



## **FCA Our Future Mission ABI response to Consultation**

26 January 2017

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### **About the Association of British Insurers**

The Association of British Insurers is the leading trade association for insurers and providers of long term savings. Our 250 members include most household names and specialist providers who contribute £12bn in taxes and manage investments of £1.6trillion.

### **Executive Summary**

The ABI supports the review of the FCA's Mission and recognises the scale of the challenge that the FCA faces in regulating 56,000 firms against its statutory and operational objectives. The FCA makes complex and subjective judgements on a daily basis and these judgements have a profound impact for society, the UK economy and regulated firms alike. Since its formation, the FCA has operated against a challenging economic and political background, and we acknowledge the professionalism and commitment of many of its staff.

In recognition of the scale of the task, and despite periods of tension between the FCA and insurers, the ABI has defended the FCA and its senior individuals to external stakeholders such as politicians, when it has come under attack publically, including in Parliament. Considerable progress has been made since the early years of the FCA which were marred by headline hunting and by an excessively adversarial approach. But there is still some way to go before we can be confident that most interventions have a uniformly positive impact for consumers and the financial services market, whilst delivering value for money.

We believe that the key to further progress is a rigorous focus on quality, operational efficiency and consistency, with good consumer outcomes prioritised over theoretically perfect transactions. Andrew Bailey has highlighted a gap between interpreting the FCA's broad objectives and its annual business plan. There is a similar gap for regulated firms between interpreting the FCA's broad regulatory principles and the extensive and evolving detail of regulatory rules, guidance, communications and interventions. Our members have seen examples of inconsistent decision making, departments operating in silos, poor adherence to timescales, inaccurate impact assessments and proposals unsupported by evidence that exacerbate this gap. Going forward we believe that by adhering rigorously to principles of simplicity, clarity, efficiency and consistency, it will be possible for this gap to be reduced, to the benefit of all.

We welcome the opportunity, as the representative body of the UK insurance and long-term savings industry, to share our views on how we believe the FCA can define its Mission and deliver the necessary change in culture. In terms of context, we question whether the

conduct issues highlighted in the Mission document, which vary by sector, represent a market wide crisis of similar scale to the 2008 prudential crisis. Our key asks are:

## **1. The FCA's Mission should be forward-looking, collaborative and clearly defined**

- The FCA should embed a collaborative and forward-looking approach, focussing on encouraging good outcomes for consumers in consultation and partnership with industry. This should build on the positive and collaborative approach we have seen from within the industry with initiatives such as the Pensions Dashboard, approach to renewal transparency, and making retirement language clearer.
- We agree that the FCA's approach to its competition objective is not well understood. It has not helped that competition reviews have been conducted by both the Competition and Markets Authority (CMA) and the FCA in the insurance field, with different approaches evident. As an example, the procedural rigour around scoping and transparency of timescales for the CMA's work on motor insurance was not always similarly evident for the FCA's work on general insurance add-ons.
- The jury is still out on the experiment of combining competition and conduct power in the same body. For the experiment to succeed, the FCA needs to communicate a clearer distinction between competition issues and conduct issues. Many of the FCA's interventions in the insurance and long-term savings markets have focused on disclosure remedies to boost shopping around and switching rates, but this does not represent a panacea for mitigating perceived deficiencies in competitive markets. Recurrent switching can represent a poor consumer decision, for example with pensions, private medical insurance, and pet insurance. A relentless focus on switching also further incentivises short-term new business capture through a focus on headline price, risking volatile underwriting cycles and hollowing out of cover.
- Given the strategic challenges for the UK resulting from the EU referendum, we believe that the FCA should work closely with industry, to play a part in ensuring that the UK regulatory regime is appropriate and supports a competitive market. This should mean reflecting on both the direct impact on financial services from the referendum result and potential changes to the regulatory approach, and the impact that could occur on other sectors of the economy, and vitally, on consumers.
- We acknowledge why the FCA feels it cannot condone specific behaviours as representing 'best practice'. However, we feel that a more forward-looking approach could be better supported by utilising and sharing examples of good practice, such as with annex 2 in the Fair treatment of long-standing customer in the life insurance sector Thematic Review: TR16/2 (the Legacy review), which sets out some examples of good and poor practice.

## **2. Regulatory certainty for long-term contract providers**

- The Mission document highlights the challenges associated with regulating long-term products. We have seen an increasing and destabilising trend of interventions by both

Government and regulator which undermine the certainty of contract. This is especially the case for the remedies imposed on exit-fees following the pension freedoms. Over the medium term, willingness to overturn contractually agreed terms will act as a disincentive to firms operating in the long-term savings markets.

