an appropriate degree of protection for consumers, and provide clarity and certainty for firms on what we expect of them. We also need to create a regulatory environment that supports positive innovation and good outcomes for all.

When competition is working well and when we observe market integrity we will see:

- **Consumers can buy the products and services they need** because the environment in which they are sold is clear, fair and not misleading with a good choice architecture.
- **High-quality, good value products and services** that meet consumers' needs.

Our vision for consumers

This Approach to Consumers explains how we prioritise the needs of retail consumers in our decision-making and interventions. Our vision for well-functioning markets for consumers underpins our consumer work. It allows us to measure our progress in working towards markets that work for everyone. We have set out the 4 outcomes we would expect to see if this vision is achieved and against which we will measure progress:

Where markets are working well for consumers we will see:

- **Inclusion** – where all consumers are able to access the financial products they need and the needs of all consumers, including vulnerable consumers, are taken into account.
- **Protection** – consumers are appropriately protected from harm.

Our vision is for a well-functioning market that works for consumers.

When competition is working well and when we observe market integrity we will see:

Consumers can buy the products and services they need because they are sold in a way that is clear, fair, not misleading and has a good choice architecture (sales, disclosure or marketing environment that helps consumers to make good decisions).

In markets with effective choice architecture, we see the following:

- Where consumers are active and able, it is easy for them to get relevant information and to switch to better products.
- Where consumers intend to be more active and able, they are supported to become so.
- Where consumers cannot be active and able, or face constraints in being so they are matched with products that better meet their needs wherever possible.

Products: High-quality, good value products and services that meet consumers' changing needs.

In markets where consumers are offered good products and services, we see the following:

- A range of products offered by a range of suppliers.
- Good quality products and services that meet consumer needs.
- Competitively priced products that are value for money.

Where markets are working well for consumers we will see:

Inclusion: Where the financial needs of all consumers, including vulnerable consumers, are taken into account when accessing financial products.

In markets where consumers are fairly included, we see the following:

- Fair treatment and fair risk pricing mean consumers are not unduly excluded.
- All consumers can access basic financial services.
- The needs of all consumers, including vulnerable consumers, are taken into account.

Protection: Consumers will be appropriately protected from harm.

In markets where consumers are well protected, we see the following:

- Consumers are not exposed to deceptive or unfair practices by financial services firms.
- Consumers are provided with the appropriate level of protection against fraud and scams.
- When things go wrong, there are mechanisms in place to support redress.
- Where appropriate, consumers are prevented from taking out products that carry a high risk of harm.

Delivering our strategy

The aim of our strategy is to ensure that the practical application of our powers and tools achieve good high-impact outcomes for consumers that make a difference. We will use our powers and tools to reduce and address actual and potential harm to ensure markets work well. And in moving towards our vision we will aim to achieve even greater impact through our work.

In delivering our strategy for protecting consumers, and to achieve this vision we will:

- Use a range of intelligence and insight to understand consumer needs and behaviours and the changing financial services environment, to identify where consumers may be at risk of harm.
- Proactively tackle the greatest areas of harm that may be occurring now or may emerge in the future, working in an integrated way by using our full suite of powers and tools and ensure we use them effectively to achieve the optimal outcomes for consumers.
- Design remedies that are best-suited to tackle harm and are based on real consumer behaviours and evaluate the impact of our interventions to inform how we prioritise and intervene in the future.
- Work collaboratively and in partnership with policy-makers, consumer bodies, industry, regulators, charities and other stakeholders in the national and international consumer landscape.

Through applying our strategy, we aim to increase the impact of outcomes for consumers and to deliver even greater public value. In doing this we will review and adapt our rules and tools and how we use them in a changing landscape. For example, in balancing the responsibilities between firms and consumers, in tackling emerging areas of harm or in securing redress for consumers.

We will be clear about how we will regulate to protect consumers from harm and plan to consult on guidance early next year to clarify our expectations of firms for the identification and treatment of vulnerable consumers. Alongside this document we are publishing a Discussion Paper on the potential need and merits of a Duty of Care.

By providing greater clarity on the areas we consider important, how we will prioritise and how we make decisions, we expect the industry to respond with a change in their approach too.

We welcome views, continuing discussion and communication on how we can achieve our vision and deliver our consumer protection objective even more effectively for consumers now and in the future.

