HM Treasury Future Regulatory Framework (FRF) Review: Proposals for Reform

https://www.gov.uk/government/consultations/future-regulatory-framework-frf-review-proposals-for-reform

Response by the Transparency Task Force, February 9th 2022

About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector. The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Our response to you has been produced by a highly collaborative group of TTF volunteers, our "Response Squad," working together to build consensus, whilst always remaining true to our "North Star" question: "What is best for the consumer?" For further information about the Transparency Task Force see: http://www.transparencytaskforce.org

This response is all non-confidential.

Some of this response is contained in answers to HM Treasury's specific questions, but the parts of the response not shown as direct answers to questions are equally part of this response, and for consideration by HM Treasury, i.e. all comments in this response are part of the response, and should be considered.

As always, context is key

"What is best for the consumer?" in the context of HM Treasury's Proposals for Reform could be summarised as follows:

'To have an efficient Financial Services Sector that functions in a clearly prescribed way under a stable and accountable regulatory environment. Regulation must be transparently applied with demonstrably effective deterrence measures to adequately protect the consumer. Regulatory responsibility and operation should not be conflicted with inherently competing interests between Financial Conduct Authority (FCA) stakeholders.'

Given the fundamental need for the financial sector to be trusted for it to function successfully in supporting the economy and UK citizens, it should be of great concern for the sector's market participants, trade bodies, professional associations and regulators that it is a sector that society does not trust.

Lack of trust negatively impacts the FCA's Strategic Objective of ensuring that the markets work well.

UK productivity (relative to hours worked) is significantly lower than our EU competitors for example Germany, this is accepted as a very serious problem resulting in UK firms being competitively disadvantaged.

It is widely recognised that this is very closely connected to a lack of investment by SMEs in, for instance, 'up to date manufacturing machinery.' It is also recognised that the primary reason for this is because of a reluctance by businesses to borrow from Banks. It is not that the Banks are unwilling to lend the money it is because of a fundamental lack of trust in the Bank's to behave fairly, and a belief that there will be no support from the regulators if they don't. As a consequence, SMEss see the risk of borrowing as too high.It is not difficult to understand why this lack of trust has arisen, and is arguably getting worse.

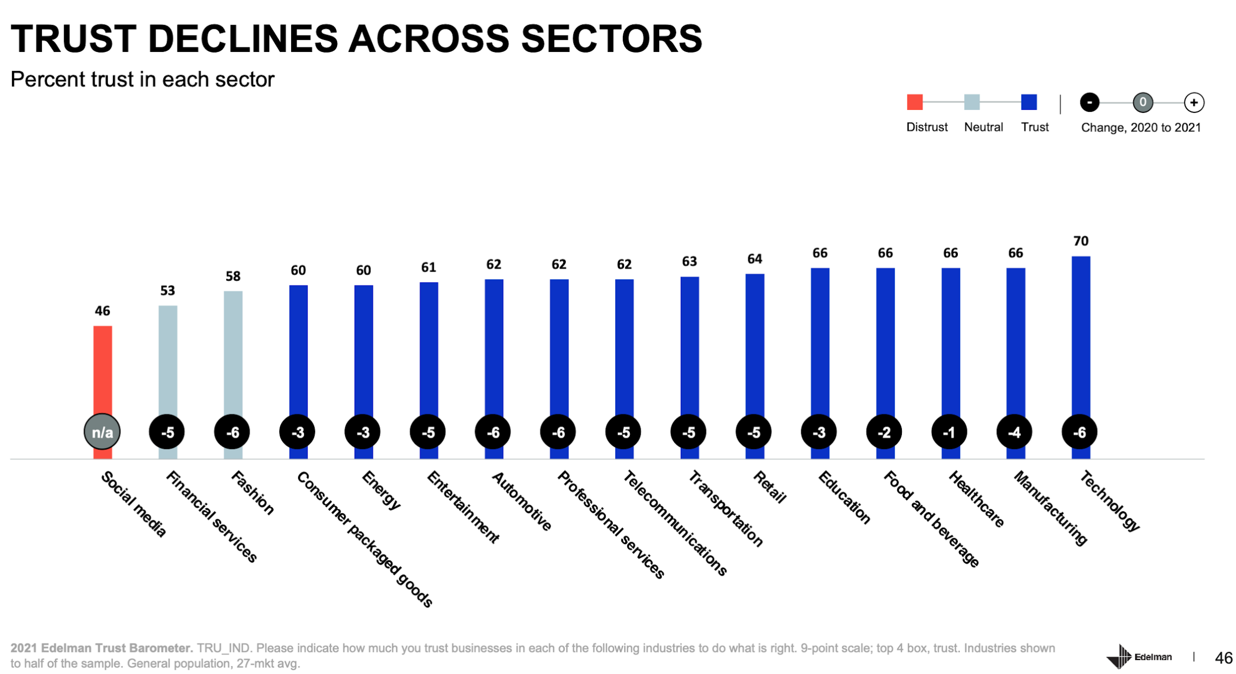
The regulators' failure to regulate and sanction translates into a failure to effectively impose deterrence to regulatory non-compliance. Clearly, this contributes to the undermining of UK productivity. A softening of regulation in the name of competitiveness would quite obviously lead to even lower investment and productivity. A restoration of trust in banks' lending behaviour by the borrowers will need to be achieved before any beneficial effect can translate from Banks competing for this business between themselves.