- Connected to the regulation of long-term contracts is the challenge of applying today's standards and expectations to contracts and products which were often manufactured and distributed decades ago. Whilst we accept the guidance resulting from the Legacy review as an appropriate framework for moving forward, we do not accept that these expectations were originally clear, nor had firms been historically and consistently supervised to these standards. There is a distinction that the FCA has yet to draw between regulatory action against clear breaches of the FCA's Handbook and principles as set out at the time, and action driven by judgements based on hindsight.
- On this question the Legacy Review Feedback Statement (FG16/8), although providing a framework, has not adequately provided clear principles regarding future interventions, not least because it described non-binding guidance as being potentially relevant for an enforcement case. We are of the view that a set of principles is needed regarding retroactive action, to make explicit the long-term role of regulatory principles, rules, guidance, supervisory strategies and other FCA communications, as well as product providers' own terms and conditions. This will provide the clarity needed so that the FCA and industry can be satisfied that interventions are not undertaken on a retrospective basis.

### **3. Clarity on the duties and responsibilities of providers and intermediaries**

- Insurers remain challenged by the blurring of responsibility between carriers and intermediaries, which has been further highlighted by the recent proposal for product providers to pay FSCS levies for intermediary failure. This could result in insurers having to fund the failure of intermediaries from different sectors. This blurring does not always reflect market realities and adds cost due to duplication of oversight responsibilities. We would welcome a clear statement of the duties of intermediaries and product providers to the end customer, based upon an assessment of which party is best placed to execute these responsibilities to the benefit of the consumer.
- For example, the Thematic Review of delegated authority: outsourcing in the general insurance market (TR15/7) identified a lack of appropriate oversight and monitoring of the delivery and performance of products by providers. Whilst the Review did not introduce any new regulatory requirements, its publication represented a clear change of approach from the FCA, placing a greater onus on risk carriers to proactively monitor the performance of intermediaries, which are both directly authorised and have considerable influence over the way the market functions. It is unclear what interventions the FCA would consider appropriate short of exiting a commercial arrangement, which may not immediately be possible due to the duration of the contractual agreement in force. Furthermore, shifting the accountability burden further towards insurers may not create the right incentive for intermediaries.

#### **4. Greater co-ordination and consistency**

- The FCA is a large organisation with significant scope. It operates in a broader political economy where other stakeholders may have overlapping roles, as identified in section 6 of the Consultation. We welcome the closer working relationship that has developed between the FCA and The Pensions Regulator (TPR) and would like to see this built upon through greater co-ordination between the FCA and other stakeholders, particularly the Prudential Regulation Authority (PRA) and Department for Work and Pensions (DWP), but also bodies such as the Financial Ombudsman Service (FOS). With regard to the DWP, closer alignment is particularly important in terms of the treatment of pensions where misalignment between approaches to trust and contract can occur, for example with exit charge caps.
- There is scope for the FCA to more efficiently co-ordinate the activities outlined in its intervention framework. We have seen examples of multiple workstreams across Policy and Supervision teams, looking repeatedly at issues such as general insurance renewals and annuities, sometimes based on differing regulatory approaches. It is by no means certain that the re-structure announced in the light of the Davies review is best designed to ensure co-operation. The weight of the internal committee structure may also be acting as a barrier between those doing the fieldwork and higher levels of the FCA. Thematic and other reviews have been prone to delay and poor communication. This includes changes to complaints rules where key information was published in a quarterly update, and on renewals transparency where a lack of clarity on what was meant by the date of implementation presented challenge. For Thematic Reviews, firms involved can feel disengaged from the process after initial contact, while firms outside the review process have very little visibility or engagement. The Fair treatment of long-standing customer in the life insurance sector Thematic Review: TR16/2 (the Legacy review) is a good example of where this has been felt to have happened. This is exacerbated by the concern that implementation timescales are generally far tighter than those allowed to undertake the actual review process itself. We are also concerned by the trend towards 'market-wide supervision', which lacks the transparency of formal reviews.
- Insurers have commented on the value provided by a mutually respectful and stable supervisory relationship and that it directly facilitates better outcomes. These relationships do exist and add value, however there are also issues with high levels of supervisor turnover for some firms, a perceived lack of data sharing between the PRA and FCA and lack of access to a supervisor for smaller firms. We believe that stability and quality in the supervisory relationship should be a consideration for the Mission, as it is key for efficiency and outcomes.

#### **5. Regulatory scope and perimeter**

- We agree with the FCA's approach to prioritising intervention where unregulated entities are involved, acknowledging the FCA has to effectively manage limited resources. Unregulated activity and connected fraudulent activity, scams and sub-standard treatment of consumers is a significant issue, especially in the long-term savings market. We support the FCA taking a strategic approach with industry, FOS and relevant law

enforcement agencies to tackle threats that emerge from outside of the regulatory perimeter.

- However, we consider that there is a risk that as a result of the FCA's interpretation of the Senior Manager's Regime, regulated groups need to assume that all of their activities are regulated, whether or not they fall within the perimeter. This creates a risk of scope creep for firms and the regulator alike.

