

## FCA COST BENEFIT ANALYSIS PANEL

### TERMS OF REFERENCE

*(approved by the FCA Board on 27 June 2024)*

#### Introduction

1. The FCA Cost Benefit Analysis Panel ('the Panel') is established by the Financial Conduct Authority ('FCA') under section 138IA of the Financial Services and Markets Act 2000 (as amended) (FSMA).
2. In accordance with FSMA and the Financial Services (Banking Reform) Act 2013 (as amended) (FSBRA), the FCA and the Payment Systems Regulator (PSR) must consult the Panel in relation to the preparation of cost benefit analyses (CBAs) in certain circumstances, and statements of policy regarding their preparation of CBAs (Statements of Policy), and the Panel must provide advice in relation to them.
3. In addition, the Panel is required to keep under review how the FCA and PSR are generally performing in their duties to prepare and publish CBAs and following such review to provide to the FCA and PSR whatever recommendations the Panel considers appropriate.

#### Scope and Panel duties

4. The Panel will provide advice to the FCA or the PSR in relation to the preparation of any CBAs upon which the Panel has been consulted.
5. Such advice is likely to include whether the likely costs and benefits of the relevant draft rules (in the case of FCA) or proposed generally applicable requirement(s) (in the case of the PSR) have been appropriately identified and assessed, in accordance with their respective Statements of Policy.
6. "A CBA" in the context of these terms refers to a CBA document which has been referred to the Panel by the Panel Secretariat and which has:-
  - a. been prepared by the FCA under s138I(2)(a) FSMA 2000 (i.e., to accompany the publication of draft rules), or under s138I(5)(a) (i.e., to accompany a publication of details of any

- significant difference between rules adopted and a draft published); or
- b. been prepared by the PSR under s104(3)(a) FSBRA (i.e. to accompany the publication of a draft of a generally applicable requirement); or under s104(6) FSBRA (i.e., to accompany the publication of details of any significant differences between the generally applicable requirement being adopted and a draft of the requirement that was previously published).<sup>1</sup>
7. A reference to the preparation of CBA by the FCA or PSR, does not refer to consideration of analysis of options at early stages, the merits of the underlying policy decision, (although the FCA or PSR may invite the Panel's informal input on the proposed evidence base and analysis from time to time), whether the FCA or PSR is doing enough to reduce the overall burden to business, or whether the policy selected is delivering value for money.
8. A CBA will be referred to the Panel by the FCA or by the PSR in accordance with their respective Statements of Policy and the CBA Panel Review Process. The Statements of Policy will include a materiality threshold and any exemptions from the obligation for the FCA or PSR to consult, or to prepare a CBA.
9. The Panel will also provide advice to the FCA and PSR on the preparation of their respective Statements of Policy and any material proposed amendments to them made from time to time.
10. The Panel will keep under review how the FCA and PSR perform generally in carrying out their duties with respect to the preparation of CBAs for publication under s138I(2)(a) and (5)(a) FSMA and under s104(3)(a) and (6) FSBRA 2013 respectively. This may include considering whether the FCA and PSR have applied their Statements of Policy appropriately when preparing a CBA or consulting the Panel about it; and providing comments and recommendations to the FCA or PSR as appropriate.
11. The Panel will prepare an annual report on its work and send it to HM Treasury by the statutory deadline each year (the first report must be provided to HMT no later than 26 December 2024 and thereafter to be advised by Panel Secretariat). It must, at least 4 weeks before doing so send a copy/draft of the report to the FCA and PSR Boards. The annual report must include any general recommendations the Panel wishes to make to the FCA or PSR, including with respect to the review it has undertaken under paragraph 10 above.

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<sup>1</sup> see FSMA 138IA(1), s138I(2)(a), (5)(a) and (7), and FSBRA s104(2), (3)(a) and (6).

12. In fulfilling its duties, the Panel shall be mindful of (as applicable)
  - (a) the FCA's duty to have regard to applicable Regulatory Principles as attached at Appendix 1.
  - (b) the PSR's duty to have regard to applicable Regulatory Principles as attached at Appendix 2.

