

Response to HM Treasury consultation on: A new approach to financial regulation: building a stronger system

Introduction

The Consumer Credit Counselling Service (CCCS) is the UK's largest dedicated provider of independent debt advice. Last year the charity helped 418,000 people with free advice and delivery of support services, including Debt Management Plans (DMPs), bankruptcy and welfare benefit checks – we are geared up to help many more. We welcome this opportunity to comment on HM Treasury's consultation on a new approach to financial regulation.

CCCS is run independently of taxpayer money on the basis of a unique set of relationships with the all the major banks, credit card companies and other creditors – our funding model means we can provide impartial advice and specialist insolvency support as people need.

CCCS is committed to improving the situation of households in financial distress. By the end of 2010, our over 800 full time staff were managing almost £3.6 billion of unsecured debt.

CCCS experienced a 35 percent increase in demand for its services as a result of the recession, helping almost half a million people in 2009 alone. This would doubtless have been of interest to the FPC had it been around.

Given the nature of the problems our clients face, the key concerns of CCCS centre on the issue of consumer detriment. In general, this can come about in two ways:

- from conduct problems – for example, when products are badly designed or missold
- from macro-economic/prudential factors, such as interest rate variations or general economic tightening, which can impair consumers' access to needed credit or ability to service existing debts.

The FPC, through the PRA, will have powers to influence outcomes in the latter sphere; however these could in certain cases have severe adverse impacts on consumers.

For instance, there is potentially a tension between the prudential desire to see banks rebuild their profitability and the impact on consumers of the price and margin increases required to deliver this. For example, focusing on consumer loans, we have already seen a noticeable widening of interest

margins since the financial crisis. Further, a minority of lenders continue to levy interest and charges on loans in arrears, even when CCCS has put in place sustainable arrangements for debt repayment.

The PRA needs to have regard to the impact on consumers of pricing and other relevant changes that banks may seek to introduce on supposedly prudential grounds.

Such impacts are outside the conduct remit of the FCA, which is not, and cannot be the direct protector of consumers in this area. Therefore, CCCS believes:

- The FPC/PRA should have regard to the impact that their policies and actions may have on consumers (in the same way as they are mandated to avoid “significant adverse effects on the capacity of the financial sector” (Box 2.B))
- There should be consumer representation on the FPC and PRA (as we suggest in our response to Q3 and Q8)
- The PRA should retain a consumer panel. It is not enough for there to be a duty to consult with the FCA, as the effect of prudential decisions on consumers will not necessarily be within the FCA’s remit.

Our response to the following consultation questions is based on their relevance to our work and the interests of our clients.

Q1. What are your views on the likely effectiveness and impact of these instruments as macro-prudential tools?

Q2. Are there any other potential macro-prudential tools which you believe the interim FPC and the Government should consider?

We are concerned that neither the FCA nor the PRA nor FPC has a remit to look at (unsustainable) consumer behaviour. Lack of oversight poses a particular risk in the unsecured credit market, where consumer detriment is most severe. In view of plans to transfer the regulation of consumer credit from the OFT to the FCA, we are concerned that consumer behaviour in this market could fall through a supervisory gap.

While the PRA has a remit to watch for and deflate credit bubbles, we also need to make sure the new regime takes account of whether households are taking on unsustainable levels of debt. This is of particular concern given the OBR’s forecast at this year’s Budget that household debt-to-income ratios will become increasingly unmanageable and soon top pre-crisis levels¹. We hope that as part of the FPC’s remit to guard against unsustainable levels of debt, it will take into account data already available through existing channels, such as that provided by CCCS.

¹ See Table 1.8 of the OBR’s supplementary economy tables to its Economic and Fiscal Outlook

Q3. Do you have any general comments on the proposed role, governance and accountability mechanisms of the FPC?

We believe the FPC should have regard to the interests of consumers in its decision-making. Decisions taken by the FPC, in particular, could have far-reaching consequences for the financial sector and the economy more widely. They may also have far-reaching consequences for consumers of financial services. It will therefore be important for the FPC to take the impact on consumers into consideration when pursuing its primary objective.

However, we fear there may be pressures to put prudential concerns ahead of consumer concerns. For this reason, we believe that there needs to be consumer representation among the non-Bank members of the committee to boost confidence that the new regime is not tilted in favour of financial service providers.

Q4. Do you have any comments on the proposals for the regulation of systemically important infrastructure?

Q5. What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the PRA?

We believe the PRA should have regard to the primary objectives of the FCA. Given the veto power of the PRA, this would bolster confidence in the new regulatory regime that the new bodies are of equal status.

Q6. What are your views on the scope proposed for the PRA, including Lloyd's, and the allocation mechanism and procedural safeguards for firms conducting the 'dealing in investments as principal' regulated activity?

Q8. What are your views on the proposed governance framework for the PRA and its relationship with the Bank of England?

Q9. What are your views on the accountability mechanisms proposed for the PRA?

We are concerned that substantive accountability mechanisms for the PRA do not exist in the absence of significant regulatory failure (3.55 – 3.39). Given the experiences of our clients with the financial institutions to be regulated by the PRA, we believe the accountability of the regulator to Parliament should be ongoing.