### **Other points and comment**

While all customers must be treated fairly, we agree that the FCA should apply its consumer protection activities with a greater focus on vulnerable consumers and believe that the link to low income is appropriate. The difficulty lies in making this work efficiently and sensitively, and in a way that ensures that other consumer segments do not receive less focus. We are of the view that approaches to vulnerability should remain flexible, especially in terms of improving the shared understanding of what defines vulnerability and the extent to which differentiated levels of customer treatment are expected. As with financial exclusion, this is an issue for society as much as firms and regulators and we urge a collaborative approach. Taken by itself, regulatory action cannot deliver a good outcome for the vulnerable in society or for the excluded, and a joined up approach with other Government authorities is required.

We acknowledge that a review of the FCA Handbook is likely to be beneficial, but this must be joined up with potential change following the EU Withdrawal Bill which will require significant review of the Handbook. The FCA faces a difficult choice between taking conduct rules from the EU – inevitably a compromise between differing perspectives on consumers' needs - and developing a conduct regime tailored to the needs of British consumers. We would also like to see consideration of how the Handbook could better reflect the digital environment we live in, enhance the clarity of the language and terminology it uses, and more clearly map out Handbook requirements to facilitate more efficient compliance, especially for disclosure.

In the context of the ongoing uncertainty that the EU referendum result has caused for firms, we would caution against using the Mission as the basis for substantial change and re-organisation that results in increased activity. We welcome the aims of the review and look forward to seeing the final Mission, but note that above all else firms will benefit from a period of regulatory and political stability, to enable them to focus on the strategic challenges that lie ahead.

## Consultation questions

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

- 1.1. The high level definition of a well-functioning market is broadly right.
- 1.2. Markets do not exist in a vacuum, and the conditions that the FCA outline do not include external factors which are often powerful influences on market function and the conditions outlined in the Consultation. For example, national and global macro-economic trends, monetary policy, political events, such as the EU referendum, and the availability of capital. These factors all affect demand and supply.

### **2. Do you think our approach to consumer loss in well-functioning markets is appropriate?**

- 2.1. We agree that no market can guarantee consumers will never lose out, or that no firm will ever fail and agree with the example reasons given in the Mission document for why an individual consumer can still lose out in well-functioning market.
- 2.2. We would note that the example reasons do not however include instances where the consumer themselves can facilitate their own loss, such as through moral hazard or through 'present bias'. A further category could therefore include individual customer negligence or conscious poor decision making. This could include where a customer consciously makes a choice which goes against appropriate advice or disclosure. This is a significant current issue, especially since the pension reforms. Examples include the increased emergence of 'insistent clients', instances of consumers ignoring risk warnings and losing valuable guarantees and paying too much tax, and consumers seeking to overturn providers who block unsuitable and fraudulent transfers. A further example could include where a consumer chooses to deliberately purchase a cheaply priced "no frills" general insurance product which does not provide the cover they need.

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

- 3.1. We accept that the FCA faces a challenge in achieving a balance between enforcing market discipline through regulatory intervention and a consumer's individual due diligence. Disclosure of key features is a good example of where information asymmetries may be removed on the surface, yet a lack of financial capability or willingness to spend time engaging with a particular disclosure on the part of the customer may render the intervention redundant.
- 3.2. We accept and support the preferred forward looking approach as outlined in the Mission document, seeking to prevent detriment in the future, recognising uncertainty and individual consumer due diligence, and that some sub-optimal outcomes occur is inevitable. The forward looking approach could seek inspiration from the FCA's Smarter Consumer Communications work. We support this

collaborative approach where regulator and industry can engage to overcome shared challenges.

**4. Do you think the distinction we make between wholesale and retail markets is right? If not, can you tell us why and what other factors you believe we should consider?**

4.1. We agree with the distinction set out in the Mission document – with the reservation that the position of smaller companies is ambiguous. At the very small end of the range, these markets can be similar to retail markets.

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

5.1. We support an approach which measures the effectiveness of the FCA against whether it delivers better outcomes for consumers, in a proportionate way.

5.2. We are concerned that the FCA's approach to measuring performance with regard to markets and competition is predominantly focussed on levels of shopping around, switching, and therefore price. We recognise that shopping around and switching in an efficient manner is one indicator of a well-functioning competitive market. But wider consideration of what represents value, quality of service, convenience of access and reputation are also important and legitimate drivers of consumer behaviour. In the insurance and long-term savings markets, good consumer outcomes are often dependent upon holding and investing in a product for the long-term. The FCA should carefully consider this when assessing competition.

5.3. Whilst we accept that the FCA's role with regard to the wider competitiveness of UK financial services is a question for government, we believe that the FCA should pay regard to the role it plays in impacting the competitiveness and attractiveness of the UK as a place to do business. This is more critical than ever in the context of the outcome of the EU referendum, particularly as the FCA is seen as a leading figure in terms of progressing conduct regulation globally.

