



Future Regulatory Framework Review
Financial Services Strategy
HM Treasury
1 Horse Guards Road
SW1A 2HQ

18th February 2021

Dear Sir/Madam,

FCA Smaller Business Practitioner Panel evidence to the Future Regulatory Framework (FRF) Review

The Panel appreciates that this is a key moment to review the UK regulatory framework and to examine the role played by the independent financial services regulators. The independent Panels are an important element of the regulatory governance structure, and as the FCA Smaller Business Practitioner Panel (SBPP) we wish to make some observations on the functioning of that structure, and on how it might work in the future. In particular we wish to focus on the points in Chapter 3 which concern the role of statutory panels in the regulators' policy-making process, and in particular on *Question 9, 'Do you think there are ways of further improving the regulators' policymaking processes, and in particular, ensuring that stakeholders are sufficiently involved in those processes?'*

The role of statutory Panels

Members of the statutory Panels are recruited to provide input from their sectors into the FCA's decision-making processes. The SBPP provides an insight into the views of the majority of firms – most of the thousands of firms regulated by the FCA fall into the smaller firms category and are regulated on a flexible portfolio basis, either by the FCA or jointly with the PRA. Panel members, however, are recruited on a personal basis, rather than representing their firm or sector. This enables them to speak more freely and to provide the FCA with the full benefit of their own experience, which may come from a variety of sources.

The Panels are a unique element of the governance process. Generally, Panel members see their participation as a way of 'giving back' to the industry and to the working of the financial services sector. They do this because they value the process and because they believe there is real benefit in challenging, advising and guiding the FCA to make robust decisions that will achieve the desired outcomes. Their firms are willing to share their people in order to advise the FCA in a critical but constructive way, in order to achieve good regulatory outcomes.

A fundamental difference between the work of the Panels and that of other bodies such as trade associations is that Panel members have signed confidentiality agreements, allowing the FCA to speak freely on subjects which may not yet be in the public domain. It is enormously valuable to the regulator, in the early stages of policy development, as decisions are shaped, and as communication strategies are devised, to have a panel of industry experts who are able and willing to advise on the practicalities of how a proposal may land, or how to communicate it in order to make the most impact.

As well as working with the FCA on its current priorities the SBPP has a role in raising issues which may not already be on the agenda, which it considers need to be more urgently prioritised, or examples of poor behaviour. Recent examples have included work on motor finance, particularly the use of the difference in charges business model, issues relating to

notification of senior managers taking temporary but long-term leave, and the need for more communication with smaller firms around Brexit.

Taking into account all these factors, the relationship of the SBPP and the FCA is valuable one. It serves the current FSMA objective of consulting practitioners on the extent to which the FCA's general policies and practices are consistent with its general duties. More broadly, it serves to provide input and evidence to the regulatory process in a way that is not otherwise available. There are elements of the relationship which could be addressed in order to work more effectively, but as a Panel we would caution that any changes must be carefully considered so as not to inadvertently lose any of the benefits of the current relationship to the regulatory process.

Options for adapting stakeholder engagement with policy-making processes

3.47 Adapting the contribution made by the existing statutory panels

We agree that that the panels provide effective representation of key stakeholder groups and make a valuable contribution to the regulators' policy-making functions. As described above, they are a unique part of the governance process. Smaller Business Practitioner Panel members are chosen after consulting with the relevant trade associations. Given the breadth of sectors in the industry, it is not possible to have representatives from every single sector, but an effort is made to ensure the main areas of business are represented, whilst keeping membership at a practical level.

Transparency

Transparency in itself is a concept which is balanced by that of confidentiality. Currently, due to the confidentiality agreements signed by the Panel members, the FCA is able to share freely with the Panels all but the most market sensitive of its policy work, in the knowledge that it will not give either commercial advantage to a particular firm or share with the industry ideas which might not be fully shaped or which in future may change. Conversely, Panel members are free to give opinions which may be based on their own personal experience but may not be aligned with the public views of their own firms or trade associations.

Not all of the Panels' work is carried out on a confidential basis. The Panels can, and do, respond to public consultations, carry out research which is published, and produce an annual report which summarises their key activity over the past year. The FCA responds publicly to the annual reports, and in doing so meets the requirements of FSMA to publish, in such manner as it thinks fit, its responses to the representations of the Panels.

If, however, the FCA were no longer able to consult on a confidential basis, it would lose an important sounding board, especially in the early stages of the policymaking process. In the view of the Panel, this would result in poorer regulation, as it would be harder for the regulator to anticipate the practical implications of its policies.

There is room for some further public articulation of the Panels' work. The Practitioner Panels in particular do not generally communicate externally with public audiences. Exceptions to this include the joint FCA-Practitioner Panel Survey, which is carried out regularly to survey the views of around 12,000 regulated firms on the work of the FCA and how it is meeting its objectives, and the annual reports.

There are also different types of transparency, and not all relate to public communication. The Panel does not generally communicate directly with HM Treasury, for example, but developing lines of communication could be explored.

There is also room to develop the feedback loop internally between the FCA and the Panel. The SBPP has raised a number of issues with the FCA, such as the issues with motor finance business models, where although their views were eventually taken into account, the Panel believes the FCA could have been more agile in dealing with the issue. The Panel would like to

see more explicit feedback on how its views have been considered, regardless of whether these views have been taken forward or whether the FCA has chosen to take a different route.

Accountability

Although the FCA has an obligation to consult the Panels, the Panels do not have an executive function, and are only one channel through which the FCA consults. They are a unique channel, and form an important part of the governance process, but they do not hold the FCA to account. Any decisions made by the FCA will take into consideration a range of inputs, of which the Panels are only one.

Holding the Panel Chairs, and by extension the other Panel members, to account for the actions of the FCA would change the nature of the relationship between the two bodies and change the nature of the Panels themselves. As the SBPP's role is currently articulated in FSMA, it is a consultative body. In order to be held responsible for the actions of the FCA, it would need to have executive powers, rather than advisory status, in which case there would be overlap with the role of the FCA Board. This would be a fundamental shift from the role the current Panel members were recruited to fill, and therefore the composition of the Panel would change. It is hard to see how a regulated firm would be able to reconcile the role of its Chief Executive, or other senior representative, with an executive role within the regulator. There would also be a substantial increase in resource required to support such roles, including preparation and briefing work, and time away from their principal occupation. It is therefore very unlikely that the Panel could continue in its current form, with members drawn from regulated firms, and an important part of the Panel's value to the FCA would be lost.

Panel Chairs have in the past given evidence to Parliamentary committees on specific topics, as part of a consultation process. There is no reason why this could not continue, making clear their advisory role to the FCA.

3.51 A new external, independent scrutiny function

We note the proposal for a new body to provide independent challenge to the regulators during the policy development process and to support public scrutiny of regulator proposals. But we agree that the practical obstacles to be overcome in making such a committee operate effectively are substantial. Our view is also that as proposed, the new body would have significant overlap with the function of the current FCA Board, and that as such it could provide less clarity, rather than more, in terms of accountability.

We would be happy to discuss any of these points in more detail.

Yours faithfully,

Marlene Shiels

Chair, FCA Smaller Business Practitioner Panel