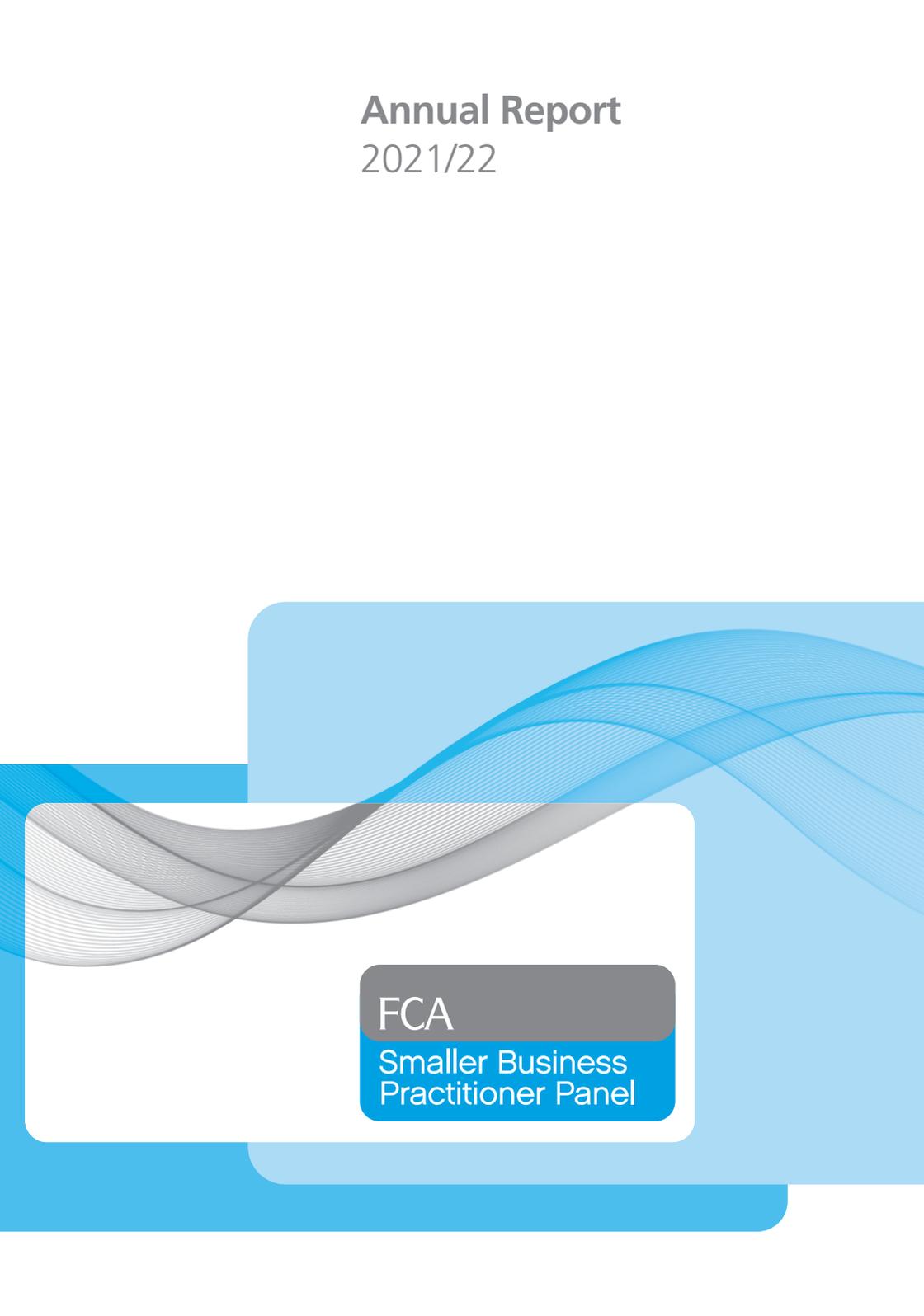


# Annual Report

2021/22



FCA

Smaller Business  
Practitioner Panel

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# Chair's foreword

In June 2022 I joined the FCA Smaller Business Practitioner Panel as Chair, and I would like to thank my predecessor Marlene Shiels for her dedication to the Panel through an unusually difficult and complex period, continuing to maintain the lines of communication between the FCA and Panel during the early days of the pandemic and beyond, and providing an invaluable source of advice and challenge to the FCA during that time.

