The Money Charity's response to The FCA Mission Consultation

The Money Charity is the UK's leading financial capability charity.

We believe that being on top of your money means you are more in control of your life, your finances and your debts, reducing stress and hardship, and that this helps you achieve your goals and live a happier more positive life.

So we empower people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives.

We believe financially capable people are on top of and make the most of their money in five key areas:

- Planning (including budgeting)
- Saving
- Debt
- Financial services products
- Everyday money (including wages, cash, bank accounts)

Introduction

1. At the Money Charity, we value the FCA and the sincere efforts it makes to engage consumer organisations in the design and delivery of regulation. In a time of profound and rapid change to the economy and with technology transforming the way that we interact with our finances, a body that takes a robust approach to the regulation of markets, protects consumers, supervises and is willing to intervene is particularly important.

2. Like any regulator whose day-to-day activity is dominated by supervisory relationships with firms, there is an ever present risk of capture by the industry. The FCA works hard to avoid this through its research and engagement with organisations such as ours who are working with consumers. We welcome the ongoing commitment of significant resources to this, and were pleased to have seen reaffirmation of this approach, both in person from Andrew Bailey and in this consultation document.

3. As an organisation offering financial education and capability services, we do not have expertise in every area consulted upon here, but will answer those where we have something specific to add or can draw from our work. We make our comments below by chapter, rather than by individual question.

Chapter 4: Ensuring markets function well

4. We broadly support the FCA's definition of a well-functioning market. It's clearly the case that consumers should be allowed to take informed risks and a well-functioning market will have some level of failure. We also accept that in certain circumstances the chance of consumer loss is the precondition of competitive markets.

5. However, The FCA should not be wedded to competition and market mechanisms in every case. The stubbornly low rates of switching in utilities and current account markets, for instance, may mean that creating a market that best serves consumers will not involve competition, but regulation and more direct control of prices.

6. In reality, despite our strenuous efforts to educate people and inform consumers that they can save money by shopping around, many consumers, through inertia and lack of skill and inclination are not behaving in a way that that you would need for competition to operate as it should. Where, over the long term, markets are not working effectively, the FCA should not always look to market mechanisms as the solution and should be much more robust in its interventions.

7. Competitive, regulated markets ought to be seen as the default, but in any instance where market forces are not delivering desired outcomes for consumers, alternatives should be available to the FCA.

8. The balance between an individual consumer's due diligence and the regulator's role in enforcing market discipline is not spelled out clearly enough in this consultation document. Clearly, some trade-off between the two is necessary, but it is not evident exactly where the FCA stands on this issue. For our part, we would argue that The FCA ought to make its decisions on the basis of observed consumer behaviour. We

know that the vast majority of people to not undertake financial decisions with the diligence which in an ideal works they would. In these circumstances such as the disclosure of terms and conditions which are never read or insurance add-ons, markets should not be designed as if they are.

9. Where a market is functioning well and most consumers are able to understand products and choose good options, consumer due diligence ought to be relied on. In situations where some or all consumers cannot or will not behave in the way that would be best for a well-functioning market, the FCA should step in.

Chapter 5: Meeting our objectives

10. In addition to diagnosing problems as they arise and how to intervene, the FCA has a challenge identifying where to turn its attention to. The intervention framework is a reasonable approach. First identifying issues, then diagnosis, planning and intervention is a clear model that works. We also support the different scopes available within the intervention framework to address issues of different scales – from individual firms to market wide issues.

11. As it stands, we approve of the issues that the FCA has recently chosen to turn its attention to (credit cards, mortgages, broadly defined HCSTC), as they are clearly real issues facing consumers. However, it is not always clear how these issues are chosen. We recommend that the FCA is clearer in explaining how it identifies issues. We would encourage the FCA to be more systematic in communicating why it chooses to intervene in certain markets and not in others.

Chapter 6: Regulation and broader public policy – getting the balance right

12. There is clearly a division of responsibilities between policy makers and regulators, but where the dividing line sits is not clear. Inevitably, the work of the regulator interacts with that of government. The development of policy and regulation are iterative processes.

13. In reality it is not politically sustainable for the FCA to be seen to be driving policy, and there must be a clear point at which it passes the baton. Where market issues are identified and a policy response is necessary, The FCA should produce research and lead debates. Having outlined issues it should then ask government to decide. The FCA should not decide policy, but play a muscular role in its formulation, shaping the debate and making demands of policymakers to address issues as they arise.

14. The areas in this consultation where the FCA is calling for greater clarity with regards to this role are, in our view, very good examples of demanding answers from government. If, as in the cases of access, price discrimination and changing technology, the FCA requires clarity on its role it should not shy away from asking for such clarity. We are pleased to see that happening here.

15. On the issue of price discrimination and cross-subsidy, we support the approach outlined. Consumer vulnerability or lack of financial capability will often be a cause of the inelasticity of demand that firms will take advantage of when discriminating on price. The growth in use of data will open up new opportunities on this. The FCA

cannot do the government's role and formulate a full policy response to this, but it has a clear role in researching the issue, leading the debate and calling for clarity from policymakers.