If you need any further information please contact:
approachtoconsumers@fca.org.uk

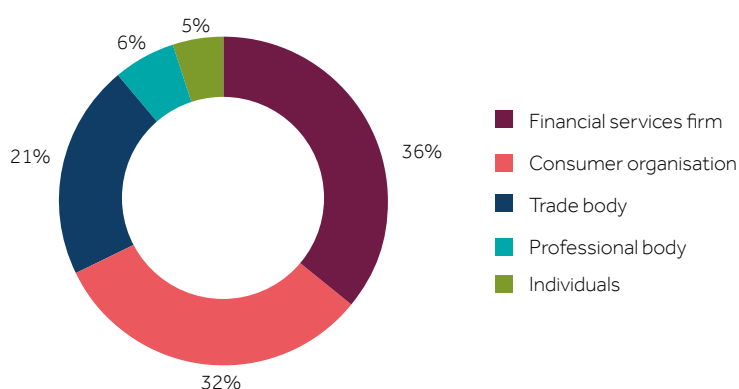
Annex A

Feedback Statement

Introduction

1. Our consultation on the future Approach to Consumers ran from 6 November 2017 to 5 February 2018. We asked 6 main questions, as well as inviting views on any other key issues or topics. We also hosted a conference in November 2017 which provided an opportunity to discuss some of the key themes of the paper.
2. This feedback statement is designed to provide an overview of the responses received, and is intended for all of our stakeholders. Primarily this will include financial services firms, consumer organisations, and trade bodies, although this document is also intended to assist professional organisations and individuals in better understanding how we have arrived at key decisions and positions outlined in our 'Approach to Consumers'.
3. The responses received were from a wide range of stakeholders, who provided a broad set of responses to the questions. We also noted that many responses discussed other issues not specifically related to the questions, and we have also provided an overview of these.

Who responded



4. We received a broad range of responses to the consultation, including from financial services firms, consumer organisations, trade bodies and individuals.
5. There were 65 respondents, with financial services firms and consumer organisations making up nearly 70% of the respondents that were analysed.
6. Of these, we had a fairly even split, with 23 responses from financial services firms and 20 responses from consumer organisations.

7. This has resulted in a wide range of views with key issues and themes in responses.

Summary of responses

8. To ensure we gathered feedback from stakeholders on important consumer issues, we invited views on a range of questions (please refer to Annex B for the full set of questions). We have categorised the common themes arising in the responses into the following 6 categories:

- Consumer & firm responsibility
- Duty of Care
- Vulnerability
- The boundary between FCA regulation and social policy
- Metrics
- Our vision

Consumer and firm responsibility

Summary of lines taken from our Future Approach to Consumers consultation paper

Consumer Responsibility

9. Consumers should take reasonable responsibility for their choices and decisions. However, we know that some consumers' low levels of financial capability, financial resilience or level of confidence in managing their money and finances, coupled with behavioural biases, make it difficult for regulators and firms to set a universal expectation of consumers. We also know that certain firm practices will affect the degree of responsibility a consumer can be expected to take.
10. We will take these factors into consideration when determining the precise level of responsibility a consumer should be expected to take for their decisions in any market. We will use our supervisory tools to determine firm practices and products that may have potential to cause harm. We will consider where behavioural biases are exploited or where consumers, particularly vulnerable consumers, are at risk of the greatest harm if things go wrong.

Firm Responsibility

11. Firms are responsible for making sure all of their customers are treated fairly and this also applies to firms that do not have direct contact with retail customers. We expect all firms to frame decisions for customers based on real consumer behaviour and not to mislead them or exploit behavioural biases.
12. We expect all firms to exercise extra care where consumers may be vulnerable and pay attention to the indicators of potential vulnerability. We recognise that it may be challenging for firms to identify vulnerability in some cases. For example where consumers do not recognise that they are experiencing difficulties or are very reluctant to discuss personal matters. We set out below our plans to consult early next year on guidance for firms on the identification and treatment of vulnerable consumers.

