Personal Banking & Fairer Financial Services

All Party Parliamentary Group on Personal Banking and Fairer Financial Services

Newsletter - July 2022

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What's happening in Parliament?

In this Newsletter we focus on the Treasury Committee, which has scheduled two very significant evidence sessions and made an unprecedented announcement of its own, in the run-up to the forthcoming Recess.

Treasury Committee policy statement: scrutiny of financial services regulations - 23 June 2022

One of the questions raised in the Committee's Future of Financial Services consultation was how the Committee itself can most effectively contribute to the scrutiny of proposed new regulations and legislation relating to financial services, in the post-Brexit environment in which the UK can set its own rules, with neither the constraints nor the checks and balances of having to conform to wider EU policy.

On 23 June it announced two key changes to its own operations aimed at addressing this requirement, creating two new entities:

- A Sub-Committee on Financial Services Regulations, with a remit to scrutinise regulatory proposals when they're at the stage of draft texts contained in consultation papers;
- A Financial Services Scrutiny Unit, which will include staff of the Treasury Committee, a legal adviser from the Office of Speaker's Counsel and specialist advisers 'appointed to provide the Sub-Committee with detailed and expert knowledge'

It seems that the Sub-Committee will operate a two-tier process, initially triaging proposals to determine whether or not to inquire further. The tests it plans to use are:

- Is the policy justified and desirable? Is the balance between service providers, consumers and others the right one? Do the benefits outweigh any drawbacks?
- Is the regulator acting within their delegated power?
- Is the drafting of the necessary standard?

Should it decide to launch an inquiry, it will have the power to call for evidence (written and in-person) and may publish a report setting out recommendations.

Since this is a finalised policy rather than a proposal, consumer feedback is not being sought. It seems likely that consumers will welcome the additional scrutiny and accountability placed on regulators to an informed group of Parliamentarians. Any concerns might be focused on the prevention or mitigation of potential conflicts of interests, such as:

- While the initial membership of the Sub-Committee on Financial Services Regulations will be all members of the Treasury Committee itself, it is possible that in time the Sub-Committee will have a different, smaller membership. Care should be taken to ensure that members with past affiliations to the Treasury (such as former Ministers) or

the industry are not over-represented on the Sub-Committee if and when it shrinks, and that they are unable to participate in the scrutiny of policy formed by or affecting entities with which they have been associated;

- Sometimes, the Committee accepts onto its staff employees who have been seconded in from regulators. It is difficult to see how they could act as impartial members of the Financial Services Scrutiny Unit, since they might be required to provide impartial advice on policies formed by their own employers. The Committee might consider whether it should either discontinue such secondments or exclude any staff thus appointed from serving on the Scrutiny Unit;
- Likewise, care should be taken to ensure that specialist advisers appointed to provide the Financial Services Scrutiny Unit with additional expertise are, and are seen to be, impartial. For example, they should not hail from regulators or have industry associations that might undermine the impartiality of their advice, or the appearance of their impartiality - perceptions and optics can sometimes be just as important as reality if one of the objectives is to win the trust and confidence of onlooking stakeholders.
- Furthermore, given the Sub-Committee's emphasis on the need to consider whether policy changes work for consumers, there clearly ought to be a depth of expertise within the financial services consumer advocacy and whistleblowing communities that could be drawn upon by the Committee when appointing to the Scrutiny Unit; we can suggest names if required

Treasury Committee evidence session: Financial Regulators' Complaints Commissioner - 15 June 2022

Our June newsletter raised, in the consultation section, what we predicted would become a big issue: whether citizens who lose money as a result of failure by a financial regulator (normally the FCA) should be compensated for those losses. We could not have known that this, and a number of other related matters, would be addressed head-on by the Financial Regulators' Complaints Commissioner Amerdeep Somal and her *de facto* deputy Ivona Poyntz, in an evidence session with the Treasury Committee, just a few days later.

You will recall that the Complaints Commissioner adjudicates complaints made to the financial regulators where complainants are unhappy with the responses received and want a third party view. The Complaints Scheme, which in practice deals almost exclusively with concerns about the FCA, is written by the regulators, but arises from a statutory obligation. There are concerns about whether the Scheme as drafted meets the legal requirements because, unlike the latter, it constrains the Commissioner's ability to recommend the payment of redress where regulatory failure is an underlying or enabling factor in their losses, but is not the sole or principal cause.