### **Functioning**

13. The Chair of the Panel shall have reasonable access to the FCA and PSR Chair, FCA and PSR Chief Economist and senior executives of the FCA.
14. The (full) Panel will meet at least quarterly to;
  - a) consider any recommendations with respect to how the PSR and FCA are performing their duties generally with respect to CBA, consider cross-cutting methodological issues which have been identified across CBAs;
  - b) prepare the annual report; and
  - c) any other business the Chair considers should be discussed by the full Panel.
15. A senior member of the FCA Economics Department and PSR representative shall be invited to attend such meetings as observers at least twice a year.
16. The FCA Chair and PSR Chair or their respective representatives will be invited to attend as Panel observers at least once a year.
17. The Panel may work in smaller groups as convened by the Secretariat to provide advice on individual CBAs and provide comments and recommendations as appropriate to the FCA or PSR.
18. The Panel will liaise as often as necessary to provide recommendations in relation to a CBA referred to them, in accordance with the CBA Panel Review Process.
19. The Panel will be expected to comply with the CBA Panel Review Process, which amongst other matters, sets out a timetable for review and process for providing advice to the FCA and PSR, which will enable the FCA and PSR to comply with their respective duties to work effectively, efficiently, and proportionately in the performance of their functions - including, for the FCA, the making of its rules; and, for the PSR, the issuing of generally applicable requirements.

20. The Panel shall be proactive in bringing to the attention of the FCA and/or PSR CBA methods and practices which the Panel consider are likely to be of interest and use in the fulfilment of its obligations under these terms of reference.
21. The Panel will respond where possible to requests from the FCA or PSR for early engagement with the Panel on the drafting of CBAs, in advance of preparing the CBA; and on the Statement(s) of Policy before the duty to consult the Panel on CBAs has been commenced in legislation.
22. The Panel may request access to relevant information from the FCA and PSR which it reasonably requires to carry out its work. This will generally not include confidential information about specific regulated firms, individuals, or markets and/or any internal comments on the underlying policy.
23. The Panel will maintain the confidentiality of information provided to the Panel by the FCA and PSR.

## **Membership**

24. The FCA Board appoints Panel members in accordance with the FCA Panel Appointment Statement of Policy, with HM Treasury's approval required for the appointment or dismissal of the Chair.
25. The FCA is required to appoint at least two individuals employed by FCA authorised firms to the Panel. These members are expected to contribute to the general work of the Panel, drawing on their perspectives of working in the sector.
26. Members will be appointed for an initial term of two or three years and, subject to reappointment may serve an additional term/s as long as this does not exceed the maximum of six years.

## **FCA and PSR Duties**

27. The FCA will provide secretariat support to the Panel, which it considers appropriate, to enable the Panel to operate effectively.
28. The FCA and PSR will provide the Panel with access to information, which they consider appropriate for the Panel to fulfil its duties.

29. The FCA and PSR must consider representations made to them by the Panel and must from time to time publish in such a manner as they think fit, their responses to the representations.
30. The Panel Secretariat will assist the Panel in identifying confidential (including market sensitive) information in relation to which particular duties of confidentiality apply.

## **Appendix 1**

### **The Financial Services and Markets Act 2000 provides that the FCA must have regard to the following regulatory principles:**

- a) the need to use the resources of each regulator in the most efficient and economic way;
- b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- c) the need to contribute towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and, section 5 of the Environment Act 2021 (environmental targets), where each regulator considers the exercise of its functions to be relevant to the making of such a contribution;
- d) the general principle that consumers should take responsibility for their decisions;
- e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements;
- f) the desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act;
- g) the desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives;
- h) the principle that the regulators should exercise their functions as transparently as possible.

## Appendix 2

### **The Financial Services (Banking Reform) Act 2013 provides that the PSR must have regard to the following regulatory principles:**

(a) the need to use the resources of the Payment Systems Regulator in the most efficient and economic way;

(b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;

(c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term [[F1](#), including in a way consistent with contributing towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Payment Systems Regulator considers the exercise of its functions to be relevant to the making of such a contribution;]

(d) the general principle that those who use services provided by payment systems should take responsibility for their decisions;

(e) the responsibilities of the senior management of persons subject to requirements imposed by or under this Part, including those affecting persons who use services provided by payment systems, in relation to compliance with those requirements;

(f) the desirability where appropriate of the Payment Systems Regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Part;

(g) the desirability in appropriate cases of the Payment Systems Regulator publishing information relating to persons on whom requirements are imposed by or under this Part, or requiring such persons to publish information, as a means of contributing to the advancement by the Payment Systems Regulator of its payment systems objectives;

(h) the principle that the Payment Systems Regulator should exercise its functions as transparently as possible.