This year, the Panel has been acutely aware of the range of pressures on smaller firms, and the combined effects of regulatory change. It has encouraged the FCA to consider the cumulative effect of multiple consultations, regulations and data requests, which often hit hardest on smaller firms with limited resources to deal with change.

Looking forward, the Panel has a number of important areas of focus. In an environment where many of the fundamental building blocks of regulation are under challenge and review, we will continue to press the FCA into taking the particular circumstances of smaller firms into account. The current, and escalating, cost of living crisis will place a burden on smaller firms and their customers, and if they are to continue to thrive in a strong, competitive market there is work to be done on firm resilience, on resolving the pressures on professional indemnity insurance and on reviewing the unsustainable funding for the compensation framework.

The Panel supports the introduction of the forthcoming consumer duty, and encourages the FCA to focus on articulating what best practice looks like in order to help firms navigate their way through implementation. We continue to stress that the focus on good outcomes must not focus narrowly on cost but on other features which customers value including service and choice.

The Panel provided input to HM Treasury's review of the future regulatory framework, supporting the role of the independent Panels and explaining how they fit as unique stakeholders into the regulatory process. We look forward to seeing the future developments of the regulatory framework and continuing to provide robust challenge to the regulator.

I would like to thank the FCA for their engagement with the Panel over the past year, and particularly to Charles Randell, who during his time at the FCA has been a strong supporter of the Panels and their input to the FCA's work. I look forward to working with the FCA and the Board over the next year as we address the challenges ahead.

**Andy Mielczarek**  
Chair, FCA Smaller Business  
Practitioner Panel

# 1

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## Introduction

The Smaller Business Practitioner Panel (SBPP) is one of four statutory Panels for the FCA, working alongside the Practitioner Panel, Markets Practitioner Panel and the Financial Services Consumer Panel. The SBPP aims to apply its experience and knowledge to improve UK financial services regulation through representing to the FCA the views, interests and concerns of smaller regulated firms.

Each year the Panel identifies its key areas of focus and priorities and communicates these to the FCA. During the year the Panel meets regularly with FCA senior staff and representatives of other bodies to engage with the regulatory process and provide advice and feedback.

The Panel supports the FCA in its work to improve diversity, and in its objective of seeking diversity in all its forms to be represented across the Smaller Business Practitioner Panel itself.

Over the year the Panel focused on:

1. Helping the FCA develop its understanding of how smaller businesses contribute positively to a strong, competitive market.
2. Supporting the development of good communications from the FCA and smaller businesses.
3. Supporting the FCA's priorities and ensuring future regulation is clear, transparent, and fit for purpose.
4. Helping the FCA understand the cost of regulation for smaller firms.
5. Supporting the FCA's Transformation programme.

# 2



Helping the FCA develop  
its understanding  
of how smaller  
businesses contribute  
positively to a strong,  
competitive market

## 2.1 Diversity and inclusion

*In July 2021 the FCA, PRA and Bank of England published a joint discussion paper on how they could accelerate the pace of meaningful change on diversity and inclusion in the financial services sector, looking at what role they could most usefully play to support this change. The Panel responded.*

Across the industry, Panel members believe the business case for diversity and inclusion was made long ago and very much welcome the contribution of the regulators in driving this work forward. Their view is that this will be a long-term project, given the fundamental shift required in society as a whole. The Panel has, however, cautioned the FCA against the use of specific targets, particularly in the context of smaller firms, as they may be less meaningful, or in practice impossible to apply, in firms with very few employees, and encourages a proportionate approach in such cases.

## 2.2 Firm failure, including PII and the Compensation Framework Review

*The FCA has a number of initiatives underway, principally as part of its Consumer Investments Strategy, addressing the issue of firm failure. These include reviewing the capital requirements of non-MiFID adviser firms, working with industry to create the conditions for firms to demonstrate good advice to reduce Professional Indemnity Insurance (PII) premiums and reviewing the compensation framework to ensure that it remains proportionate and appropriate.*

The Panel has considered a number of issues over the year relating to firm failure, who pays for it, and the effect on consumers. These have included the planned work to rethink the prudential requirements for personal investment firms (PIFs) being undertaken as part of the Consumer Investments Strategy, the Compensation Framework Review and the strain on the PII market, which the Panel believes is not currently fit for purpose. The Panel has discussed with the FCA the continuum of resources which come into play when a failure occurs. The first resource is the firm's own capital. Beyond the firm's own capital, there is its PII insurance, and the Panel has encouraged the FCA to work with the PII insurers to ensure they have the best possible data and understanding of the market to ensure that the supply of cover is both appropriate and affordable. It is the Panel's firm view that then, and only then, should firm failure fall back on the

FSCS, which has now grown beyond its original remit and requires unsustainable levels of funding.