Points raised by Somal and Poyntz included:

- Somal has been pushing the FCA to be more transparent in disclosing non-protected information since her appointment 18 months ago; a year ago, she sent them a short,

draft Memorandum of Understanding setting out how she hoped they might work together. It took the regulator a year to respond, doing so the week she gave evidence to the Committee;

- She believes that the FCA's transformation programme has made some progress, but that there's work still to do, especially in the key areas of tackling fraud around the regulatory perimeter and the 'halo effect' of firms being on the Register that should not be, whether because they are not fit or proper or because they do not conduct regulated activities;
- She believes firms should be required to state specifically, for each product, whether it is or is not regulated, including SME lending, which (largely) is not;
- She refused a request from Kevin Hollinrake MP to reopen a case rejected for consideration by both Andrew Bailey (when he was CEO of the FCA) and her predecessor about the treatment of a whistleblower, on the grounds the Scheme as drafted by the regulators prohibits the regulator from considering complaints not brought by, or on behalf of, someone affected by the matters raised, except on the behalf of . [Editor's note: Kevin has indicated that there are features specific to the complaint that mean he cannot formally complain on behalf of the whistleblower. This lacuna might ideally be closed in any future re-drafting of the Scheme, especially given that no such limitation was envisaged by Parliament when it created the obligation to operate such a Scheme - the Act requires it to exist 'for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions'. In the meantime, I've emailed Kevin suggesting a workaround that might enable the issue to be considered];
- Kevin pointed out that the LCF case was not just about flaws in the Register but also highlighted the FCA's failure to act on intelligence received; she accepted this point, said that she was unaware of any shortcomings in the Transformation Project's attempts to address it but would monitor the issue and highlight any concerns;
- Somal believes her role is more limited than that originally envisaged by Parliament. In particular, she believes that she should have the power to *direct* and not merely to *recommend*, particularly in relation to compensatory payments. Typically, the FCA honours her awards in respect of delays for handling complaints but rejects them when they relate to material losses caused by regulatory shortcomings;
- This discrepancy came to a head with London Capital & Finance, where Somal recommended that redress be paid but the FCA is refusing to do so;
- This and other historical and forthcoming injustices could be resolved by changes to the wording of the Complaints Scheme. In July 2020 the regulators opened a consultation aimed at further narrowing the scope of the Scheme; over 3,000 responses were received, many from consumers seeking to move the rules in the opposite direction. The regulators have delayed the publication of feedback and proposals multiple times, and there is currently no indication of when this might occur;
- She believes that there is no statutory basis for the FCA's position that it will compensate consumers for regulatory failure only when it is the 'sole or primary' cause of loss and sympathises with the view that it 'is something that the FCA has tried to slide in through

the back door… which was not subject to public consultation, and it is unfair and inappropriate';
- The number of complaints she receives is growing. Some of those should be directed elsewhere, for instance to the Financial Ombudsman. She plans to revamp her website, including clearer signposting and making it more appealing to younger users;
- Her team is handling most cases within eight weeks, but is not being helped by the FCA, whose disclosed files are often initially incomplete;
- She believes she and her successors would be perceived as more independent if they were appointed for a single five-year term than the current two three-year ones: 'you could have a commissioner who had one eye on reappointment, and that should not be an influencing factor' [Editor's note: there is a feeling among consumer and whistleblower stakeholders that both Somal and her predecessor have been inclined to pull their punches on occasion, and there are also concerns about the independence of the incumbent, both because of her reluctance to criticise the Financial Ombudsman in her former role as its Independent Assessor and because an unfortunate incident in her private life might render her more dependent on her current role than is healthy, given that, some might think, she might find it difficult to return to the legal profession or secure another role in public office];
- She also raised the question of whether it's appropriate that her role is appointed by the regulators (described by Anthony Browne MP as 'the poachers appointing their own gamekeeper'), rubber-stamped by the Treasury, or that her budget should be agreed by the regulators. Browne suggested the Treasury should take these powers [Editor's note: this would be unpopular with consumer advocates, who perceive the Treasury vulnerable to industry influence. An alternative approach might be to hand powers of appointment, oversight and budget-setting to a body representing consumer interests];
- The Complaints Commissioner's operating costs are around £1,300 per complaint, but the compensation recommended averages just £7 per complaint;
- She accepts that primary legislation is required if stakeholder demands for her office to have 'more teeth' are to be met [Editor's note: the forthcoming Financial Services and Markets Bill is surely the obvious opportunity to achieve this, finally resolving ambiguity about the extent of the Scheme and powers of the Commissioner created by shortcomings in the drafting of FSMA 2000 and repeated in the Financial Services Act 2012. It could also remove the FCA's broad exemption from civil liability, which would give wronged consumers the option of litigating if unable to achieve justice via what often seems an arbitrary and at times unfair and unjust Complaints Scheme];
- The Complaints Commissioner has never lost a judicial review, but faces two this year; they, and Data Subject Access Requests, require outsourced legal support and are expensive, sometimes resulting in her having to revise her budget upward part-way through a year