Duty of Care

13. Our Handbook Principles apply to most authorised firms and include the Principle of 'treating customers fairly'. Our Handbook also requires that firms act in the best interests of their clients.
14. However, a number of our stakeholders have also identified a potential need for us to introduce a new Duty of Care for firms. This would impose an obligation for firms to exercise reasonable skill and care in the provision of services to consumers.
15. Opinions differ about the exact nature and effect of a duty of care might be. In our Mission 2017 and Future Approach to Consumers, we committed to produce a Discussion Paper to explore potential merits of a Duty of Care as part of our Handbook Review following the UK's exit from the EU in 2019. This is because it would be difficult to make extensive changes to the FCA Handbook at the same time as undertaking the major overhaul needed to put the EU Withdrawal legislation into effect.

Feedback received

16. Respondents mostly agree with the balance outlined in the paper between consumers taking responsibility for themselves, versus firms taking responsibility for their actions and acting in the interests of consumers, but also comment that we needed to be firmer about when and how we intervene.
17. Respondents are in general agreement that we need to be clearer on what is meant by 'reasonable' when discussing consumer responsibility and on what consumer outcomes we consider to be fair.
18. The majority of respondents agree that if firms have not behaved in line with the Principles for Businesses (PRIN), we should intervene.
19. Respondents raised the breadth of the powers available to us, and there was general agreement that we should be using the full range of its powers when firms do not behave in line with the Principles for Businesses, with a particular focus on Principle 6 (Treating Customers Fairly).
20. In their response to this consultation, 15 of the respondents presented a need for a Duty of Care to be implemented.
21. Further discussions about the case for introducing a Duty of Care have also taken place in Parliament in the context of readings on the Financial Guidance and Claims Bill. Members of Parliament have called for the UK Government to revise this legislation to include a requirement for us to make rules setting out a reasonable Duty of Care.

Next steps

22. We recognise this feedback and the wider debate on this issue, including feedback received on this topic following our Future Approach to Consumers. We are therefore publishing a Discussion Paper alongside this Approach document to help us assess whether change is needed to help prevent harm to consumers and, if so, what form it could take.
23. We are inviting contributions from all interested parties on the case for and against introducing a Duty of Care on firms and seeking views on what form such a provision might take, as well as consequential issues arising from adopting it. This will help us approach the Handbook Review with a better understanding of the issues.
24. We want to understand where any gaps might lie in the regulation of financial services, what might be required to fill these and what different outcomes any changes to regulation might achieve.

25. We will also continue to review how we use our range of powers and tools. This includes how we use them to strike the balance between firm and consumer responsibility in different situations.

Vulnerability

Summary of lines taken from our Future Approach to Consumers consultation paper

26. Consumers in vulnerable circumstances may be significantly less able to represent their own interests than the average consumer, and may be more likely to suffer harm.
27. Any consumer can become vulnerable at any time in their life. We expect firms to pay attention to possible indicators of vulnerability and have policies in place to deal with consumers who may be at greater risk of harm.
28. Firms must also comply with the Equality Act 2010 in how they interact and communicate with vulnerable groups.
29. We expect firms to exercise extra care where consumers may be vulnerable, although we recognise that it may be challenging for firms to identify vulnerability in some cases.
30. Vulnerability can take different forms which can be obvious or hidden, permanent or temporary. Individual consumers may accept and acknowledge or disagree and not recognise that they are experiencing vulnerability.
31. We built on our initial definition of a vulnerable consumer from Occasional Paper No 8 Consumer Vulnerability, and proposed an updated definition, which we believed took into account the transient nature of vulnerability. We invited views on the following definition of a vulnerable consumer:
- People who can readily be identified as significantly less able to engage with the market, and/or
 - People who would suffer disproportionately if things go wrong.

Feedback received

32. 28 of the respondents raised concerns about the new proposed definition of vulnerability.
33. Some respondents to the consultation on our Future Approach considered that the original definition set out in Occasional Paper No 8 Consumer Vulnerability had already been adopted and put into practice by many organisations. They felt that the revised definition risked narrowing the definition and shifting the responsibility more towards the consumer to self-identify.
34. Several respondents provided an alternative definition of vulnerability.
35. Respondents were in agreement over the transient nature of vulnerability, and the difficulties in identifying vulnerable consumers.
36. Feedback indicated that there was uncertainty of the steps firms should be taking to identify and assist vulnerable consumers.
37. Some respondents discussed the additional challenges that the new General Data Protection Regulation may bring to identifying vulnerable consumers. Respondents indicated that more was needed to clarify what we expect in relation to firms' treatment of vulnerable consumers, with some respondents indicating that clearer lines on expectations of firms for Principles 6 and 7 are needed, to be able to enforce against breaches of these principles more easily.