It is the Panel's view that a review of the compensation framework is very much needed, and is, in fact, one of the most important pieces of work coming from the FCA as it impacts on all areas of the industry and is an important part of ensuring the landscape continues to include smaller firms. The Panel agreed with the principles of the review and welcomed the FCA's emphasis that the FSCS is a 'fund of last resort'. Its view is that the system should cover regulated advice for regulated products.

From the Panel's experience, it views the PII market is reaching a moment of crisis, which is not only restricted to firms in the regulated financial services world. It has warned that as a result many small businesses, in a variety of sectors, will no longer be able to continue trading and that the FCA, and other regulators such as the Solicitors' Regulation Authority (SRA), need to address the issue urgently.

Given the crossover between all these different initiatives the Panel has urged the FCA to link together its work across the piece, taking into account where the market failures are occurring, with an overall objective of ensuring the market functions well in the event of firm failure.

## 2.3 Understanding the industry

A continuing theme from the Panel is the number of areas where coordinated communication with the industry is enormously beneficial in helping the FCA in meeting its objectives – for example, helping smaller firms to understand what they needed to do in relation to the Ukraine crisis (and in getting feedback on their experiences). The Panel has encouraged the FCA to make full use of trade associations and professional bodies, to make maximum use of their existing communication channels, as an efficient and effective way of getting messages across quickly.

## 2.4 Claims management companies (CMCs)

*In January 2021 the FCA consulted on restricting CMC charges for financial products and services claims. In November 2021 it announced new rules to protect consumers against excessive charges. The Panel responded to the consultation. The FCA also consulted in May 2021 on preventing phoenixing (the reappearance of an individual connected with a wound-up financial services firm in connection with a claims management company).*

The Panel is supportive of the FCA's proactive supervisory strategy to improve the quality of CMC services and believes this is a sector which merits regulatory attention. It has urged the FCA to work closely with the SRA to ensure consistency of approach for firms which fall under their jurisdiction, as the SRA

is carrying out a duty equivalent to the FCA, requiring it to make rules with a view to protecting consumers from excessive CMC fees. The Panel believes it is especially important that the FCA's interventions remove incentives for firms to flood the system and therefore it supports the introduction of a price cap which aims to make it unprofitable for firms to make many unmeritorious claims.

A further area the Panel had raised with the FCA as a serious concern was phoenixing in the context of CMCs, and it supports the work addressing this.

# 3



Supporting the  
development of good  
communications from  
the FCA and smaller  
businesses

### 3.1 FCA policy on smaller firms

In September 2021 the Panel was made aware of articles in the trade press giving rise to the view that the FCA would prefer the industry to consist of a smaller number of larger firms, which would be easier to regulate. The Panel received assurances from the FCA Board that it would be concerned by any sense that the FCA was dismissive of smaller firms, and that this was emphatically not the case. However, it is the Panel's view that the FCA should continue to choose its words extremely carefully in its communications on this issue, so that its intentions are very clear and not subject to misinterpretation, as otherwise there will be implications for smaller firms, for example, seeking PII (already a difficult market to access).

### 3.2 Data strategy

*In its strategy document for 2022-25, the FCA has committed to reducing and preventing serious harm by harnessing data to assess problems more quickly and so act sooner, aiming to prevent harm from happening in the first place.*

In its discussions of the FCA's data strategy the Panel has noted the recognition of the burden on smaller firms in particular. Its view is that keeping data current, and smart use of such data, will be important, and it has encouraged the regulator to buy in data which has already been collected by third party suppliers as this is likely to provide better quality input, particularly from smaller firms, than relying on self-completion. The Panel has encouraged the FCA to make the best use of information it, and other regulatory bodies, already has, and collecting data at a gross level from firms will also allow such information to be repurposed without requiring further requests to the industry, reducing the resources required. The Panel's view is that the key to receiving better quality and more focused intelligence from the industry is for the FCA to be clearer about what information is being used for, and collect only that information which is going to be used. It is also important for the FCA to provide feedback on information supplied, in order to improve quality in future.

It has also encouraged the FCA to think about how to share information with industry, as a result of the data provided, to help firms in their understanding of what good and bad practice looks like.