Consumer advocates believe that the overall picture for citizens who suffer losses as a result of the actions and inaction of the financial regulators, principally the FCA, is unappealing, and that it is principally a matter requiring legislation to improve and clarify their rights.

Treasury Committee evidence session: Chair and Chief Executive Officer of the Financial Conduct Authority - 7 July 2022

The Committee is due to hold an evidence session with the FCA's Chief Executive Officer and Chair, provisionally scheduled for 7 July, perhaps at 10am. In the past, such sessions have often been timed to occur just after a key appointment takes effect, so it is possible that the event might be a first public outing for the new Chair, though it is also conceivable that Acting Chair Richard Lloyd, who is widely rumoured not to have applied for the permanent position, will be present instead.

Questions Committee members might consider asking include:

- How is the FCA's Transformation Programme progressing?
- How will the Transformation Programme deal with the significant underlying issues that the FCA has, ie the causes of its problems, and not just the symptoms. For example, Dame Elizabeth Gloster claimed that the single biggest problem the FCA has is its culture, when she gave evidence to the Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill Committee [Editor's note: this clip is worth revisiting, as is the Executive Summary in her report];
- Why is there no longer a full-time, dedicated Executive Director for Transformation, given the urgency and importance of the project - and why has the role been added to the responsibilities of Emily Shepperd, especially given acknowledged weaknesses (esp. Qs 231-5) in her own department that require her urgent attention?
- Is the real reason Emily Shepperd is having to double up and look after the Transformation agenda that the FCA does not want to have to advertise the role externally, as recommended by the Treasury Committee (esp. pars 41-43), because an outsider appointed on merit might have a reasonable expectation of implementing profound change in the organisation, which might include uncovering past errors and worse and might give rise to the public crystallisation of significant financial liabilities for both the regulator and systemically important firms?
- Why did it take the FCA a year to respond to the Complaints Commissioner's proposed Memorandum of Understanding on transparency? Has it now been agreed? If not, when will that happen?
- When will the FCA publish its spectacularly overdue report into the actions of the directors of HBoS?
- When will the FCA publish its report into the actions of the firms and senior managers responsible for the collapse of the Woodford Equity Income Fund?
- Does the FCA accept that the publication of such a report must be followed by the commissioning by the Treasury of an independent report into allegations of regulatory failure, under Section 68 of the Financial Services Act 2012?