"In the words of the Bank of England's Andrew Bailey in 2019, when he was CEO of the Financial Conduct Authority, the regulator "was required to consider the UK's competitiveness, and it didn't end well, for anyone'. The Chancellor's laudable aim for the UK to be the world's first net zero financial centre would be undermined if the risk of instability deterred the private investment urgently required to fund a just climate transition."

Excerpt from:

https://www.businessgreen.com/news/4044404/financial-services-regulation-focus-stability-net-zero-government-urged

We believe that there is cause for concern about the reputational integrity of the financial services sector, in most parts of the world. There is ample evidence to suggest that society is distrusting of financial services. The highly credible 2021 Edelman Trust Barometer in Financial Services shows it to be the second most distrusted industry; second only to social media.



Given the fundamental need for the financial sector to be trusted for it to function successfully, it should be a great concern for the sector's market participants, trade bodies, professional associations and regulators that it is a sector that society does not trust.

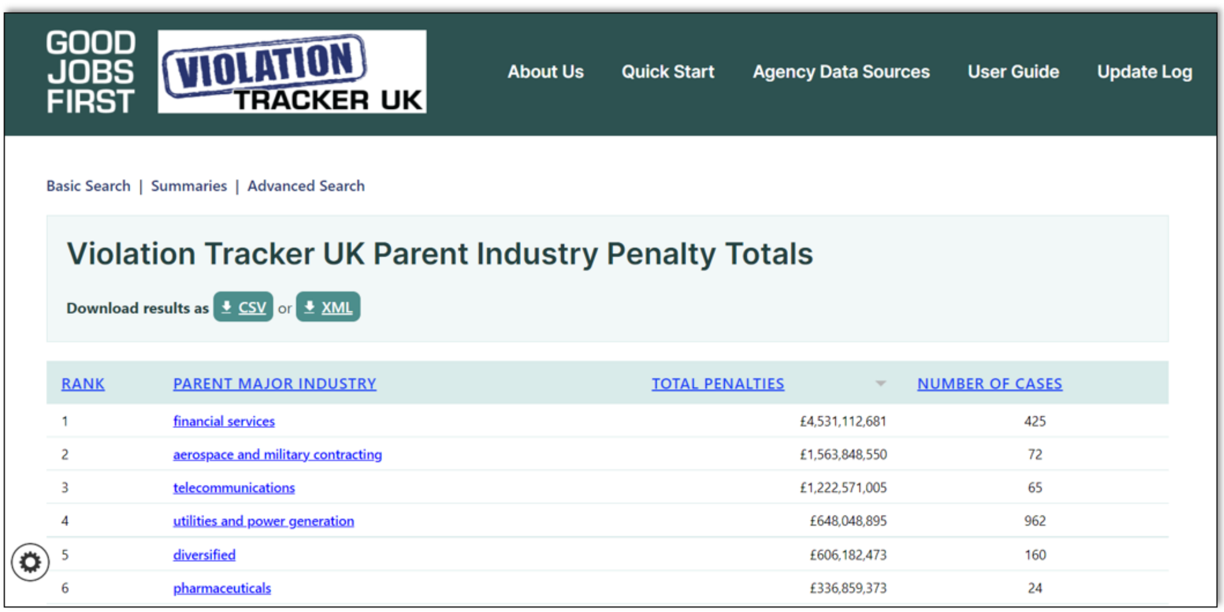
It is easy to understand why the financial sector is distrusted; in fact the evidence suggests that people *should* distrust it. Consider for example the overall conduct of the financial industry in the UK compared to other industries when it comes to the level of violations.

