

Annual Report

2018/19



FCA

Smaller Business
Practitioner Panel

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Chairman's foreword

In a year which has been dominated, both for the regulator and for the industry, by the uncertainties surrounding the UK's departure from the EU, the Panel is encouraged to see the FCA starting to tackle the wider issues of what regulation should look like in the future and actively addressing some of the big issues which will be key to achieving good outcomes-based regulation.

Clarity of regulation continues to be one of the Panel's key areas of focus, and this year we have seen the publication of the FCA's Approach documents, a welcome development which helps the industry to anticipate and plan for future regulatory needs.

We have encouraged the FCA to focus more acutely on prioritisation in order to make best use of its resources. The Panel again raised concerns about the volume and pacing of regulatory measures, particularly during the summer of 2018, when there was a high volume of activity relating to the banking and building society sector. We realise that for an organisation with such a wide remit it can be difficult to identify what not to do and to focus on a realistic number of priorities. We have encouraged the FCA to identify a smaller number of annual priorities in the context of a medium-term strategy with clearly-defined objectives, measured against outcomes. This should include a clear articulation of what the regulator wants to achieve, rather than prescribing specific activity.

Considering the area of proportionality and cost-effectiveness of regulation

we particularly welcome the FCA's commitment to reviewing the costs and benefits of regulation explicitly for smaller firms and we look forward to seeing the outputs and actions taken as a result of this work.

In developing its communications strategy the Panel encouraged the FCA to increase its efforts to clarify what smaller firms needed to do in order to prepare for Brexit and the increased resource in this area, via the website and other communication channels, was welcome.

Looking forward to the next year we urge the FCA to focus on the issue of information disclosure, which touches on several of the Panel's priorities, including innovation and culture. In the Panel's view consumers and firms are not well served by a disclosure culture which is too focussed on firms' regulatory and legal responsibilities rather than on good consumer outcomes. We intend to work with the FCA to look at how this might be improved.

I would like to take this opportunity to thank my colleagues on the Panel both past and present for the time and energy they give to the work and for sharing their expertise with the FCA. It has been a challenging year for the industry and the regulator, dealing with uncertainty and the changing dynamics of both financial services and the wider environment. We look forward to continuing to work with the FCA on the concerns of smaller firms in the year ahead.

Craig Errington
Chairman, FCA Smaller Business
Practitioner Panel

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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.

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Panel focus

The Panel's primary objective is to consider the impact of regulation with particular reference to smaller firms. Under that overall objective, this year it has continued to focus on the issues of proportionality and cost-effectiveness, volume and pacing of regulatory measures, communications and engagement and clarity of regulation.

2.1 Proportionality and cost-effectiveness

Costs of regulation

The cost of regulation for smaller firms continues to be substantial, and the Panel continues to encourage the FCA to target its resources in a way which most efficiently meets its objectives. For example, the Panel has emphasised to the FCA that a market study, such as the investment platforms market study, which finds a well-functioning market is a successful project and does not necessarily need to lead to regulatory interventions.

Reviewing costs and benefits of regulation for small firms

In its Business Plan for 2019/20 the FCA has committed to reviewing the costs and benefits of regulation for smaller firms as a cross-sector priority.

Identifying and monitoring the cost of regulation for smaller firms has been one of the Panel's key priorities for some time, so it is particularly pleased to see this as a priority for the FCA for the coming year. The Panel supports this work, but also emphasises there is a need to consider both the layering of multiple regulatory

initiatives and the opportunity cost in terms of activities which are missed or postponed. For smaller firms where there are only a few staff, this might mean that increased regulatory activity results in less client-facing, fee-earning activity, fewer resources available for innovation or less participation in industry events. Analysis which captured an element of these costs would be particularly valuable, and the Panel has helped the FCA to develop its survey in this area.