5.4. Measuring the cumulative impact of conduct regulation on regulated firms is difficult, but we believe that development of a qualitative framework to capture this would be beneficial and informative. The approach to measurement has to be transparent, as far as possible, so that the FCA is genuinely accountable. We acknowledge however that there is a challenge in delivering complete transparency, for example where it may impact market performance.

**6. Do you think the way we interpret our objective to protect and enhance the integrity of the UK financial system is appropriate? Are there other aspects you think we should include?**

6.1. The approach to interpreting the objective to protect and enhance the integrity of the UK financial system is largely appropriate. The interpretation must have the consumer at its heart and be forward looking.

6.2. We agree with the Consultation assessment that good regulation has a positive impact on growth and competitiveness. As we highlight in answer to question 5, the FCA should reflect on this in the context of the EU referendum result. The FCA will be playing a critical role in the years to come, and will need to focus on coherent and timely implementation of change resulting from the referendum result.

**7. Do you think our intervention framework is the correct one?**

7.1. It is helpful to have a high level overview of the FCA's intervention framework and in addition to the answers below, we refer to our comments in section 4 of the executive summary.

7.2. Since 2013, the FCA has published 38 major documents, including Thematic Reviews, Market Studies, Consultations and Policy Statements directly relevant to insurers. Twelve Thematic Reviews have been undertaken in relation to general insurance, despite the Mission document describing general insurance products as lower risk<sup>1</sup>. This is a significant volume of regulatory intervention in a relatively short period of time. Whilst we are not arguing that no change was needed, such a degree and frequency of intervention can sap bandwidth that could be dedicated elsewhere, for example on innovation and improving the customer experience. We would urge an approach which is proportionate, better targeted and based on a transparent assessment of market wide and systemic issues, versus issues associated mostly with a small number of firms.

7.3. We believe that there is room for the FCA to enhance how it implements its intervention framework, especially with regard Thematic Reviews and Market Studies:

**Timing** – Thematic Reviews and Market Studies have proven to be far too lengthy and the timelines are often imprecise and unclear. We believe that the FCA should publish transparent and realistic target timescales for its work at the outset and provide updates if these subsequently change. With Market Studies, the period from publication of Terms of Reference can create uncertainty, resulting in firms re-considering their own initiatives where they believe that the FCA will later seek to intervene anyway. For Thematic Reviews, the lengthy timelines, mean that the issues that the FCA may interview a firm about at the beginning of the process have evolved, or been dealt with, by the time the findings are published. The Legacy review was first announced in the 2014/15

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<sup>1</sup> Mission Review Consultation, Page 13

FCA Business Plan, and its findings were not published until March 2016 (not accounting for additional Consultation on non-Handbook guidance, the Final Guidance for which was not published until December 2016).

In addition, we would welcome a much more sensible approach to the setting of implementation timescales and deadlines for industry. Regulated firms are often complex entities with multiple businesses and systems. This means that the timescales given for data requests and implementation of policy measures can be highly challenging. An example of this was the Policy Statement on improving complaints handling (PS15/9), which included unrealistic timescales to implement complaints reporting rules changes. An industry request for an extension was initially rejected, but subsequently accepted and announced through a quarterly update. This created additional confusion, and came long after firms had reallocated resources to systems changes. A frequent casualty of unrealistic implementation timescales is shortened testing programmes, which actually increases risks to consumers.

**Communication and firm engagement** – Member firms have told us that they have not heard any feedback from the FCA during the Thematic Review process, despite being promised it. This includes firms not receiving any feedback at all until the day before findings were published, including those firms that had been referred to enforcement. This is unfair, creates uncertainty, and may prevent firms from taking proactive action to rectify issues as the review is underway. This feedback contrasts with the positive accounts provided by member firms that have engaged with Project Innovate.

**Factual accuracy** – Some letters issued to firms have contained factual errors. While firms have a right of reply, it is critical that any concerns about errors are engaged with. The assessment of a firm as part of the Thematic Review process must be accurate to ensure fairness, credibility and robust findings.

**Consistency** - Firms involved in a Thematic Review will have direct feedback from the FCA setting out actions at the end of the process, to which firms respond with their own action plans. Firms outside of the Thematic Review process, who may wish to reflect upon more detailed findings than those published may not get the same level of supervisory access, which creates a risk of inconsistent outcomes.

## **8. Where do you believe the boundary between broader policy and the FCA's regulatory responsibility lies?**

8.1. We support the FCA being clearer with consumers and industry as to where its responsibilities for particular public policy challenges begin and end. This is not just a responsibility for the FCA as Government and other stakeholders, both in the public and private realms, need to be clearer about where the responsibilities for setting standards lie.

8.2. Boundaries will of course lie in different places dependant on the challenge or issue in question, and they should remain flexible to account for changing circumstances. But, where assessments of boundaries do change, this must be clearly communicated to consumers and to firms.

