

The Financial Conduct Authority: Approach to Regulation

A Response by Credit Action

Background

Credit Action is a national money education charity (registered Charity in England & Wales No. 1106941) established in 1994.

In January 2009 we also created our dedicated Welsh arm, Credit Action Cymru.

We offer a range of resources, tools and training to help everybody handle their money well, and to inform consumers so that they can make informed decisions about their personal finances.

Credit Action operates at a national level through advocacy, collaboration and partnerships with various groups and companies as well as at a local level through a variety of targeted projects, with a particular emphasis on those most vulnerable to financial difficulties and over-indebtedness. Through its work Credit Action reaches over 650,000 UK citizens every year.

We try and help as many people as possible avoid the pain of debt. However we recognise many contacting us will be in trouble already, so we work in partnership with the major debt counselling charity the Consumer Credit Counselling Service (Registered Charity No. 1016630).

Opening Comments

As an organisation which takes a keen interest in consumer rights and regulatory policy, Credit Action welcomes the opportunity to comment on the Financial Services Authority's outline proposals for its successor body, the Financial Conduct Authority (FCA). The creation of the FCA, alongside the Financial Policy Committee and Prudential Regulation Authority, clearly represents a significant shift from the old tripartite system of regulation. We believe that it will be critical to the success of the new framework to ensure that consumers are adequately protected, and that the industry is appropriately policed, meaning that the role of the FCA will be of paramount importance going forward.

We are encouraged by many of the propositions set out in this consultation with regard to the FCA. However, we would like to emphasise the importance of a number of key issues that are identified in the consultation, such as engaging more directly with consumers and addressing emerging detriment on a more proactive basis, and propose several measures which we feel are particularly crucial to ensuring that the FCA supports and empowers consumers effectively.

We have focused our response on various points made in the first four chapters of the consultation (Overview, Scope, Objectives and Powers, and Regulatory Approach), and address each of these in turn in the following sections.

Chapter 1: Overview

Paragraphs 1.5 and 1.6 of the consultation set out the FCA's strategic and operational objectives, as well as the general duty to promote competition. We will give more detailed consideration to these when commenting on *Chapter 3: Objectives and Powers*. However, the initial overview also provides a supporting set of guiding principles in paragraph 1.11, which we feel offer a useful launching point for a consideration of the FCA's general approach to consumer protection and conduct regulation.

We broadly endorse the five principles laid out in paragraph 1.11, but would like to stress the importance of certain aspects of these which we see as fundamental to ensuring the new regime protects consumers effectively.

Firstly, the consultation states that the FCA will take a differentiated and proportionate approach to promoting good outcomes for consumers, ‘which takes into consideration the knowledge and financial sophistication of various types of consumer’. For us, the recognition that consumers approach their engagement with financial service providers with differing levels of financial capability is crucial. Often it is those with the lowest levels of initial understanding who require the most protection, to ensure that they do not fall victim to poor sales practice and that the products they purchase are appropriate to their needs. In our view, it will be critical that an awareness of this is embedded in the FCA’s policy-making.

Secondly, it is suggested that the FCA will be ‘more outward-looking and engaged with consumers ... and better informed and about their concerns and behaviour where this is relevant to regulatory action’. We strongly endorse the principle of greater consumer engagement, and believe this will be central to the FCA’s ability to identify detriment at an early stage, as it emerges. Consumers can provide a wealth of intelligence to support regulators if the correct lines of communication are put in place, and it will be vital for the FCA to establish and maintain these. Equally, consumers themselves should be empowered to hold the industry account where necessary, meaning it will be essential to ensure that consumers are fully aware of how to seek redress (including through any consumer redress schemes established by the FCA under powers described in paragraphs 5.40 to 5.42). We will return to this latter point in subsequent sections. Moreover, in our comments on *Chapter 4: Regulatory Approach* we will outline specific further steps that we feel need to be taken in order to ensure that the FCA’s consumer engagement work is effective.

Finally, we are highly supportive of the FCA’s commitment to ‘intervene earlier to tackle potential risks to consumers and market integrity before they crystallise’. If the FCA can successfully deal with emergent problems before they become widely manifest then this can only be a positive development,

reducing the number of consumers who suffer detriment and require redress. As already suggested, we feel that effective consumer engagement will play a key role in facilitating earlier intervention.

Chapter 2: Scope

In paragraph 2.2, the consultation states that ‘There is a risk, based on past experience, that consumers will not understand the distinction between registration and regulation and the different powers which the FCA will have when acting as a registrar as opposed to a regulator’, and that clear communication with consumers will be essential to mitigating this risk. We would emphasise the importance of this, as in our view it will be essential for consumers to understand the nature and scope of the FCA’s role, as well as how and when it is appropriate to engage with it.