2.2 Volume and pacing of regulatory measures

The Panel noted, particularly during the summer of 2018, that there continued to be a substantial volume of publications requiring the attention of respondents. This is particularly the case in the banking and building society sector, where there were a number of concurrent and overlapping consultations, such as high cost credit and overdrafts, price discrimination in cash savings, and the review of retail banking business models. The Panel continues to stress that the FCA needs to recognise the importance of responses from all stakeholders and adjust its consultation processes appropriately.

2.3 Communications and engagement

FCA Communication strategy

Over the past year the Panel has commented on various aspects of the FCA's communication strategy, emphasising the need for specific consideration of the needs of smaller firms and the channels, such as Regulation Round-up and Live and Local events, which they find useful.

In particular, the Panel has encouraged the use of case studies by the FCA, including examples of good and bad practice.

2.4 Clarity of Regulation

FCA Approach to Regulation

When the FCA published its Mission in 2017 it committed to being more open and transparent about how it regulates and why it makes its decisions in the manner that it does. As part of this it committed to publish a range of documents that explains its approach to regulation in more depth. Over the past year it has published documents on its approach to supervision, enforcement, consumers, competition and authorisation.

The Panel has received regular updates on the FCA's work in publishing its Approach documents and appreciates the increased clarity these documents provide on the way the FCA addresses its objectives.

Authorisations

The Panel has been encouraged to see that progress has been made in the area of authorisations over the past year, using technology solutions to improve transparency and help to reduce frustration for firms undertaking the process. It has, however, raised the point that it can still take some time for Authorisations to approve senior managers, especially for dual-regulated firms which also require approval from the PRA. It has

encouraged the FCA to work actively with the Financial Ombudsman Service and the Financial Services Compensation Scheme to reduce the instances of phoenixing firms. Although there may only be a small number of firms attempting this it has serious consequences for those customers affected and risks reflecting badly on the reputation of the whole sector.

2.5 Cross-cutting topics

Fair pricing in financial services

In October 2018 the FCA published a Discussion Paper on the fairness of certain pricing practices in financial services, acknowledging that the judgement of when price discrimination is fair is not always straightforward. The FCA expressed a desire to take into account stakeholder views on its approach to deciding whether and how to act in the markets it regulates.

The Panel responded jointly with the FCA Practitioner Panel to the FCA's discussion paper on fair pricing in financial services. In their response they stated that they believe the FCA should start with the question of 'what is the right exchange of value?' between the customer and the firm, taking into account all the costs and benefits of the product over time, to establish what is a fair price. The Panels' view is that it is not necessarily in itself unfair that different customers pay a different price for the same product, but more work needs to be done on articulating the degree of differential value and what is and is not acceptable.

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Priorities

3.1 Brexit

The FCA provides technical advice to the Government and is working with firms to understand their plans to ensure there is a robust regulatory system in place on the day the UK leaves the EU. It has published a range of information over the last year, including instruments and guidance that would apply in the event the UK leaves the EU without a deal or an implementation period.

The Panel has encouraged the FCA to increase its efforts to communicate more with smaller firms, in as far as is feasible, about what they should be doing to plan for Brexit, and was pleased to see increasing coverage in Regulation Round-up and on the dedicated area of the FCA website. It has encouraged the FCA to be clear about the difference in regulatory arrangements for firms currently passporting into the UK, and UK firms passporting into other EU countries.

3.2 Innovation and Technology FCA and innovation

The FCA's Project Innovate aims to tackle regulatory barriers to allow firms to innovate in the interest of consumers, and includes a 'regulatory sandbox' providing support for innovative firms ready to test and an advice unit providing regulatory feedback to firms developing automated models to deliver lower cost advice and guidance to consumers.

The Panel discussed the development of the Advice Unit with the FCA, and recommended that it would be helpful for firms considering innovation in this area if further clarity could be given on the difference between advice and guidance. The Panel's view is that action in this area is likely to ramp up significantly as more and more firms turn to technology-based solutions.

Regulatory and supervisory technology

The FCA is exploring how technology could make it easier for firms to meet their regulatory reporting requirements and improve the quality of information they provide.