Next Steps

- 38.** We have listened to feedback received from stakeholders. We recognise that the original definition of vulnerability set out in Occasional Paper No 8 Consumer Vulnerability, provided a common understanding that allowed stakeholders to develop and adapt according to their specific business needs. So, we have decided to revert to the original definition of vulnerability which defines a vulnerable consumer as:
- ‘someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.’
- 39.** We categorise possible drivers of vulnerability under 4 broad headings:
- Health – health conditions or illnesses that affect ability to carry out day to day tasks.
 - Resilience – low ability to withstand financial or emotional shocks.
 - Life Events – major life events such as bereavement or relationship breakdown.
 - Capability – low knowledge of financial matters.
- 40.** To provide clarity on our expectations of firms and ensure good outcomes for consumers, particularly vulnerable consumers, we plan to consult early next year on guidance for firms on the identification and treatment of vulnerable consumers.
- 41.** We intend that our guidance will explain our expectations and help firms meet them. We will use the guidance, once issued, to inform our work and will monitor how firms are supporting vulnerable consumers.
- 42.** We plan to host an event with firms and another with consumer organisations and charities later in 2018 to identify the difficulties firms have in dealing with vulnerable consumers. This event will also provide a platform for industry to highlight best practice in identifying and assisting these consumers.

Boundary between FCA Regulation and social policy

Summary of lines taken from our Future Approach to Consumers consultation paper

- 43.** We recognise that we may not always be best placed to resolve all the harms we see, and that we are just one part of a complex network trying to protect the interests of consumers.
- 44.** Our recent Occasional Papers on Access and Vulnerability show the breadth and complexity of consumer issues, as well as the need for a multi-organisation response to achieve real change.
- 45.** We have the ability to convene key stakeholders which helps the FCA, firms and others to come together to resolve an issue, without the need for formal regulatory intervention.
- 46.** We will always seek to act within our remit and be clear on where we feel we can act and where there is a need for action from others, for example Government.
- 47.** In a number of areas, for example financial exclusion, there are aspects that sit directly within our remit, but others that are part of a broader social policy debate and therefore in the domain of other parties.

Feedback received

- 48. Respondents were overwhelmingly supportive of our willingness to work collaboratively and consider the area that crosses between our remit and the broader social policy debate.
- 49. The responses indicated that the broad range of powers that we have available to use are not always widely understood or it is not clear how we use them.
- 50. Some respondents considered that we have a distinct remit and should not be expected to act outside of this.
- 51. However, many of the respondents recognise that where issues fall out of our remit, or into the social policy debate, we may have an important role to play in convening and influencing other parties to act.

Next steps

- 52. We will continue to work collaboratively with a wide range of stakeholders to ensure that even when areas are outside of our remit, we influence and inform debate and policy to ensure best outcomes for consumers.

Metrics

Summary of lines taken from our Future Approach to Consumers consultation paper

- 53. We described our approach and detailed some of the data we have used (notably our Financial Lives Survey 2017) to ensure our interventions are informed by our insight and to identify how our vision relates to real consumers' experiences across a range of retail products or sectors.
- 54. We consulted on additional metrics that could be used.

Feedback received

- 55. Respondents provided very little feedback on our use of metrics, or additional metrics that could be used.

Next steps

- 56. The Financial Lives Survey 2017 provides a valuable source of insight for us. This survey is the largest consumer tracking survey the FCA has commissioned. Future waves, every 2 years, will continue to increase our understanding of public perceptions and experiences of financial services, and show how these change over time.

Our vision

Summary of lines taken from our Future Approach to Consumers consultation paper

- 57. We set out our vision for well-functioning markets for consumers. The indicators link with the conditions we want to see when competition is working well and when we observe market integrity.
- 58. This vision underpins our consumer work and gives us a metric against which we can measure our progress in working towards markets that work for everyone. We have set out the 4 outcomes we would expect to see if this vision is achieved and against which we will measure progress.
- 59. In all markets we want to see:

- That consumers can buy the products and services they need because the environment in which they are sold is clear, fair and not misleading with a good choice architecture.
- High-quality, good value products and services that meet consumers' needs.