Q10. What are your views on the Government's proposed mechanisms for the PRA's engagement with industry and the wider public?

We are concerned that plans to scrap the consumer panel for the PRA will place consumer concerns at a further remove from the decision-making process. First, although the FCA has a consumer protection agenda, unlike the panel it is not set up to represent consumer concerns. Second, it is

possible that the effect of prudential decisions on consumers will fall outside of the FCA's remit. Therefore, scrapping the PRA's consumer panel and bringing in a weaker 'duty to consult' the FCA distances consumers further from prudential decision-making. To ensure that consumer issues are at the heart of the new regime, the Government should retain a consumer panel for the PRA and ensure that the body has non-executive consumer representation.

Financial Conduct Authority

Q11. What are your views on the (i) strategic and operational objectives and (ii) the regulatory principles proposed for the FCA?

Q12. What are your views on the Government's proposed arrangements for governance and accountability of the FCA?

We believe it would be desirable for members of the FCA governance team to have experience of consumer advocacy – this would add credibility to the authority's consumer protection agenda.

We would prefer to see positions of governance at the FCA filled through a process of open competition rather than Treasury appointment.

Q13. What are your views on the proposed new FCA product intervention power?

The new FCA product intervention power is a welcome tool for early action to prevent consumer harm. We believe services should be included under the definition of a product or subject to a similar intervention power. For example, this might cover the unfair charging structures of many providers of debt management plans (DMPs). In our view it is simply unjustifiable for DMP providers to charge upfront fees. Not only do they push vulnerable clients even further into debt, but they also drive an aggressive sales culture and are one of the driving forces behind inappropriate advice.

Q14. The Government would welcome specific comments on:

- **the proposed approach to the FCA using transparency and disclosure as a regulatory tool;**
- **the proposed new power in relation to financial promotions; and**
- **the proposed new power in relation to warning notices.**

We welcome the FCA's new power to direct firms to withdraw misleading financial promotions and believe that it must cover consumer credit services, like debt management plans.

We also welcome the FCA's new power to publicise the fact that it is initiating action against a firm – in the case of consumer credit, this is long overdue.

It will be important to make sure that the FCA is well resourced. We believe that the OFT's monitoring of debt management firms and enforcement action against them has in the past been undermined by a lack of resources.

Q15. Which, if any, of the additional new powers in relation to general competition law outlined above would be appropriate for the FCA? Are there any other powers the Government should consider?

Regulatory processes and coordination

Q16. The Government would welcome specific comments on:

- the proposals for RIEs and Part XVIII of FSMA; and
- the proposals in relation to listing and primary market regulation.

Q17. What are your views on the mechanisms and processes proposed to support effective coordination between the PRA and the FCA?

We are concerned that plans to ensure the PRA has regard for the objectives of the FCA have been dropped (5.10). If the relationship between the prudential and consumer regulator is not balanced, ordinary consumers of retail products may continue to lack the degree of regulatory focus or protection they expect or require.

While, within the proposed framework, the FCA has the strategic objective to protect and enhance confidence in the financial system, it must also be vigilant against firms justifying anti-consumer pricing and charging practices on prudential grounds.

Q18. What are your views on the Government's proposal that the PRA should be able to veto an FCA taking actions that would be likely to lead to the disorderly failure of a firm or wider financial instability?

Q19. What are your views on the proposed models for the authorisation process – which do you prefer, and why?

Q20. What are your views on the proposals on variation and removal of permissions?

Q21. What are your views on the Government's proposals for the approved persons regime under the new regulatory architecture?

Q22. What are your views on the Government's proposals on passporting?

Q23. What are your views on the Government's proposals on the treatment of mutual organisations in the new regulatory architecture?

Q24. What are your views on the process and powers proposed for making and waiving rules?

Q25. The Government would welcome specific comments on

- **proposals to support effective group supervision by the new authorities – including the new power of direction; and**
- **proposals to introduce a new power of direction over unregulated parent entities in certain circumstances?**

Q26. What are your views on proposals for the new authorities' powers and coordination requirements attached to change of control applications and Part VII transfers?

27 What are your views on the Government's proposals for the new regulatory authorities' powers and roles in insolvency proceedings?

Q28. What are your views on the Government's proposals for the new authorities' powers in respect of fees and levies?

CFEB (now the Money Advice Service) is currently funded through a levy on banks and financial service providers. However, if it takes on a co-ordinating role for debt advice, there is a strong case to broaden the levy to include utility companies to whom a significant amount of problem debt is owed. Debt comes from two or three main areas and we'd expect the government to take this into account. Our proposal could be implemented in co-ordination with the energy regulator, Ofgem, to ensure that those who receive part of the benefit of debt advice make a proportionate contribution to its delivery.

Compensation, dispute resolution and financial education

Q29. What are your views on the proposed operating model, coordination arrangements and governance for the FSCS?

Q30. What are your views on the proposals relating to the FOS, particularly in relation to transparency?

The role of the FOS should not be lost in the new regime. It is particularly the case that those who have fallen into debt need a swift and impartial dispute resolution service in their dealings with creditors.

Q31. What are your views on the proposed arrangements for strengthened accountability for the FSCS, FOS and CFEB?

**Consumer Credit Counselling Service
April 2011**