The FCA's work on regulatory and supervisory technology is appreciated by firms and the Panel supports efforts being made to seek innovative solutions in this area which could lead to real benefits for firms and consumers as well as for the regulator. The Panel has warned, however, that the FCA should bear in mind that the cost benefit analysis for smaller firms of introducing new technology will be different to that for larger firms.

It has cautioned against assuming that innovative technology solutions designed by, and for, larger firms will also be of benefit to smaller firms relative to the cost.

The Panel has also encouraged the FCA to explain more publicly the way it is itself using the data it collects in innovative ways, such as to improve

supervision processes, as this is likely to provide better inputs in future.

Cyber issues and operational resilience

The FCA's work on cyber resilience includes the use of Cyber Coordination Groups of firms to share best practice and a cross-sector survey published in November 2018.

Recommendations from the Panel over the last year include an explicit link with the Senior Managers and Certification Regime (SM&CR) clarifying the FCA's expectations on operational resilience, and supporting the use of Dear CEO letters as an appropriate channel for communicating the regulators' messages about operational resilience and cyber security if action is required. This applies equally to small firms as to larger ones. It has also emphasised the need for a proportionate approach to the requirements on smaller firms that balances their more limited resources against the potential impact of resilience and security failures of even some quite small firms on the wider industry.

Cryptoassets including crypto-derivatives

As part of the UK Cryptoasset Taskforce, the FCA is undertaking a range of activity to protect consumers from the risks that cryptoassets pose, while encouraging responsible development of legitimate distributed ledger technology and cryptoasset-related activity.

The Panel has highlighted that rogue firms are already aggressively targeting potential consumers in this area and supports the FCA's work to move quickly and proactively in order to warn the general public – and the market – of the potential for loss and fraud in the area of investment in cryptoassets.

3.3 Culture and governance Culture

Following work early in 2018 on the issue of culture the FCA has continued its engagement with the financial services community, working with thought leaders including members of all the Panels, to explore the themes and questions raised in its consultation work and to share examples of good practice. A key element of the FCA's work on culture is the implementation of the SM&CR.

Panel members have participated in several of the dinners held by the FCA with thought leaders from various sectors to engage on the issue of culture. The Panel appreciates the proportionate and consultative approach the FCA has taken in applying the SM&CR to smaller firms. It has encouraged the regulator to ensure it communicates with smaller firms that this initiative is not just 'business as usual', but represents a significant change in approach.

FCA Directory

The Financial Services Register (FS Register) provides a public record of the firms the FCA and Prudential Regulatory Authority (PRA) regulate and the individuals they have approved. The FS Register will continue following the extension of the SM&CR but will contain only individuals for specified Senior Manager roles. The FCA plans to introduce a Directory in 2020, a new public register and user interface which includes information on additional individuals in certain roles it does not approve.

Getting the public directory right will be a significant element of the new regime, and is as key for consumers who need to know about the firms they are dealing with as it is for the firms themselves which use it as an important resource. The Panel had expressed some concerns about the FCA's plans for introducing the Directory, but is now more satisfied that proposals to put safeguards in place to ensure the quality of the data available will give consumers and firms more confidence in the new service. The Panel has, however, continued to raise concerns about the implications for advisers not included in the Directory, such as advisers offering protection products. It has encouraged the FCA to make clear that such advisers are not excluded from the Directory because they are carrying out fraudulent activity or have been subject to enforcement.

Duty of care

In July 2018 the FCA published a discussion paper on the potential merits of, and alternatives to, a duty of care for financial services firms towards their customers.

The Panel has been working with the FCA Practitioner Panel and the Financial Services Consumer Panel on a way forward on a duty of care which works for consumers, practitioners across the industry, and the regulator. The Panels are continuing to engage with the FCA as this project continues.

Environmental, social and governance issues

Over the past year there has been an increasing interest in the areas of stewardship, which the FCA has observed may be driven in particular by increasing interest in how companies and investment firms manage environmental, social and governance (ESG) risks. The FCA has carried out a discussion on climate change and green finance and a consultation on a new duty for Independent Governance Committees (IGCs) to report on their firm's policies on ESG issues.