### 3.3 Whistleblowing

*In Spring 2021 the FCA ran its first campaign to encourage individuals working in financial services to report potential wrongdoing to the FCA, and remind them of the confidentiality processes in place.*

The Panel strongly supported the FCA's whistleblowing campaign, and recommended that the FCA should also communicate directly with CEOs to encourage developing a culture where whistleblowing can take place if it is needed. It believes that if a firm's culture and governance processes are working as they should there should be no need for whistleblowing to take place, but it is important that the message is communicated from the top that if staff feel these processes have broken down they should be able to use the regulator's whistleblowing procedure.

# 4



Supporting the FCA's  
priorities and ensuring  
future regulation is clear,  
transparent, and fit for  
purpose

## 4.1 New Consumer Duty

*The FCA consulted twice in 2021 on proposals to set a higher standard of consumer protection in retail financial markets, where firms compete vigorously in the interests of consumers. The FCA expects to confirm any final rules by the end of July 2022. Parliament has also called strongly for a change to the standard of protection for consumers, and the work underway meets the FCA's obligations under the Financial Services Act 2021.*

The Panel very much supports the outcomes the FCA seeks to achieve with this work, of a higher level of consumer protection in retail financial markets, where firms are competing vigorously in the interests of consumers. The Panel responded to both FCA public consultations and has been actively consulted on the proposals. It initially raised significant concerns about the context within which the proposals were being made, clarity about how they would sit with other regulation, and the wording of the new principle when used across a diverse range of sectors.

Its view was that the proposals in the second consultation were a significant step forward, in particular the wording of the principle itself. Further concerns remain, however, about the tight timescales for implementation, complexity, and proportionality for some business models, and the potential for a private right of action. The Panel is concerned that if, in future, a private right of action were to be introduced

firms would rely on the law rather than regulation, consumers would lose out and the role of the FOS would become redundant.

## 4.2 Future Regulatory Framework (FRF) Review: Proposals for Reform

*Following a consultation earlier in the year, in November 2021 HM Treasury published a further consultation on a review of the future regulatory framework to determine how the framework should adapt to the UK's new position outside the European Union, and how to ensure it is fit for the future. Both consultations considered the role of the FCA's Panels.*

In its responses to the consultations the Panel welcomed the fact that the government acknowledges the role of the Panels as 'critical friends' and that it does not seek to change this. The Panel commented that its members have the ability to provide input at all stages of policy development, but a statutory requirement for the regulators to publish information on their engagement with the Panels is welcome. The Panel supported the proposal to require the FCA to publish a statement on its approach to the recruitment of Panel members, to ensure that their membership represents a truly diverse range of stakeholder views, while acknowledging the difficulty of representing the views of over 50,000 firms across all regulated sectors.

### 4.3 Consumer Investments and Pensions Consumer Journey

*In May 2021 the FCA published a call for input to understand consumer behaviour at key points in the pension saving journey to improve pension outcomes. In September, following an earlier consultation, it published more detail on its consumer investments strategy to explain the work it would be doing to ensure consumers can invest with confidence.*

The Panel responded to the call for input on the pensions consumer journey, pointing out the importance of differentiating between the experience of advised and non-advised consumers, acknowledging the important role the employer can play, and the importance of making decisions for financing later life more relevant to younger consumers. It also supported the consumer investments work, in particular the use of metrics to measure progress, whilst cautioning against an approach to high-risk investments which discourages not only those who should avoid them, but also the small number of investors for whom they could be appropriate. It also encouraged the FCA actively to work with new communication channels to address younger customers who are investing (in regulated and unregulated products) for the first time, and who may not be reachable through the channels the FCA has traditionally used.

The Panel highlighted the need for the two pieces of work to be closely aligned, as in terms of consumer outcomes, saving for later life can be done either through a pension or consumer investment route, or more likely, through a combination of the two.

### 4.4. Advice

Given the changes in the way people manage their finances and interact with industry the Panel has discussed with the FCA the concern that the advice gap is being filled by online and social media sources which are shifting participation in financial services, and in high-risk investments, towards a younger age group. It has encouraged the FCA in its work to require firms to highlight the risks involved and to be clearer about what is at stake in such investments, and were pleased to see the warnings it has issued about participating in the crypto market. It has also highlighted changes in consumer behaviour, particularly as a result of different working patterns during the pandemic, which have increased the number of people investing in high-risk and high-return products in the hope of retiring early. It believes there is a benefit in focusing regulation around simplified advice to make it more proportionate to the risks involved.