- Are delays in the publication of the FCA's investigation into the conduct of the firms and senior managers motivated at least in part by a desire to delay the commissioning of an investigation into the FCA's own part in the Fund's collapse?
- Given the disclosures to a recent Employment Tribunal demonstrating that the FCA was warned by an experienced employee that its regulation of peer-to-peer lending platforms (many of which have now collapsed into insolvency amid allegations ranging from recklessness to criminality) was inadequate, does it accept that there is a need for the Treasury under Section 68 or the FCA under Section 73 of the Financial Services Act 2012 to launch an independent investigation into alleged regulatory failures?
- Does the FCA accept that there are serious and well-founded allegations of extensive regulatory failure in respect of its oversight of Blackmore Bonds? [Editor's note: while the products themselves *may* have been unregulated, their promotion to unsophisticated investors and the use of misleading financial promotions were both serious breaches of financial regulations, indeed they were potentially criminal matters, so ought to have received the urgent attentions of the regulator; this did not happen];
- The FCA is due to publish feedback to its second-stage consultation on the proposed Consumer Duty, together with new rules, by the end of this month. It has already implied (Q223) in an evidence session with this Committee that the Duty will not be accompanied by a Private Right of Action, at least initially, because the rule changes will take time to become embedded and because doing so might make firms risk-averse. Does the FCA accept that if handing consumers a right to litigate in the event of breaches of the Consumer Duty would change firms' behaviour, it is effectively implying that firms fear consumers more than they do the regulator? And would the FCA agree to commit to introduce a PRoA at a later date, perhaps 12 months after the Consumer Duty takes effect, to give industry time to adjust to the new requirements?
- The FCA has signed Memoranda of Understanding with other bodies, for example the City of London Police, the Serious Fraud Office, the Financial Ombudsman Service, the Financial Services Compensation scheme, and so on. The way the FCA interacts with such organisations is of interest to the Committee, and the public. In the interests of transparency, would the FCA disclose to the Committee all the Memoranda of Understanding that the FCA has with all other bodies?
- There has been much concern about the ineffectiveness of the FCA in relation to its consumer protection remit; for example that there has even been a recent Rally for Better Financial Regulation, with campaigners marching to Parliament to protest about the FCA's poor performance, with many of the people marching having lost life-changing amounts of money because of what they see as chronic and catastrophic regulatory failure by the FCA. What do you think the FCA's consumer protection performance in recent years has looked like to consumers?
- Some believe that the FCA's decision to refuse to launch a new redress scheme for SMEs wrongly sold Interest Rate Hedging Products by their banks and, in the view of John Swift QC, also wrongly excluded by the FCA from the original redress scheme, shows the FCA to be morally bankrupt. What would you say to that allegation, given that it is widely accepted as a matter of fact that businesses categorised at the time as retail

clients by the banks, and their owners, were harmed by the banks and therefore deserve to be compensated?

- Is there any truth in the rumour that the FCA's refusal to follow the logic of Swift's recommendation and introduce a further redress scheme in 2021 is because the FCA made a binding commitment to the banks that the redress scheme originally created would be a full and final redress scheme, meaning that the FCA has deprived itself of the right to exercise its statutory powers?
- What steps are being taken by the FCA to monitor progress at the British Banking Resolution Service; and what is the FCA's view of the performance and independence of the BBRS?
- What concerns does the FCA have, if any, about the Articles of Association of the BBRS and the establishment of a Bank Appointed Member, in relation to the Scheme's ability to be, and appear to be, independent of the banks?

APPG activities

Defective/fraudulent family trust providers and funeral plans

At the June meeting of this APPG, David Simmonds MP CBE raised the issue of customers (often elderly) of provincial building societies[1] having been introduced to The Family Trust Corporation (later The Philips Trust Corporation), sometimes direct and sometimes via a 'free' will-writing service, The Will Writing Company.

It appears that the Trust Corporation firms' advice to place family homes and other assets in trust to avoid care home fees and perhaps inheritance tax, was flawed (deprivation of assets rules preclude the former, while attempts to do the latter might trigger tax charges on the trusts that would otherwise not have applied).

Worse, Administrators for the the Philips Trust Corporation, which entered an insolvency procedure in April, found that PTC pooled clients' monies with funds belonging to other clients and invested them through a connected party in illiquid, unsecured corporate bonds, the residual value of which appears difficult to determine and may be negligible. It then used income from investments and even the capital introduced from new clients and the sale of existing clients' properties to honour redemption requests from clients - in effect, the whole thing may have been a Ponzi scheme.

Moreover, it would appear there are extensive links (see also Private Eye) between the two Trust Corporations and Safe Hands, a funeral plan provider that is also now insolvent. The appointment of lawyers to 'identify and pursue' trust assets suggests that some form of misappropriation may have taken place.

There are suggestions that some or all of the firms involved may have been conducting regulated activities without obtaining FCA authorisation[2], which could imply that criminal offences have been committed. The Private Eye piece reports that one of the firms involved has been under investigation by the FCA since 2019 and that a key figure in another achieved FCA authorisation despite being involved in a previous scam in which a colleague received a seven-year prison sentence.