16. The increase in personal responsibility assumed and pushed by policymakers and financial service providers does require regulatory innovation. The challenges faced in the new and future environment are more complex and pose greater behavioral challenges than many of those that came before. The sandboxing work is a good example of the FCA addressing this complexity and uncertainty in an innovative manner.

17. The FCA's argument that a duty of care is unnecessary because provisions already exist for treating customers fairly is reasonable on one level - we do not want to unnecessarily duplicate rules. However, the Financial Services Consumer Panel has shown evidence that current rules have failed to produce the required culture change from the '*top to the bottom of firms*'[1].

18. While the current provisions for treating customers fairly does allow customer complaints and provides clear guidance that, if followed wholeheartedly, would improve banks' culture, they have failed to penetrate through providers. A Duty of Care would be a commandment, easy to understand by all players that could incentivise cultural change by strengthening consumers' ability to take action. We don't want the Duty of Care to simply be another layer of bureaucracy, so if the TCF can be strengthened, we would support that. But unless the TCF can be change in a way that makes a real break with the status quo, we support the FSCP's position on this issue.

Chapter 7: Protecting consumers

19. We support the approach that affords greater protection to consumers for more complex products. Clearly, consumers should be able to use products with some amount of risk, but should not lose out in situations where it is unreasonable to have expected them to understand the contracts they are entering into.

20. There is also a good case for differentiating amongst consumers, affording greater protection to groups with lower financial capability and allowing others to take greater risks. However, there is an underlying assumption about capability that we question. The FCA rightly notes that anyone can become vulnerable at any time, and recognises that some customers have lower financial capability and require greater protection. What this misses is the low levels of financial capability that are widespread throughout the population.

21. Though it is not spelled out in this document, the FCA tends to behave as if the vast majority of people are basically capable, and special provision is required for a low-capability minority. Our experience of running workshops for adults and young people, as well as much independent research[2], shows that this is simply not the

[1] https://www.fs-cp.org.uk/culture-change-not-getting-bank-customers-says-financial-services-consumer-panel
[2] http://www.fincap.org.uk/financial-capability-survey

case. In fact, low capability is widespread, and particularly when it comes to complex or less commonly used financial products, people are not in a position to understand the risks they take on or to be expected to manage their finances optimally.

22. The FCA's task is therefore not simply to look for markets where there is significant detriment affecting particular groups of consumers who have low financial capability. Instead, regulation should assume that the vast majority of consumers will need products, guidelines and rules that make their finances easier to understand than they currently are.

23. There is a numerically small group of consumers whose financial capability is very high and others who have the financial resources to endure the potential downsides of risky financial products. Where possible the FCA should endeavour not to prevent innovation and risk in markets that serve these groups, but should not weigh their interests above the majority of people who need substantial regulatory protection.

Chapter 8: Vulnerable consumers

24. The opening paragraph of this chapter on vulnerability is very welcome. The recognition that vulnerability is fluid and will potentially affect everybody at certain times in their lives is hugely important, and we hope it is fully embraced in the approach the FCA has to its interventions.

25. One of the key questions that should follow from this insight is: *"how should the FCA intervene in this market given that the majority of consumers may be vulnerable?"* However, the actual approach that the FCA tends to pursue is to identify particular groups that have vulnerabilities and shape specific interventions for them.

26. That is not to say that the FCA should not identify specific remedies to particular vulnerabilities such as dementia or those with low literacy skills. And the FCAs work with protected and other groups has been commendable. However, it should also regulate markets as a whole as if the majority of consumers may be vulnerable at any given time.

Chapter 9: The role of disclosure in consumers' choices

27. The approach to disclosure outlined in the document is welcome, particularly the recognition that rules need to be made with actual human behavior in mind.

28. However, the widespread understanding that disclosure does not work for complex products does not appear to have radically altered practice. Consumers are still regularly being asked to sign long agreements in the winking knowledge that they have not actually read them. In situations such as this where it is clear that consumers do not fully engage with financial products, the FCA should not work on the assumption that they do.

29. Many products are simply so complex that comprehensive disclosure will either be misunderstood or ignored by most consumers. Where it does not damage the market significantly, we are pleased to see that the FCA is considering 'interventionism', stepping in to simplify products. If simple, compressive and functional disclosure is

not possible due to complexity, the regulator should simplify products – for instance by placing constraints on prices or add-ons.

Chapter 10: When will we intervene?

30. The FCA framework for intervention is very sensible. However, it is not always clear to us how such a framework has been used to make interventions. This is not to say we object to any interventions, simply that the FCA could communicate more clearly why it has chosen to act in one area and not in another. This issue is perhaps more about communication than approach.

31. Occasionally, it should look systematically across markets, explaining why is chooses not to intervene, as well as why it does.

Chapter 11: Competition and market design

32. Competition is seen as the default mechanism for ensuring positive consumer outcome. In many markets, we can see that this is a functioning model. In others, this has not been the case and markets have been allowed to continue despite the market forces not producing desired consumer outcomes. Whilst this consultation makes clear provision for muscular interventions, we would support the FCA in great use of these provisions.

Chapter 12 and 13: Supervising firms and our approach to enforcement

33. We support the FCA's approach to supervision and enforcement.