Equally, there needs to be clear communication around the FCA’s place within the broader network of partner organisations, such as the Financial Ombudsmen Service, Financial Services Compensation Scheme, and Money Advice Service. Ideally, the specific responsibilities of each of these bodies needs to be widely understood by consumers, so that they are confident about which body they need to approach when they find themselves in a particular situation.

In our opinion, clarity around these issues is crucial to ensuring that consumers are empowered to seek redress, as well as compensation and other forms of support. We recognise that while in some cases the FCA may be directly responsible for providing redress (for instance, through consumer redress schemes that it will have the power to establish), in other instances such responsibilities may fall to another body (for example, the Financial Ombudsman Service in the case of individual complaints). However, the general point being made is that clear routes to redress and support are a core part of any successful consumer protection regime, and that as part of that regime the FCA should play an active role in ensuring such routes are visible and well understood.

Chapter 3: Objectives and Powers

Paragraph 3.1 sets out the FCA's single strategic objective, 'to protect and enhance confidence in the UK financial system'. It also outlines the FCA's three operational objectives which support the achievement of the strategic objective, namely:

1. Securing an appropriate degree of protection for consumers
2. Promoting efficiency and choice in the market for financial services
3. Protecting and enhancing the integrity of the UK financial system

From a consumer perspective, there are a number of key priorities that we feel are especially important in enabling the FCA to deliver on these objectives. We outline each of these below, and also refer to relevant proposals in other parts of the consultation which we believe will help support them:

- **Ensuring consumers have a clear and fair route to seek redress:** As discussed in the previous section, we feel that it is of fundamental importance to the effectiveness of the regulatory regime that consumers have a clear route through which to seek redress if they suffer detriment. The FCA has an important contribution to make to this, both by ensuring the visibility of its own consumer redress schemes, and being clear about its role and its place in the wider support framework.
- **Ensuring there is a clear penalty when consumers are mistreated:** In order for consumers to have faith that the regulatory system is protecting their interests, and for firms understand that misconduct carries serious consequences, we feel it is important that clear penalties are applied to those organisations that fall below the standards set by the FCA. This ties in strongly with the approach to credible deterrence described in paragraphs 4.13 to 4.15. We therefore hope that the penalty framework which the FCA has committed to adopt from Financial Services Authority, 'which provides a stronger link between the benefit a firm receives from its misconduct and the size of its fine' (paragraph 4.13), delivers in this regard. Moreover, in terms of enhancing awareness of enforcement action amongst both the general public and other firms, the suggestion that 'the FCA will seek to ensure

appropriate information is made public about disciplinary actions at an earlier stage' (paragraph 4.14) is one we welcome. Given the importance of strong and visible disciplinary action to ensuring that the new regulatory framework delivers results, we expect the FCA to apply penalties in a firm and robust manner wherever this is justified.

- **Ensuring that consumers receive the right balance of information:** When communicating with consumers, it is important that they receive the right balance of information (i.e. not too much and not too little) and that information is provided in a way that is straightforward and easy to understand. Given that the FCA is committed to a more outward-looking approach to consumer engagement, the significance of ensuring that information is supplied in a simple and intelligible manner is something that we would like to emphasise, as we feel that this could have a significant impact on the degree to which consumers feel able to interact with the FCA itself. We are glad that the FCA recognises the importance of ensuring that its communications are 'clear and readily accessible' (paragraph 4.11), and hope that this principle will underpin all of the FCA's interactions with consumers.
- **Assuring consumers that change is really taking place:** In order to determine that the FCA is producing results for consumers, we believe it is crucial that clear evidence is made available concerning the effectiveness of its interventions in order to provide assurances that tangible change is taking place. We strongly agree with the sentiments expressed in connection with this in paragraph 5.5 that 'Measuring whether markets are performing their role better following interventions is the real test of regulatory success and maximises accountability'. The suggestion that the ex-post Cost Benefit Analysis reporting pursued by the Financial Services Authority should be further developed in order to 'identify the impacts of specific regulatory changes' is therefore one we would support. We also feel that it is important that the findings of any such reporting are presented in a clear and easily accessible way that will enable consumers to draw their own conclusions about the effectiveness of specific interventions.

In addition to these core points, we would like to make further comments about two specific issues, financial education and financial inclusion, and the significance of the FCA's role with respect to them. We believe that these issues are of considerable importance to the ultimate stability and integrity of the financial system, a point we made in our response to HM Treasury's original consultation on regulatory reform (*A new approach to financial regulation: judgement, focus and stability*). Events of the past few years have demonstrated the enormous damage that can be done if consumers take on unsustainable levels of personal debt, and have revealed how vital it is for consumers to develop the knowledge and capabilities necessary to make informed decisions about money and engage constructively with the financial services industry.