It may be that the FCA's concerns about its own reputational risks in this case, combined with its concerns about the potential impact on small building societies should they be liable to the

[1] Introducer building societies we know of so far include those in Cambridge, Nottingham, Leeds, Skipton and Newcastle; there may be others

[2] Editor's note: it would seem that deposit-taking and discretionary wealth management activities have taken place, as a minimum, both of which are unambiguously regulated activities

clients they introduced to the alleged scammers, may render it reluctant to investigate and enforce with the rigour that APPG members and citizens might wish.

David has written to the FCA asking it to set out its position in relation to the alleged events. With his permission, we would like to share the regulator's reply with the Group in due course.

Difficult questions that may in due course have to be answered include:

- What (if any) due diligence did the building societies conduct into the firms before introducing them to clients?
- On what basis were the firms selected, and how were they presented to clients?
- What (if any) monetary or other rewards or incentives were received by the building societies or their employees, in return for making said introductions;
- What (if any) contractual arrangements exist or existed between the building societies and the firms?
- What (if any) *ex post* monitoring did the building societies conduct into how the firms treated their clients?
- When did the FCA first become aware of concerns about the introductions, or about the conduct of one or more of the firms?
- What actions did it take, and when, as a result of becoming aware of these concerns?

[Editor's note: this episode provides a powerful illustration of the importance of two themes introduced in the Consultations section of our June 2022 newsletter. If 'authorised persons' (financial services firms and senior managers authorised by the FCA) owed a Duty of Care to consumers, as envisaged by Parliament in FSMA 2000 but subsequently overruled by regulators, they would be civilly liable to consumers if they fail to prevent reasonably foreseeable harm. If, as seems to be a credible hypothesis, building societies introduced their customers, some of them elderly and vulnerable, to dodgy service providers with little or no due diligence or ongoing monitoring, perhaps in return for financial incentives paid to the firms or their employees, the existence of a Duty of Care would create a liability enforceable by consumers, without the need for regulatory action. The same would apply under the proposed Consumer Duty, if accompanied by a Private Right of Action but not, as the FCA currently proposes, without one.

Likewise, if it emerges that the FCA was aware of the potential for these introductions to go badly wrong some years ago and that it did either nothing or far too little to protect consumers, removing its exemption from civil liability and explicitly empowering the Complaints Commissioner to direct it to compensate victims of regulatory failure where it is an underlying or enabling factor in consumers' losses would create two avenues for consumers to secure further redress in the event that the building societies lack the financial means fully to compensate them. Without Parliament taking such steps, consumers are unlikely to be able to secure redress from the regulator for unremedied losses, whether in this case or in others that may arise in the future. From a consumer advocacy perspective, this is why these issues matter.]

Other live issues

Regulation of peer-to-peer lending

As mentioned briefly on page 6, an exceptional report has been published by a remarkable individual known as 'The Mouse in the Court', whose hobby is attending court proceedings of potential interest to consumers, and blogging about them. It concerns the Employment Tribunal claim of Walker Sigismund, a former FCA employee who asserts that he was made redundant wrongfully by the regulator after blowing the whistle about alleged shortcomings in its regulation of banks in the GFA era and, more recently, of peer to peer lending platforms. [Editor's note: see *Times* coverage, which your Secretariat helped to organise, here and the text for non-subscribers here).

The outcome of the Employment Tribunal is awaited, so at this stage Walker Sigismund's allegations must be regarded as unproven, albeit that the evidence presented appears extremely concerning. It does appear to corroborate anecdotal claims made by current and former FCA employees to this APPG's Call for Evidence about the FCA. Most have spoken about a 'bias against action', of senior managers repressing attempts by those in lower positions raising concerns and of attempts to bully, marginalise and 'manage out of the organisation' those unwilling to accept 'the FCA line' on a given issue.

The fact that the majority of p2p lending platforms collapsed into insolvency and that there are credible allegations of regulatory breaches and even criminality associated with several of them also suggests that Sigismund's concerns were more astute than the instincts of those who favoured lesser or no action.