8.3. The work on access to Financial Services is a good example of where the FCA has raised questions that extend beyond its scope, but for which the route to a public policy solution is unclear. However, we believe that it is an area where the FCA can play a discreet role in enabling firms to offer products to consumer segments who may currently have difficulty with access. Supporting the development of Big Data and innovation for example is one way the FCA can provide support. The FCA can also help by taking a holistic views of its impact on markets when regulating, assessing whether an intervention in one part of a market may lead firms to withdraw or stop innovating in another part.

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

9.1. Differential pricing and cross subsidy are not only features of financial services but are commonplace in various other markets, such as retail. Cross-subsidy is usually the result of firm competition to win customers, and one of the results is price differentiation. The challenge for the FCA is in assessing whether this produces an overall good outcome for customers, and whether, as the Mission document highlights, intervention is justified where it is considered to be detrimental. In this context, once cross-subsidy has become a feature of a market, for any one firm to pull back from this approach would almost certainly lead to a significant loss of market share. In addition, we would note that any form of collusion on price would be illegal under competition law, and clearly warrant intervention.

9.2. However, in terms of the FCA's approach to intervention, it is not clear from the document what the approach is, other than reserving the right to make a judgement on price discrimination and cross subsidy. We support the FCA being transparent on how it approaches and makes judgements, but we urge that it is proportionate and based on close engagement with industry. The unintended consequences of intervention could have negative and unforeseen impacts on consumers and industry.

9.3. In terms of considering the boundary between the FCA's regulatory responsibilities and the activities of other organisations, this is an area where the FOS is exerting influence and where a more strategic approach is required across the two organisations. Some firms have raised concerns that FOS adjudication on pricing complaints can be inconsistent and that they are not always aware of the FCA's work in relation to pricing. We would urge the FCA and FOS to work closely together to ensure a more aligned approach.

## **10. Does increased individual responsibility increase the need and scope for a greater and more innovative regulatory response?**

- 10.1. The need and scope for greater and or a more innovative regulatory response will, to a large extent, depend on where increased individual consumer responsibility is occurring.
- 10.2. The document notes that pensions is an area where increased individual responsibility has occurred against a backdrop of added complexity. In this context it is right that the FCA looks to take a greater role in assessing the need for regulatory change to reflect a drastically different policy environment, where firm and consumer behaviours were, and to an extent remain, untested. For this reason we have been supportive of the Retirement Outcomes Review and Financial Advice Market Review, including the setting up of the Advice Unit for example, as approaches used to assess a changing retirement market and remedy concerns in the advice market.
- 10.3. Consideration of the products involved has to form a part of the FCA's thinking as well as the level of individual consumer responsibility. Clearly a mortgage is more complex and of higher value than a basic current account, for example.
- 10.4. We agree with the document's assertion that the FCA has a role to play in making it clear to consumers what protections they are, and are not, afforded. Consumers are more likely to own the decisions they make if they are aware that there is some level of risk associated with it. It is therefore critical that everybody plays a role in making consumers aware of where the boundaries of responsibility lie. We would go further to suggest that an approach to making boundaries clear should be coherently shared by the FCA, FOS and firms.
- 10.5. In addition, we support the FCA highlighting the need to focus on improving financial capability, which will help improve consumer capacity and confidence in taking good financial decisions. The FCA should seek to play a supporting role in the Government's proposals to create a Single Financial Guidance Body geared to improving financial capability.

## **11. Would a Duty of Care help ensure that financial markets function well?**

- 11.1. We agree that it is unnecessary to establish a 'Duty of Care' rule and agree with the considerations outlined in the Mission document. The FCA's regulatory principles and detailed Handbook establish a framework designed to protect consumers and an obligation on firms to treat customers fairly. This framework has been strengthened by the implementation of the Senior Insurance Managers' Regime, which further enshrines principles of individual accountability. Since 2013 the FCA has also used enforcement action to back up its principle of 'credible deterrence' against certain insurers and intermediaries, as well as a number of individuals. Substantial and life changing fines have been enforced against a number of individuals in executive teams who oversaw systemically poor consumer outcomes and were deemed to have breached FCA regulatory principles.

11.2. Consumers also have access to appropriate redress due to the FCA's work. A number of mandatory and voluntary redress schemes have been overseen by the FCA where issues of systemic poor customer treatment had been identified, resulting in the return of millions of pounds to consumers. In this context, senior management and Board members are already well aware of the potential personal impact, as well as that to the wider business, if they do not consider consumer outcomes when making business decisions. Finally, individual complaints by retail consumers can be adjudicated by the FOS. The service is widely used by retail consumers at no cost and insurers abide by the judgements made by the ombudsmen.

## **12. Is our approach to offering consumers greater protection for more complex products the right one?**

12.1. This is generally the right approach, but it needs to be proportionate and focussed on good consumer outcomes, rather than just complexity. For example, it is important that the regulatory assessment takes account of the end client, appreciating that business to business transactions are very different to business to consumer.

