

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Dear Sirs,

Building operational resilience: impact tolerances for important business services and feedback to DP18/04

The Financial Services Consumer Panel welcomes the opportunity to respond to this consultation paper. As we said in response to the 2018 joint FCA, PRA and Bank of England Discussion Paper, the consequences of system failures can be disastrous for consumers who need to withdraw or transfer cash, pay bills, or pay for goods or services.¹

Firms should already know which are their important business services that could cause harm to consumers if disrupted. Equally, they should be clear what level of disruption they and their customers could tolerate.

It is important to minimize the risk of adverse events occurring, but also to have plans in place in the event that they do. Where consumers do suffer detriment, there should be automatic redress applied to ensure they are at least put in the position they were in before the detriment occurred. Automatic redress would also ensure firms gave more weight to the impact of disruption to business services that are important to consumers, even if they are not significant from the point of view of the firm. For example, a 24-hour delay to the payment of salaries might be minor from the perspective of the bank, but major from the perspective of the people who have not been paid. Understanding the consequences of system failures, both to consumers, but also of any financial penalty, will help focus the minds of Boards and Executives when making decisions about system upgrades, investments in cyber security, and other operational matters.

Equally, when things do go wrong, it is essential that firms are able to communicate how they will put things right, in a timely and effective manner. The CP opens with the need for a communications plan, but there is very little detail within the paper itself. The CP should stress the need for firms to be transparent about the issues they are facing, and to provide regular updates so their customers understand any consequences as well as what alternatives may be in place. We do not believe there is an exhaustive list of comms channels, but dedicated webpages, social media updates, press and radio advertising, and dedicated phone lines are all possible channels for firms to have in place.

Firms should be transparent about previous issues, so that consumers can be clear about how much weight the firm places on its operational resilience. We do not believe that the requirement on firms to display information about the number of major operational and security incidents they have experienced goes far enough, as outages of different lengths, for example, can impact consumers in different ways, and data breaches have other consequences consumers should be made aware of and understand.

In the event that things go wrong, firms must ensure adequate resourcing to handle calls / complaints in their resilience plans. We have said before that the current 8-week deadline for firms to respond to customer complaints is too long, especially in the context of the digitalised

¹ https://www.fs-cp.org.uk/sites/default/files/fscp_response_building_the_uk_financial_sector_s_operational_resilience.pdf

world we live in, where consumers reasonably expect their financial transactions to be processed within minutes.

We are pleased to see a necessity for firms to move away from the legacy systems they have been running for many years following various mergers and acquisitions. However, all system upgrades should result in better services and security for consumers. Good governance is key to ensuring decisions are made for the benefit of consumers, and not just for financial reasons.

Although the focus of the consultation is on individual firms and their plans and responses, some plans and recoveries from outages will require collaboration between firms and competition objectives should not be an obstacle to this. Regulators should encourage such arrangements where they will lead to better outcomes for consumers. Examples where collaboration may be required could be when external factors have affected more than one institution (e.g. power supply problems) but might also be around other firms providing contingency services to affected customers where one firm has a major problem.

Equally, we believe that the risks to consider are wider than those just facing individual firms. Market-wide and systemic risks should not be missed as a result of regulators focusing too narrowly on firm's individual resilience.

The Consultation stresses the need for Board members to have 'adequate' knowledge, skills and expertise to be able to provide constructive challenge to senior management as part of their oversight responsibilities in relation to operational resilience. Does the FCA have evidence that this level of expertise will be sufficient? For example, is there any correlation between firms that have suffered a major breakdown in operational resilience and those whose Boards lack technical expertise?

The governance of the relationship with third party service providers (even if the third party is part of the same group, and even if they are from a different jurisdiction) is an essential part of resilience planning and mitigation. Firms' own Internal Audit activities should facilitate a more systemic review across firms that carry a greater than average risk and which might therefore impact on other firms in the sector, and this would also include third party providers.

Yours faithfully

Wanda Goldwag
Chair, Financial Services Consumer Panel

Questions – we only answer those questions where we have something substantive to add.

Q1: Do you agree with our proposal for firms to identify their important business services? If not, please explain why.

Yes. In addition, we note that the Payment Systems Regulator is not involved in this coordinated consultation process. Payment systems need to be considered as an essential business service as the consequences to consumers when payments can't be made can be far-reaching.

Q2: Do you agree with our proposed guidance on identifying important business services? Are there any other factors for firms to consider?

We are pleased the FCA has stressed the risk of the misuse of consumer data as an important risk. This is true for providers, third party service providers and for Account Information Service Providers (AISPs). Misuse of consumer data may not always have consequences for the firm involved, but can be serious for consumers.

Q3: Do you agree with our proposals for firms to set impact tolerances? If not, please explain why.

The need to focus on the impact on end users as well as the needs of the firm itself is welcome. The need to take account both of consumer characteristics, the number potentially affected and the importance of the potential impact is also welcome.

Q4: Do you agree that duration (time) should always be used as 1 of the metrics in setting impact tolerances? Are there any other metrics that should also be mandatory?

It should be mandatory for firm to set metrics and tolerance levels specifically for vulnerable groups of customers. Vulnerable consumers are more susceptible to harm and likely to suffer worse harm from a given event than other groups, so it is essential that firms are able to evidence that they have considered this and taken steps to mitigate those harms.

Q8: Do you agree with our proposed approach to testing? If not, please explain why.

We agree with the proposals to ensure firms use realistic scenario testing to demonstrate that they are operating within reasonable tolerances. However, we believe regulators should also ensure there are some prescribed industry-wide tests, so that they can be reassured of how firms will respond to different scenarios.

The senior manager responsible should be clear on the requirement for scenarios to be plausible, which should include thinking about the human capabilities and resourcing as well as the technological solutions. Firms should know they can upscale their human capital at short notice if required. If sound governance was in place but no one there to implement it, then it was futile.

Regulators should consider whether there are also lessons that can be learnt from other sectors such as utilities, particularly on how to resolve system-wide issues.

Q9: Do you agree with our proposals for communication plans? If not, please explain why.

We agree with the importance placed on fast and effective communications. It is essential that firms are proactive in contacting their customers. It is essential that firms are transparent about the issues they are facing, and provide regular updates so their customers understand any consequences as well as what alternatives may be in place.

It is clear that normal call centres can't cope with the extra demand from an outage, not with the atypical nature of the queries. As a bare minimum, firms should use a dedicated team on a dedicated number for dealing with calls related to major outages (for example anything over 12 hours), dedicated pages on their websites and dedicated social media updates, as well as the normal channels they use to communicate with consumers, such as post and email. Failing to provide proper communications or answer consumers' concerns can be as problematic as preventing people from accessing their money.

Firms should also be clear in their communications that consumers will be entitled to redress. As we say above, if automatic redress were mandatory following systems failures, it would ensure firms gave more weight to the impact of disruption to important business services.

Q10: Do you have any comments on our proposed requirement for a self-assessment document?

We believe that firms should also reference the outcomes of relevant Internal, and External (where applicable), Audit reports. Information such as the ratings, recommendations, completion of previous actions, planned management actions, and forward plans for related reviews, will provide a level of independent assessment of the extent to which senior management and the Board are across this issue.

Self-assessment documents could be requested from those firms that receive inadequate or limited Internal Audit ratings in any area relating to operational resilience.