The Panel considered the regulation of firms' policies on ESG factors and on firms' stewardship policies, specifically in the context of the new rules for Independent Governance Committees, but also more broadly in the context of other initiatives such as the FCA's consultation on climate change and the

European Commission work on ESG and investment advice.

The Panel believes the first priority is for regulators to develop a coordinated approach, both within the FCA and with others who have responsibility, looking at areas including pensions, asset management and innovation. There is currently a great deal of new business activity in this area and for individual investors or members of IGCs it is not always clear what is on offer and what processes and safeguards are in place to ensure that investments meet their criteria. The Panel has noted that efforts to agree a taxonomy on sustainable finance at EU level are welcome as a basis for this but there is, however, still a risk that customers will be misled into buying products which have been 'greenwashed' by firms which do not have rigorous screening standards if there is not a coordinated approach at international level. The Panel has responded on these points to the FCA's discussion paper on building a regulatory framework for effective stewardship.

3.4 Credit and lending

Motor finance

The FCA reported in March 2019 on a review of the motor finance market. It found that the widespread use of commission models which allow brokers discretion to set the customer interest rate and thus earn higher commission, can lead to conflicts of interest which are not controlled adequately by lenders.

The Panel is very much encouraged that the FCA has thoroughly investigated the issues in the motor finance market that it has raised for some time, and were particularly interested that it has confirmed its concerns around consumer detriment relating to the difference in charges model. It has encouraged the FCA to move as quickly as is practical to implement remedies in this market, given the scale of the potential detriment to individual customers.

Mortgages Market Study

In March 2019 the FCA published its final report on its Mortgages Market Study, including findings on whether the competition in the mortgage market works for the benefit of consumers and an update on remedies.

The main areas of focus of the mortgage market study were considered by the Panel to be generally appropriate, but it made some observations about the mortgage landscape, in particular to highlight the importance of advice and protection in this sector. The Panel also believes it is important not just to focus on price as a metric. It has encouraged the FCA to develop measures of customer satisfaction which go beyond the cheapest option to establish a realistic view of whether the customer has made the right decision.

The Panel continues to stress the role of protection in the mortgage business and to encourage the FCA to focus on this as it believes mortgage protection is an important element in considering the customer's wider financial situation.

Consumer Credit Act Review

The FCA is required by legislation to arrange for a review of the Consumer Credit Act (CCA) 1974. The review must consider whether the repeal of CCA provisions would adversely affect the appropriate degree of protection for consumers. In March 2019 the FCA published a report on its views and decisions about the future of CCA provisions will fall to the Government.

The Panel has raised the issue of the Consumer Credit Act a number of times, for example in the context of the FCA's ability to influence the provision of information for motor finance, which is rigidly defined under the Act. The Panel considers the CCA should be incorporated into the FCA's rules as a matter of priority in order to achieve good consumer outcomes.

Credit broking

In September 2018 the FCA published a thematic review into the impact of credit broking remuneration models at the point of sale.

The Panel noted that the FCA has not found evidence that commission is a systemic or significant driver of consumer harm in credit broking, but encouraged it to look more closely at particular sectors, and to look at transparency in the total sales package.

Assessing creditworthiness

Following consultation, in July 2018 the FCA published final rules and guidance on assessing creditworthiness in consumer credit, including clarification of the distinction between affordability and credit risk and its expectations around firms' policies and procedures.

The view of the Panel was that this was a useful and positive piece of work. It was good for small businesses to understand the FCA's view of what good and bad practice looks like, as well as guidance on proportionality.

3.5 Financial Life Planning Pensions

The Panel has considered several issues in the area of pensions over the last year, including the FCA's Retirement Outcomes Review and discussion on non-workplace pensions. It has urged the FCA to avoid any remedies that take a piecemeal approach to dealing with issues within the sector. The Panel's view is that the key issue in saving for later life is not charges or specific product issues, but whether consumers are making informed decisions about their later-life choices. Consumers must have access to an appropriate range of products and services, including advice and guidance.