## 4.5. Environmental, Social and Governance (ESG) issues and sustainability strategy

*The Chancellor's remit letter to the FCA in March 2021 stated that it should have regard to the Government's commitment to achieve a net-zero economy by 2050 when performing its functions as a regulator. During the COP26 summit in Glasgow the FCA released its new strategy for positive change, with themes of building trust in the market for ESG products and ensuring transparency along the value chain. At the same time the FCA consulted on seeking initial views on new sustainability disclosure requirements for asset managers and FCA-regulated asset owners, as well as a new classification and labelling system for sustainable investment products.*

The Panel has suggested the creation of a map of how the many initiatives (within and outwith the FCA) which address the areas of ESG and sustainability inter-connect. This would be welcomed by all stakeholders. It has stressed that it is important that the regulatory bodies act quickly on disclosure and transparency, looking at the social and governance aspects as well as environmental, as the industry is already well advanced in developing products and services in this area.

In response to the consultation on sustainability disclosure requirements the Panel raised the need for plain language in disclosure requirements, and further clarity for advisers on how they engage with clients on the topic in the absence of MiFID requirements relating to onboarding post Brexit.

## 4.6 The Appointed Representatives (AR) Regime

*In December 2021 the FCA consulted on improving the AR Regime, having identified a wide range of harms across all the sectors where firms have ARs.*

The Panel's key message in its response to the consultation was to emphasise the complexity and diversity of this market, and that there are many different business models in operation. For example, around half of appointed representatives are introducer appointed representatives which are associated with different levels of harms and risks. Addressing issues in the appointed representative market will have an impact across the industry, not just for the firms directly affected, as many firms may choose, or need, to become directly authorised instead. It encouraged the FCA to take a targeted approach to address such a complex market, identifying where the particular risks lie, and targeting any actions on those areas.

## 4.7 Third Party suppliers

*In its Business Plan the FCA has committed to launching a discussion with the Bank of England and Prudential Regulation Authority (PRA) on Critical Third Parties (CTPs) in 2022.*

The Panel has highlighted, during its discussions on diversity and inclusion and around vulnerable customers, but also more broadly, the reliance of smaller firms on third party suppliers (product providers or others), for example to provide staff training, as well as more broadly to provide core systems. It has urged the FCA when considering the responsibilities of smaller firms to bear in mind that, even with the best intentions, they are not fully in control of the services they are offered by a range of third parties.

## 4.8 Competition in retail banking

*In January 2022 the FCA published its final report on competition in retail banking markets, building on its 2018 Final Report and 2018 Progress report. The final report explored trends in the retail banking industry in light of significant changes such as Covid-19, increased digitalisation and ring-fencing and considered what this has meant for competition and overall profitability.*

The Panel's view of the market is that digital players have taken advantage of new and more agile technology and systems, and larger players have more recently been able to capitalise again on their scale to improve their offerings to consumers in response, bringing overall benefits. It is, however, less confident about the future, with more traditional medium-sized providers already struggling to compete, and with likely consequences for further sectoral consolidation and even retrenchment.

## 4.9 Market volatility and the crisis in Ukraine

*Following the Russian invasion of Ukraine the FCA has published a range of guidance for firms on the application of sanctions, as well as points that firms should consider regarding their firm's operational and cyber resilience.*

As a result of the crisis in Ukraine the imposition of sanctions which were more complex and wide-ranging than any which firms have previously dealt with, compounded with concerns about cyber threats, mean that smaller firms were particularly reliant on clarity from the regulator as to what they needed to do and when. The Panel strongly recommended using all available channels to help firms understand their responsibilities and what they need to do – for example by using Dear CEO letters and other direct communications as well as making information available for reference on the website.

The extreme volatility in the markets during the crisis illustrated the need to address whether the requirement for depreciation notifications should be permanently removed and the Panel recommended that the FCA not only extend its temporary measures but should announce that it is removing the requirement altogether. Its view was that they have the opposite effect to that intended, in that they can alarm investors into selling in a falling market when this may not be in their best interests.