60. In addition, where markets are working well for consumers we will see:

- Inclusion – where everyone is able to access the financial products they need and the needs of vulnerable consumers are taken into account.
- Protection – consumers are appropriately protected from harm.

61. The way in which we exercise our powers and duties, together with our expectations of firms and their treatment of customers plays a key role in achieving our vision. It also requires the co-ordination and collaboration of many parties, including firms, regulators, consumers, UK Government and charities. We cannot achieve this vision alone and we understand that it requires complex trade-offs between protection and personal choice.

Feedback received

62. We received overwhelming agreement with our vision.

63. However, many of our respondents discuss the many potential barriers and risks in achieving our vision, such as consumer inertia, financial capability, and use of technology and data.

64. Some respondents comment that our vision should be achievable, not aspirational, while other respondents discuss the need to be realistic and flexible, and recognise that responsibility for these issues sits across stakeholders.

65. Many of the respondents discuss how we need to be realistic in what we can achieve. For example, many of the respondents discuss financial capability as a significant barrier to achieving our vision, although they recognise, that this is outside of our remit.

Next steps

66. This vision underpins our consumer work and gives us a metric against which we can measure our progress in working towards ensuring that markets work well for consumers.

67. To ensure that we are achieving good, high-impact outcomes for consumers and can deliver even greater public value, we will continue to review our toolkit and how we use it, and evaluate the impact of our interventions. For example, in balancing the responsibilities between firms and consumers, in tackling emerging areas of harm or in securing redress for consumers.

Consumer conference

- 68.** We held a consumer conference on 21 November 2017, where we invited discussion around a range of topics discussed in Our Future Approach to Consumers Paper in breakout sessions throughout the day.
- 69.** Breakout sessions on the day looked at:
- the boundaries between social policy and regulation
 - where the responsibility lies for consumer issues
 - wider vulnerability issues
- 70.** Over 100 people attended the event which encouraged interesting debates and discussions from a wide range of stakeholders.
- 71.** Throughout these discussions, several other key issues were raised, most notably:
- the definition of a vulnerable consumer
 - whether firms should have a 'Duty of Care'
- 72.** It is important we listen to all of our stakeholders through all of the channels we have available. We have considered the feedback received through various discussions at the consumer conference as well as the formal responses received, to inform our response to this consultation.
- 73.** If you need any further information please contact: approachtoconsumers@fca.org.uk

Annex B

Our consultation questions

FSMA requires us to take into account the eight principles of good regulation. One of these is the general principle that consumers should take responsibility for their decisions.

- 1. While having regard to the general principle that consumers should take responsibility for their decisions, do you agree that there are circumstances where consumers cannot be expected to take responsibility? What do you think these circumstances are? How could – and should – the FCA intervene in these cases?**

It is not always easy to identify which consumers are vulnerable at any point in time. But these consumers may face a higher risk of harm, and may suffer more severe harm as a result.

- 2. Do you agree that firms have a responsibility to take reasonable steps to identify the signs of vulnerability, and to have processes in place to take appropriate action where they have identified a consumer with a particular need and at a particular risk of harm?**

In a number of areas, for example financial exclusion, there are aspects that sit directly within the FCA's remit, but others that are part of a broader social policy debate and therefore in the domain of other parties, including Government.

- 3. Which consumer issues do you think sit directly within the FCA's remit, and which are more a matter for Government? Are we right to commit our resources to working with other organisations, such as firms, other regulators, Government, courts, consumer groups etc., where improved consumer outcomes may require action that is not within the FCA's regulatory toolkit?**

In this approach document we set out our vision of 'well-functioning markets that benefit everyone'

- 4. Do you agree with the aspirational vision and outcomes that we explore? Are there any further barriers or risks to us achieving it?**

We have described our approach and detailed some of the data we have used (notably our Financial Lives Survey 2017) to identify how far our vision is from consumers experiences across a range of retail products or sectors.

- 5. What further metrics would you use? Are there any specific data sources or tools that may be of benefit?**

In the final section we set out our framework explaining how we will work, including how we intend to prioritise consumer issues, select interventions and design remedies.

- 6. Do you agree with this framework? Would you like us to consider any additional or alternative factors in how we regulate:**
 - a. for all consumers
 - b. for the most vulnerable or excluded, and
 - c. to meet the challenges of the future?



© Financial Conduct Authority 2018
12 Endeavour Square London E20 1JN
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
All rights reserved