Pension transfers

In spring 2018 the FCA consulted on improving the quality of pension transfer advice, to provide greater clarity on the quality of advice expected by the regulator and with the objective of raising the standards of advice given. This took into account work carried out in relation to the British Steel Pension Scheme (BSPS) which identified significant issues with poor advice.

In its response to the consultation the Panel emphasised that it is keen to ensure that the problems arising from the BSPS situation do not happen again, but encouraged the FCA to take an approach to transfer advice that keeps as many options open to customers as possible and does not shut down channels of advice which people value and need. In regulating the area of transfers it emphasised the FCA must take into account the broader picture and not reduce access to advice for the broader market on the basis of individual events.

Investment Platforms Market Study

The FCA published the Investment Platforms Market Study Final Report in March 2019 along with a package of measures to help consumers who invest through investment platforms more easily find and switch to the right one for them.

In the view of the Panel the findings of the investment platforms market study were robust and realistic. The outcome of the study, which did not find widespread competition concerns, is welcome and the Panel has encouraged the FCA to evaluate carefully whether any further action would be in the interests of consumers or a good use of regulatory resources.

Retirement Outcomes Review

In June 2018 the FCA published its Retirement Outcomes Review, looking at how the retirement income market is evolving since the pension freedoms were introduced in April 2015. Remedies included proposals to require drawdown providers to offer non-advised consumers a range of investment solutions ('investment pathways') to help them choose investments that broadly meet their objectives.

Implementing the proposals from the Retirement Outcomes Review (ROR) will be a challenging process for the FCA. The Panel's view is that the disclosure remedies are generally helpful, but the issue of applying investment pathways to SIPPs is a complex one, and some smaller SIPP operators are likely to find the investment pathways difficult to operate. The Panel has advised that FCA should pay close attention to the costs and benefits of its proposals.

Retail Distribution Review and Financial Advice Market Review

In 2019 the FCA will start to review the impact of the Retail Distribution Review (RDR) and Financial Advice Market Review (FAMR) using indicators from a range of data. The RDR had far-reaching objectives to raise the quality of advice, increase adviser professionalism and reduce bias in product sales. It aims to publish its findings in 2020.

The Panel was involved in the Financial Advice Market Review and in the Working Groups which resulted from it. It is particularly supportive of the work done by the FAMR Working Group on rules of thumb and nudges, which was handed over to the Money Advice Service (and its successor) to implement. The Panel believes it is important that this work is included within the scope of the review as it was an important output from the FAMR project.

General insurance pricing

In October 2018 the FCA published a market study into general insurance and the key findings of its thematic work on the pricing practices of household insurance firms.

The Panel is encouraged that the FCA is looking at the whole customer journey, including intermediation, and recommended analysing the different elements separately in terms of value and claims experience.

Members of FCA Smaller Business Practitioner Panel

Craig Errington

Chairman
Group Chief Executive, Wesleyan

Paul Beasley

Chief Executive Officer,
Richmond House Wealth Management

Andy Chapman

Chief Executive Officer, The Exeter

Nicholas Coghill

Chief Executive Officer,
City Asset Management plc

Andy Golding

Chief Executive Officer, OneSavings Bank
From 01.11.18

Gerald Grimes

Head of Commercial Development,
PCF Bank

Richard Haas

Deputy Chairman
Chief Executive Officer, CapeView
Capital LLP

Gemma Harle

Managing Director, Mortgage
and Protection Network,
Quilter Financial Planning

Robin Keyte

Director, Keyte Ltd

David Marlow

Chief Executive,
Nottingham Building Society

Peter Minter

Chairman, Moneybarn
Until 31.01.19

Phillip Monks

Chief Executive, Aldermore Bank plc
Until 31.07.18

Ashley Rogoff

Founder and Managing Director,
Ashley Page Insurance Brokers Ltd

Sue Round

Chief Executive Officer,
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