# 5



Helping the FCA  
understand the cost  
of regulation for  
smaller firms

## 5.1 Combined effect of regulatory change

Given the substantial number of major regulatory projects over the past year, and continuing into the next year, including the new consumer duty, the work on general insurance pricing practices and the work on consumer investments, the Panel has encouraged the FCA not to underestimate the combined requirements of regulatory change, both on the industry and, importantly, on its own resources as it seeks to become an outcomes-led regulator. It has urged it to be rigorous in its prioritisation to drive forward those, and only those, projects which demonstrably have a positive impact following cost-benefit analysis.

## 5.2 Cost of regulation

The Panel appreciates that there are costs, and benefits, involved in operating in a regulated industry. However, it has seen a substantial increase in the costs, both direct and opportunity costs, which are not linked to changes in business models such as entering higher-risk product sectors or poor behaviour by the firms in question. It has highlighted that the sheer volume and pace of change, including many overlapping initiatives, is placing undue stress on the firms involved and that the time and resource involved in providing evidence of compliance, rather than the actual compliance itself, is becoming unsustainable for some firms. It has urged the FCA to consider this as a competition issue if firms exit the market, and one which will affect the customers of those firms which do the right thing, but cannot continue as their margins are further eroded by unavoidable cost.

# 6



## Supporting the FCA's Transformation programme

*The markets which the FCA oversees are changing rapidly and it is transforming how it can operate to respond to this and prepare for future challenges. Its ongoing investment in its people, technology and capabilities, along with evolving its culture, will enable it to deliver its commitments. Some of the specific work involves becoming a data-led regulator, streamlining decision-making and governance, focusing on diversity and inclusion and developing a national location strategy.*

The Panel has expressed reservations about implementing a project as substantial as the FCA's Transformation work on top of major initiatives such as the new consumer duty, the compensation framework review and the work on GI pricing practices, at a time when every pillar of the regulatory framework is under review. It has recommended a more phased approach to change to ensure the day-to-day regulation of financial services continues to function effectively.

# Members of FCA Smaller Business Practitioner Panel

## Marlene Shiels

Panel Chair  
Chief Executive  
Capital Credit Union  
Until 31.5.22

## Andy Mielczarek

Panel Chair  
Chief Executive Officer  
Chetwood Financial Ltd  
Member from 1.5.22 and Panel Chair  
from 1.6.22

## Devesh Ambasna

Principal Partner  
AWS Advice

## Andy Chapman

Chief Executive Officer  
The Exeter  
Until 31.12.21

## Nicholas Coghill

Chief Executive Officer  
City Asset Management plc

## Gordon Dewar

Managing Director  
Salvation Army General Insurance  
Corporation (SAGIC)

## Gerald Grimes

Panel Deputy Chair  
Group CEO, Together Money  
Until 31.7.21

## Gemma Harle

Managing Director Mortgage and  
Financial Planning Network  
Quilter Financial Planning

## Gerry Mallon

Chief Executive  
Tesco Bank

## David Marlow

Chief Executive  
Nottingham Building Society  
Until 30.4.22

## Julian Parrott

Partner  
Ethical Futures  
Until 1.3.22

## David Perry

Managing Director  
FSB Insurance Services

## Sue Round

Deputy Chair  
EdenTree Investment Management  
Until 31.7.22

## Will Self

Panel Deputy Chair (from 1.7.22)  
Chief Executive Officer  
Curtis Banks

## Paul Smith

Chief Executive Officer  
Morses Club plc  
Until 22.2.22

## Lee Streets

Chief Executive Officer  
Evolution Funding Ltd

## Stuart Tragheim

Chief Executive Officer  
Holloway Friendly  
From 1.6.22

## Panel diversity statement

The FCA has agreed to adopt diversity targets for all the FCA's Independent Panels. These targets reflect those introduced by the FCA in April 2022 for the board and executive management of listed companies:

- At least 40% of each Panel are women
- At least one of the senior positions (Chair, Deputy Chair or equivalent) across the Panels is held by a woman
- At least one member of each Panel is from an ethnic minority background

The FCA has collected information on diversity across all Independent Panels. It is working to improve the data it holds and to be able to provide figures for individual Panels (where relevant) for next year's Annual Reports. Based on the information held as of 31 March 2022, this shows that across all the Panels:

- *36% of all Panel members were women*
- *43% of the senior Panel positions across all Panels were held by women*
- *7% of all Panel members were from a minority ethnic background*

The Panel supports the FCA in its objective of improving diversity in the appointments it makes to all the independent Panels.

## **Smaller Business Practitioner Panel**

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**FCA**

**Smaller Business  
Practitioner Panel**