The best source for such data is the recently launched Violation Tracker UK. In the interests of transparency we should point out that Transparency Task is very closely connected with Violation Tracker UK; and proudly so. For example, we Chair its UK Advisory Board.

Violation Tracker UK holds data about corporate infringements in 46 sectors. What does the data in Violation Tracker UK show about the UK's financial services sector? It shows that the conduct of the sector is so bad that if you add up all the infringements by all the other 45 industries it equates to roughly the same as the financial sector on its own.

That is a truly alarming reality; so much so that repairing the reputational integrity of the sector should be Priority #1 for all stakeholders that truly care for the wellbeing of the sector and the society it is meant to serve.

The screenshot below shows the top of a chart that all financial sector stakeholders in the UK should be ashamed that the financial sector is at the top of: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Violation Tracker UK Parent Industry Penalty Totals

Download results as CSV or XML

RANK	PARENT MAJOR INDUSTRY	TOTAL PENALTIES	NUMBER OF CASES
1	financial services	£4,531,112,681	425
2	aerospace and military contracting	£1,563,848,550	72
3	telecommunications	£1,222,571,005	65
4	utilities and power generation	£648,048,895	962
5	diversified	£606,182,473	160
6	pharmaceuticals	£336,859,373	24

To view the chart in full, click here.

Furthermore, it is impossible to ignore the obvious question: how can it be, that despite the UK's financial sector being such a systemically important part of our economy and our international reputation, that we are tolerating such poor stewardship of it by its conduct regulator?

That question becomes even more poignant when you look deeper into the data held within Violation Tracker UK and consider the obvious pattern of recidivism that exists within the sector. The screenshot below gives a feel for the nature of the recidivism within the sector:

Basic Search | Summaries | Advanced Search

Violation Tracker UK Parent Industry Summary Page

Parent Industry: financial services
Penalty Total since 2010: £4,531,112,681
Number of Cases: 425

Note: The totals include only those entries matched to a parent company. The industry designation is the primary one for the parent's operations overall.

TOP 10 PARENT COMPANIES	TOTAL PENALTY	NUMBER OF CASES
Barclays	£515,651,961	20
Lloyds Banking Group	£467,402,170	35
UBS	£460,563,400	5
NatWest Group PLC	£436,370,276	24
JPMorgan Chase	£396,172,200	4
Deutsche Bank	£395,435,024	4

To see that data in full, click here and when viewing it, scroll down and see the obvious pattern of the same organisations committing the same offences over and over again. Perhaps this suggests that there is a culture within the sector that sees the fines imposed on it as a cost of doing business. Perhaps this hard evidence also calls into question the grotesque lack of effectiveness of the FCA in ensuring the sector behaves properly and that it succeeds in its objective to maintain the integrity of the sector and provide an appropriate level of consumer protection.

