Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Dear Anne,

Consultation on a new regulatory framework for individuals

This is the Financial Services Consumer Panel's response to the proposals on remuneration set out in CP13/14. The Panel welcomes this opportunity to outline its position on the proposals. In our response we have focused on the questions within the remit of the Panel only.

We agree with the FCA's approach as covered by questions 6, 8, 10, 11, 16, 19 and 21. We do have concerns about the lack of detail as regards the practicalities surrounding the enforcement of both the Certification Regime and the Conduct Rules, and the interaction with the new Banking Standards Review Council (BSRC). The Panel also strongly urges the FCA not to simply 'grandfather' all existing senior managers into the new regime.

Our responses to individual questions within the Consultation Paper where we have substantive comments to make are set out below.

Q12: Do you agree with the PRA's and FCA's proposed approach to handover arrangements?

We welcome the proposed requirement on firms to take reasonable steps to ensure that newly appointed Senior Managers are made aware of all necessary information and risks of regulatory concern in order to perform their responsibilities effectively. This requirement will prevent senior managers from avoiding responsibility by claiming they were unaware of misconduct issues that originated prior to them taking up their duties.

Q14: Do you agree with the proposals set out in the FCA's proposed statements of policy contained in draft chapters SUP 10C and DEPP 8?

The Panel welcomes the new powers for the regulators to impose conditional approval of senior managers as it presents the FCA with an opportunity to increase standards by requiring training or making approvals time-conditional. However, we would not want to see these new powers used to approve the appointment of senior managers that do not fulfil the minimum requirements under the presumption that they will improve their standards once in office.

Q17: Do you agree with the FCA's proposed approach to rules and guidance on fitness and propriety?

While the Panel welcomes in principle the new Certification Regime for all banking staff with a 'significant harm' function, we are concerned about how these rules will be enforced in practice. Certificates will be issued by banks for their own staff, meaning that the success of the new rules will be largely dependent on the will of senior managers across the industry to take responsibility for their implementation.

The primary purpose of the regime is to prevent misconduct from occurring by ensuring relevant staff are competent to perform their roles, but is unclear how the FCA will monitor compliance unless a breach of conduct rules is committed by an employee covered by the regime. We hope that the FCA will be pro-active in its supervision of firms to ensure that the new rules are respected in both letter and spirit.

Moreover, the interaction between the new Certification Regime and the Banking Standards Review Council is not apparent from the Consultation Paper, even though the BSRC has included the Regime's implementation as one of its objectives. The Panel reiterates its long-held view that the banking industry needs to be subject to a mandatory standards body that requires individual membership.

Compulsory membership for individuals characterises many other professional standards bodies, including those for the legal, accounting and medical professions. The Panel is aware that such bodies for many other sectors also act as regulator. Given the role of the FCA, we are not proposing that the BSCR fulfils such a role. Nonetheless, this should not preclude a situation where bankers are obliged to join a professional standards body.

One option to achieve this would be to put the existing Chartered Bankers Institute on a statutory basis and make membership compulsory. Voluntary membership of this body has not proven to be effective, as the Institute has only 9,000 members. Alternatively, the terms of reference of the BSRC could be modified and given a statutory basis to achieve the same objectives.

Combined with the PRA's and FCA's new senior managers' regime, a stronger, independent banking standards body would be better placed to address the cultural and behavioural change that the UK banking industry needs than the BCRS proposals in their current form.

Q22: Do you believe that rules should apply to all people in the firm who are directly involved in financial services business?

The Panel welcomes the extension of conduct rules to all relevant staff, as direct interaction with consumers by retail staff can pose the greatest risk of mis-selling or other forms of misconduct.

However, we did identify the potential risk that the new Conduct Rules could be applied by banks in a way that deflects responsibility for large-scale failings away from senior managers to front-line staff. The FCA's collection of data for suspected and confirmed breaches of the Conduct Rules should enable it to identify patterns of misconduct that indicate structural or cultural failings within a firm, and enable it to act accordingly against senior managers under the new SMF regime.

Q24: Do you agree that these are the right Conduct Rules for both regulators to introduce, taking into account the objectives set out in paragraph 5.16?

Q25: Do you agree that these are the right additional FCA-specific rules?

Q26: Does the guidance attached at Annex 6 give helpful clarity on the behaviours the FCA expects under each of the rules?

The Panel welcomes the new Conduct Rules, in particular rule 4: "You must pay due regard to the interests of customers and treat them fairly". We have previously had concerns about the adequacy of the existing FCA guidance on treating customers fairly and therefore support the inclusion of a specific rule this issue within the Conduct Rules, which we hope will lead to better consumer outcomes.

However, to make the application of this rule as effective as possible, we believe the accompanying guidance should be substantively re-written. In our view, the guidance should set out the wider principles underpinning the concept of fair treatment, rather than simply providing a non-exhaustive list of examples of 'unfair treatment'. Moreover, the guidance on Rule 4 is heavily focused on investments and may not be appropriate for all retail staff.

Q27: Do you agree that individuals already performing the relevant controlled functions within their existing approvals should be grandfathered to the new SMF?

We strongly oppose the proposal to 'grandfather' all existing senior managers and those with significant responsibility functions into the new system, as this means that it will take years for the full effect of the new rules to become apparent.

Instead, we recommend that the FCA either issues temporary authorisation before existing office holders are fully vetted in line with the new rules (similar to the approach to the authorisation of consumer credit firms), or that firms should be obliged to issue a statement certifying that an internal review has found their senior managers compliant with the rules.

Q28: How much time do you think is necessary to implement the new SMR rules, including the preparations of Statements of Responsibilities and Responsibilities Maps? Please explain what activities would be required to prepare for implementation, and the time required for each activity.

and

Q29: How much time do you think is necessary to implement the new Certification Regime?

and

Q30: In relation to the Conduct Rules, how much time do you think is necessary for implementation? Please explain what activities would be required to prepare for implementation, and the time required for each activity.

Although the Panel does not have the expertise to comment on the necessary time required for implementation, we would urge the new rules to be implemented and enforced without unnecessary delay.