12.2. Pursuing an overly risk-averse approach to more complex products may mean that customers who would have benefited from them lose out because they are barred, or dis-incentivised from doing so. This could lead to issues around access. In addition, such an approach can lead to firms being incentivised to only design and manufacture less-complex products, again seeing customers who may have benefited from a perceived complex product lose out.

12.3. An approach which focusses just on complexity can fall into the trap of perceiving all products as complex, especially if complexity is approached from the point of view of the consumer. Just because a product is complex, does not necessarily mean it poses more risk. This has been the experience with recent EU regulation which seemingly categorises all products as complex, based upon the presence of specific underlying investments. A side effect of this is that it makes diversification more difficult, increasing a customer's exposure to volatility.

12.4. Clearly, the majority of financial services products will be seen by most consumers as complex, but this does not mean that all consumers will get a bad outcome from them. We urge a proportionate, flexible and outcome focused approach.

## **13. Is our regulatory distinction between consumers with greater and lesser capability appropriate?**

13.1. We do not believe that the document offers a 'regulatory distinction' as such, other than stating that financial capability and lower income, connected to vulnerability, are factors when considering intervention and levels of consumer protection. We agree with the statement that those who are viewed as vulnerable should always be kept under review.

13.2. We agree that an approach to regulatory intervention based on assessment of consumers on the basis of their levels of financial capability is a sensible one. However, we need to be clear about what constitutes greater and lesser capability, and be clear that greater capability can be accompanied by risk as well. For example, the more capable may shun advice on the basis they think they do not need it when they do.

13.3. Ultimately, the focus for us all has to be on improving levels of financial capability, particularly as average levels across the whole population are relatively low. In the long-term, this will be the best way to ensuring that consumers make good and informed decisions.

**14. Is our approach to redress schemes for issues outside our regulatory perimeter the right one? Would more specific criteria help firms and consumers?**

14.1. We agree that the approach to redress schemes outside of the regulatory perimeter is appropriate.

**15. What more can we do to ensure consumers using redress schemes feel they are receiving the appropriate level of personal attention?**

15.1. The FCA has a role to play in ensuring that consumers are given factual and precise information about redress schemes and how they should go about investigating whether they are due redress. This is critical to ensure that consumers are not left disappointed after following inaccurate or misleading information, or left with reduced redress by using claims management companies. The National Audit Office found that 80% of PPI complaints to the Ombudsman were channelled through claims management companies, and that of the £22.2 billion in redress paid out between April 2011 and November 2015, between £3.8 billion and £5 billion was received by claims management companies.<sup>2</sup> The FCA should stay alert as to whether this approach from claims management companies remains fair to consumers, or whether closer regulatory response is required.

15.2. The FCA should be prepared to challenge inaccuracies and misperceptions where they arise and may mislead consumers, as well as highlighting the most effective way for them to acquire redress where due. Where redress is due, it should be ensured that it is delivered in a fair and timely way. For voluntary redress schemes, it may be possible to drive greater consistency if the FCA were to develop and publish some minimum standards of practise.

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

16.1. We agree in principle that vulnerable consumers may warrant greater levels of protection and require a more paternalistic and interventionist approach. The difficulty for insurers lies in identifying vulnerable customers sensitively and

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<sup>2</sup> <https://www.nao.org.uk/wp-content/uploads/2016/02/Financial-services-mis-selling-regulation-and-redress.a.pdf>

unobtrusively, and in finding efficient and sensitive ways of overcoming this. It is therefore essential that the FCA keep what constitutes vulnerability under review, and understands that it is a significant challenge to identify what constitutes vulnerability. FCA and industry need to work together in partnership with charitable bodies and others to consider and agree clear indicators of vulnerability, and to ensure that best practice is shared across industry.

16.2. The Consultation highlights low income as an indicator of vulnerability. There could be a risk that products aimed at supporting consumers on low incomes could become less attractive to design and distribute if regulatory controls around them increase, on the basis that they are targeted at consumer segments which are considered vulnerable. Such an approach could run counter to the FCA's focus on fairness and access. In addition, protecting vulnerable consumers must be achieved proportionately, and must not come at the expense of restricting access to products for non-vulnerable consumers. Finally, it should be noted that for many products insurers may well not know what a consumer's income level is.

16.3. The Consultation also highlights low financial capability as an indicator of vulnerability. As we suggest in answer to question 13, it is therefore critical that the focus for us all has to be on improving levels of financial capability.

16.4. Enhancing support for vulnerable consumers is an area where collaboration between the FCA and industry can help deliver positive results. The ABI and BIBA launched an industry Code of Good Practice to help insurers and insurance brokers recognise and help potentially vulnerable customers, including the 'older old', who may need extra support when renewing motor and home insurance policies. In addition, the ABI is currently working with members to develop a tool kit to share best practice in supporting vulnerable customers at retirement. We welcome the engagement that we have had with the FCA in relation to these initiatives.