While financial education and financial inclusion are not explicitly mentioned in the FCA's strategic or operational objectives, we feel that it will be necessary for the FCA to engage with them to some degree in order to effectively fulfil its functions, and indeed we are pleased that this is recognised in certain parts of the consultation.

With regard to financial education, the consultation suggests that the FCA will take on the Financial Services Authority's existing functions in relation to the Money Advice Service (paragraph 3.23). In our view, the relationship between the FCA and the Money Advice Service will be an absolutely crucial one, particularly given the FCA's focus on promoting efficiency, choice and competition in markets. Ultimately, consumers themselves will need to major play a role in driving improvements in the market, and this obviously demands that they are equipped with the skills necessary to do so. We would therefore stress the value of a strong two-way relationship between the two bodies.

Equally, we also feel that it will be very important for the FCA not to restrict its engagement to the Money Advice Service alone, and believe that it should engage proactively with a broad range of financial education organisations such as ourselves and other third-sector providers. In addition of course, it will be crucial for the FCA to recognise the contribution that it can make as a regulator to supporting consumers' financial capability. We are pleased that the consultation refers to the FCA's responsibility to 'seek to ensure that firms

provide appropriate information to consumers, at the right time, about the product being purchased, so that they can consider the implications for their personal situation and make an informed decision' (paragraph 3.10), and encourage the FCA to reflect on an ongoing basis on how else it can support consumers' decision-making.

With respect to financial inclusion, we respect the FCA's position that it 'will not set policy as this is a matter for government' (paragraph 3.27). However we see the acknowledgement by government that the FCA has a mandate to address financial inclusion under its 'efficiency and choice' objective as very positive.

We would also stress that those consumers who have experienced financial exclusion, and who have perhaps not engaged with financial services before or for an extended period of time, are likely to be particularly vulnerable. They will probably be less able to navigate the system, and to know where to seek redress if they suffer detriment. The regulator undoubtedly has a role to play in ensuring that those in such situations receive an appropriate level of protection.

In this context, the principle noted in paragraph 1.11 that we have previously referred to (that the FCA should take a differentiated and proportionate approach to promoting good outcomes for consumers 'which takes into consideration the knowledge and financial sophistication of various types of consumer') is particularly significant, and we would again emphasise the importance of embedding this in the relevant policy-making processes.

Chapter 4: Regulatory Approach

Paragraphs 4.10 to 4.12 set out the FCA's approach to engaging with consumers. As outlined in our comments on *Chapter 1: Overview*, we strongly support the principle of greater consumer engagement, and believe that if realised this will enhance the FCA's ability to identify detriment and intervene at an early stage.

The consultation suggests a number of measures that the FCA will take to enhance its ability to engage with consumers, including conducting extensive market research, building relationships with consumers and their representatives (including at a European level), and utilising social media, roadshows, panels, focus groups and other sources of consumer information. While we believe all of these will have a valuable impact, we feel that further steps need to be taken to ensure the FCA is successful at ‘building the consumer perspective into all its work’ (paragraph 4.10) and protecting those most at risk.

In our view it would be highly beneficial for individuals with a significant track-record in championing consumers and protecting the vulnerable to have a presence at board level within the FCA. In our response to *A new approach to financial regulation: judgement, focus and stability*, we noted that the recruitment of Mick McAteer and Brian Pomeroy as non-executive directors of the Financial Services Authority had been praised in the 2009/10 Annual Report of the Financial Services Consumer Panel.¹ We subsequently expressed the hope that the FCA (at that point the Consumer Protection and Markets Authority) would always seek to have at least one non-executive director with significant consumer credentials on its board. We maintain this position, and believe that such a policy would help ensure that a consumer perspective is embedded at the highest level of the FCA.

In addition, we strongly believe that the FCA’s outreach activities could be significantly enhanced by the presence of a high-profile individual capable of championing consumer causes, following the model for a Consumer Advocate proposed by the previous Labour Government in a public consultation in December 2009. We feel that if correctly managed, this kind of public figure could add real value to the FCA’s consumer engagement efforts by acting as a conduit between the general public and the regulator. In our view there is a definite space for such an individual, independent but endorsed by Government, to play a role in co-ordinating work to inform consumers and championing groups of consumers who had suffered detriment (particularly

¹ Financial Services Consumer Panel, *Annual Report 2009/10*, p. 12

the most vulnerable who will potentially be the least capable of navigating the system). We would therefore urge policy-makers to waste no time in implementing this proposal, and integrate a Consumer Advocate as a key part of the FCA's consumer engagement strategy.

Contact

For further information on any of the suggestions made in this response, please contact John Davies or Liz Dunscombe by email at office@creditaction.org.uk or by telephone on 0207 380 3390.