Crucially, the documents disclosed during the proceedings have wider implications, in two key respects. First, they indicate that the FCA, which is statutorily independent of the Treasury, was in fact subject to influence from that body to take a relaxed view on the regulation of p2p, echoing the findings of John Swift QC's independent review into the regulator's redress scheme for SMEs missold Interest Rate Hedging Products, which found evidence of HMT lobbying, up to and including Ministerial level. And second, they demonstrate that the board minutes published by the FCA may not always constitute an accurate summary of proceedings, raising questions about the integrity of the organisation's then leadership and whether steps are needed to improve transparency.

Taken in conjunction with the shortcomings identified in the Connaught and London Capital & Finance reviews and calls for similar exercises for Woodford, Blackmore Bond and further cases, the APPG may wish to consider whether asking for a thematic review for Peer to Peer is

appropriate or whether a better course of action might be to call for something akin to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry established in Australia in 2017. This took the starting point that misconduct had been extensive and regulation inadequate, enabling it instead to focus on the issues of both financial remedy for the victims of legacy regulatory failure, and the introduction of measures necessary to prevent further harms.

Forthcoming Events

Discussion Paper event: "Faces of Financial Crime: Human Suffering Caused by the Financial Sector" - 14 July 2022 (Parliament), 19 July 2022 (Zoom)

The Transparency Task Force is running an event in Parliament on Thursday, 14th July from 12pm to 1:30pm. It is to launch a Discussion Paper entitled "Faces of Financial Crime: Human Suffering Caused by the Financial Sector".

There is also a corresponding event on Tuesday, 19th July from 12pm to 1:30pm, on Zoom.

Please contact andy.agathangelou@transparencytaskforce.org if you wish to attend/say a few words at either of the events.

Also, statements of support from Parliamentarians are being incorporated into the report, for example:

By Kim Leadbetter MP:

'The British public need and deserve a financial sector that it has good reason to have trust and confidence in. However, the amount of financial crime, scams and scandals that are taking place shows that there is ample justification for the concerns that many people have, that the regulatory framework is failing to provide sufficient consumer protection.

'This paper does a first-class job in raising awareness of the terrible plight that victims of financial crime and malpractice face. It is clear that more could and should be done to reduce the chance of people falling prey to criminals, and to support them if they unfortunately do. I, and many Parliamentarians will be keen to help drive through the kind of reforms the paper is calling for.'

By Baroness Bennett of Manor Castle:

'Financial crime and mismanagement is sometimes dismissed as 'victimless', but of course it is far from that. We all suffer collectively from the fraud and greed, but some people's lives are torn apart by it.

'We live under the dictatorship of the Treasury, with the assumption being that we are all here to serve the economy, rather than the economy serving people and planet. Practical regulation can prevent further individual victimisation, but more, we need a huge revamp of our approach to financial governance.'

By Baroness Thornton:

'Financial Crime is not victimless, but often the victims are the most vulnerable and the least able to defend themselves and get redress, which is why providing and enacting "an appropriate degree of consumer protection," is vital and still lacking. And why this initiative is so important and has my support.'

By Andrew Gwynne MP

'I am delighted that the Transparency Task Force has produced this report, because the UK's financial sector is of strategic importance to our economy, and it ought to be doing a decent job serving the interests of all our citizens, but it clearly isn't.

'The report shouts out the terrible impact on victims of financial crime and misconduct and provides extensive evidence suggesting that the financial regulatory framework is not yet effective in providing adequate consumer protection. The central thrust of the paper is that Parliamentarians now have an opportunity to bring about reforms during this Parliamentary session that will mitigate the risk of consumers being harmed, and also provide meaningful support to those that do become victims.

'I wholeheartedly agree, and I will be doing my bit to support such reforms wherever and whenever I can – my own constituents are not immune from scams and mis-selling, and I want to do all I can to help protect their interests.'

We would be very grateful for any other comments of support, please - they would be needed by Monday, 4th July. A working copy of the Paper can be accessed here; you'll see a mountain of effort has been put into it.

Contacts and suggested next steps

If you have any comments or questions about this newsletter; or suggestions for future topics to be covered; or if you would like to have a ‘guest column’ in a future edition, please don’t hesitate to get in touch.

Please contact Mark Bishop, member of the Secretariat Committee to the APPG on Personal Banking and Fairer Financial Services: markbishopuk@gmail.com and/or Andy Agathangelou, Chair of the Secretariat Committee: andy.agathangelou@transparencytaskforce.org