## **17. Is our approach to the effectiveness of disclosure based on the right assumption?**

17.1. We agree that good disclosure is essential to informing consumers and helping them take good decisions. Yet as the Mission document highlights, it is notoriously difficult to get right, and often limited as a tool for correcting specific perceived market failures. This is both a result of lengthy and complex disclosure itself and poor financial capability.

17.2. The FCA's Smarter Consumer Communications work has been welcome. This helps spread best practice and ensures that the FCA's Handbook is fit for purpose in a world where the way consumers access and digest information is changing. Many consumers interact on an omni-channel basis, for which changes to individual documents are likely to have a limited impact.

17.3. However, part of the problem is caused by the volume of disclosure requirements included in the FCA Handbook, many of which originate from EU Directives, such as PRIIPs. Whilst firms can innovate in how they communicate with customers beyond

what is set down in the Handbook, this has to be undertaken alongside, and on top of, what is required and mandated by regulation. We note that this is not just requirements emanating from the FCA, but in some circumstances from the FOS and FSCS to. This creates a tension between providing smarter communications, and the need to meet minimum regulatory requirements on what must be communicated. We are also not convinced that the FCA disclosure rules are geared to allowing communications to be adapted for use with digital channels and we welcome that the FCA intends to look at this issue in 2017.

17.4. Firms invest significant resource in both assessing and enhancing the quality of their disclosure materials, and the customer journey. As the Mission document notes, this can have significant cost for firms. This cost is amplified when disclosure rules and expectations are changed on a regular basis. Improving disclosure is an area where we see value in collaboration between the FCA and insurers, and potentially where guidance is required to help clarify where insurers are being over cautious when it comes to exploring new ways of communicating with customers.

**18. Given the evidence, is it appropriate for us to take a more ‘interventionist’ approach where conventional disclosure steps prove ineffective?**

18.1. As we have made clear in answer to question 17, we accept the limitations of disclosure as a regulatory tool. The FCA should however entertain that it may be the specific disclosure remedy itself which is unsuitable, and that other disclosure or transparency tools may be more effective. Without accepting that the remedy itself may be defective, and testing this possibility, the FCA risks crossing a line where it is trying to enforce a vision of how it thinks consumers should behave in particular markets, yet where the consumers themselves stubbornly behave differently.

18.2. The Mission document states that the FCA is not a price regulator, yet highlights product restriction and price constraints as being potential tools to be used where the FCA has assessed that previous efforts to improve disclosure and transparency have failed. We would consider these options to be at the extreme end of the spectrum in terms of intervention. The FCA would need to make a powerful case for their use, assess carefully the risk of unintended consequences, and they should only be considered as an absolute last resort.

**19. Do you think our approach to deciding when to intervene will help make FCA decisions more predictable?**

19.1. We fully support the FCA being more transparent and predictable in its approach to interventions. It is critical that industry fully understands why the FCA chooses to intervene in a particular market, and why it chooses to do so in a particular way. Adhering consistently to clear procedures is absolutely essential. However, the FCA has itself to wish to be more transparent and predictable, because there are real limits to regulatory transparency. For example, there may be market consequences associated with major announcements.

19.2. We would welcome clarification on how the FCA intends to be more transparent when it comes to undertaking Thematic Reviews in particular. The current process is undertaken almost completely in secret between the firms involved and the FCA, until the point of publication. We appreciate that the FCA is rightly cautious with regard to potentially market sensitive information and announcements. However, industry can feel overly distant from the Thematic Review process, including both those involved and those not involved. We have highlighted some concerns in this area in our answer to question 7.

**20. Are there any other factors we ought to consider when deciding whether to intervene?**

20.1. FCA interventions are often preceded by data requests to firms. As an organisation that collects and assesses a significant amount of data, we understand its value, but also the pressure it can put on firms, especially the often short and tight timescales. We would suggest that where a data request is being considered, that the FCA carefully consider whether it is entirely necessary, how it will be used and whether an assessment could be made in other ways. For example, by utilising existing data sets, research or information sharing with the PRA. We would also call on the FCA to be clearer about outlining the purpose for the collection and ensuring that once it is collected, it is analysed and used for the purpose set out.

20.2. At present the cost of regulatory initiatives does not seem to be a major factor in the FCA's thinking. In our view, the cost benefit analysis should be critical to the FCA's assessment of whether intervention should be pursued. We have raised concerns about the under-estimation of costs to firms in the context of a recent FCA intervention. We would urge that cost benefit analysis considers the full range of impacts of any intervention, across the full lifecycle of any measure.

**21. What more do you think we could do to improve our communication about our interventions?**

21.1. We support clearer disclosure of terms of reference and timelines up front for regulatory interventions, which are then adhered to.

21.2. We acknowledge that the FCA has a crowded business plan, but we would welcome a much more precise account of when interventions are set to begin and when they are set to end. We note that many Policy Development Updates list TBC, or give a season, as the expected timing for example. This makes it difficult for firms to plan and schedule necessary changes. This is problematic in relation to Consultations, which firms use as a guide to the direction of regulatory change, but more importantly in relation to Policy Statements where they set out final rules and guidance. An example of this is the unclear timing for the forthcoming Consultations on the Insurance Distribution Directive, a Consultation that will be critical for helping assist firms in their preparation for planning activities ahead of an implementation deadline which has already been set. Firms have a limited bandwidth to pursue change, and will be better able to interact with regulatory developments if timings

are clearer and more precise. We have highlighted in answer to question 7 where communication could be improved as part of the Thematic Review process.

21.3. We would also urge the FCA to be clearer and more co-ordinated in terms of what it expects firms to do in response to the range of communications that the FCA publish. Whilst it may be clear what is expected from a firm in relation to a specific Handbook rule, it can be confusing if other regulatory sources, such as dear CEO letters, speeches, and Occasional Papers accumulate around the same subject, creating uncertainty about what is expected. Examples include the various regulatory sources highlighted in the Legacy review which set out the broad expectations for treatment of long-standing customers, or the range of FCA communications across vulnerability, access and the ageing population in the past three years. Where expectations exist across various regulatory sources for a specific type of firm, product, or regulatory issue, it would be helpful if the FCA clearly mapped out what sources they view as necessary to consult to ensure expectations are being met.

21.4. We support a more consistent communications approach across the two different modes of supervision. There is a feeling that firms under the fixed supervisory regime may be more likely to receive information earlier than those under the flexible regime. The FCA should aim to ensure that it communicates as consistently as possible with firms under both regimes to ensure that there is a level playing field.

21.5. Although not regarding communications on interventions, we would also call for the FCA to enhance the processes it has in place for updating firms when they submit items for regulatory approval. For example, information on the progress of approval for an Approved Person is critically linked to a firm's recruitment process.

**22. Is there anything else in addition to the points set out above that it would be helpful for us to communicate when consulting on new proposals?**

22.1. The Consultation states that the FCA is not a price regulator, but sets out that it will in some circumstances introduce price interventions, including caps. This appears to be a contradiction. Recent interventions in price, which we acknowledge have been directed to a certain extent by Government, have raised serious concerns across industry. We would urge the FCA to avoid making price interventions, unless all other avenues have been explored and detriment is such that only this approach would be suitable. We would also support the FCA in assessing broader value, not just focussing on price, including overall levels of customer services, levels of cover, and quality of product.

### **23. Do you think it is our role to encourage innovation?**

23.1. We commend the FCA for the work it has undertaken to make the sector more attractive to firms who wish to innovate, especially new entrants, including through the establishment of Project Innovate and the Advice Unit. We also welcome the focus the FCA has taken on removing regulatory barriers to innovation, such as in the digital space, and more broadly through the Regulatory Sandbox. We have received positive feedback of the experience of engaging with Project Innovate from member firms.

23.2. As the regulatory system plays a role in shaping what innovation may look like, or whether it may occur or not, the FCA certainly has a role in facilitating it. We do not necessarily believe that the FCA has a role in 'encouraging' innovation for the sake of it though. However the FCA certainly has a role in understanding and fostering it, for example in breaking down barriers where they exist in regulation, and making the regulatory system attractive for innovative business models and products. We would urge the FCA to consider how the way it regulates can lead firms to shy away from investing in or pursuing innovations, including design and distribution of new products, because they are uncertain how they will be received.

23.3. It is also critical that the FCA strives to acquire an understanding of emerging trends associated with innovation, such as big data and automated financial advice. On data protection, we would welcome clarity from the FCA as to where leadership for this important policy issue sits within the organisation.

### **24. Do you think our approach to firm failure is appropriate?**

24.1. We agree that the FCA's approach to firm failure is appropriate, subject to our concerns about proposals for product providers to subsidise intermediary FSCS levies.

### **25. Do you think more formal discussions with firms about lessons learned will help improve regulatory outcomes?**

25.1. We agree that firms gain real value from having lessons learned clearly communicated. Where these lessons could be of value to other firms in a particular sector, we would support communication through the existing supervisory system to help share best practice.

25.2. We support the consideration of deploying a different form of language when investigating a firm, currently defined as 'enforcement'. This is clearly misunderstood and suggests a firm has been found to have committed a breach. Referral to investigation feels like a more sensible terminology. If the FCA changes its approach in this way it must be clearly communicated to firms and the markets.

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

26.1. To fully answer this question, we need a full understanding of how the FCA makes a judgement on when to use, and not to use, a private warning. The document does not make this clear.

26.2. We have heard positive feedback from firms around private communication of findings and education which has enabled firms to put things right quickly where issues have arisen. It may be beneficial, where possible, to moderate the content of a private warning and communicate it for the benefit of wider industry.