That validity of that line of thought becomes even more obvious when you drill down to the next level of infringement data, and look at the violations of particular organisations. For example, examine the infringements by Barclays, Lloyds Banking Group and Nat West; and ask yourself if it would be prudent to do anything that might encourage even more misconduct.

For the avoidance of any doubt the answer is "No"!

All this makes it perfectly clear that any notion of reforms that might lead to even worse conduct by the sector should be distinguished immediately as a reckless line of thought. The reputation of the financial sector and wealth it generates matter far too much for any reforms to be allowed to gamble with it. Rather, we would respectfully suggest that resource and energy would be better spent examining what needs to happen for the FCA, and thus the delivery of financial regulation in the UK, to become fit for purpose.

We believe that turning the UK's financial services industry into the world's best-regulated is the best way to restore consumer confidence in it and the UK, and to persuade governments and regulators overseas that the ghosts of the Global Financial Crisis have finally been laid to rest and that the City can be trusted to trade freely across borders. Thus, fixing UK financial regulation, rather than giving it an overt competitiveness mandate, is the most effective way to boost the performance of the industry.

In fact, we are so concerned by the poor performance of the FCA that we are having to spend a huge proportion of our very limited resources on helping to try to fix it, as these slides about our Plans and Priorities for 2022 show - look in particular at the section about the evidence published thus far from the APPG on Personal Banking and Fairer Financial Services' Call for Evidence about the FCA - see here.

Please therefore be mindful of these well-founded concerns when reading our response.

A short film about the issue

The Transparency Task Force is very grateful to TTF UK Ambassador and Advisory Group member, JB Beckett who has kindly produced a short film that provides an excellent entrée into the main issues that this consultation and our response to it deals with.

The film can be watched by clicking here.

"The Competitiveness Agenda; and why we need to push back on it"

We are also very grateful to all the speakers at our recent event about this consultation, namely:

- David Pitt-Watson, Visiting Fellow, Cambridge Judge Business School

- JB Beckett, Non Executive Director & Author of "New Fund Order"
- Nicholas Shaxson, Author, journalist, investigator and co-founder of the Balanced Economy, an anti-monopoly organisation
- David T Llewellyn, Professor of Money and Banking; and former regulator
- Marloes Nicholls, Head of Policy and Advocacy, Finance Innovation Lab
- Mark Bishop, Leader, Connaught Action Group

The full video recording of the event can be watched by clicking here.

The Transparency Task Force is not alone

The Transparency Task Force is one of 37 organisations that have issued a Joint Statement about our collective concerns regarding HM Treasury's Future Regulatory Framework proposals.

You can get to the press release about the Joint Statement, which includes comments from several individuals including Sir Vince Cable, here. The Joint Statement here. We are proud to be amongst this collection of progressive organisations, each of which has its own set of reasons for concern about the proposals:

Food for thought, that shouldn't be ignored

In his famous 1994 article "Competitiveness: A Dangerous Obsession" Paul Krugman, then Professor of Economics at the Massachusetts Institute of Technology, set out a range of concerns that, whilst now decades old and of course US-focused still do a great job in skewering the woolly thinking behind the current calls for competitiveness.

Paul Krugman's comments below (almost all of which are from the 1994 article) capture the essence of his thinking on the topic very well.

We posit that the wisdom of such a highly-acclaimed, award-winning and highly relevant subject-matter expert should not be ignored.

- "If we can teach undergrads to wince when they hear someone talk about 'competitiveness,' we will have done our nation a great service."
- "A government wedded to the ideology of competitiveness is as unlikely to make good economic policy as a government committed to creationism is to make good science policy."
- "Countries are nothing at all like corporations….countries do not go out of business."
- "The rhetoric of competitiveness — the view that, in the words of President Clinton, each nation is "like a big corporation competing in the global marketplace" — has become pervasive among opinion leaders throughout the world. People who believe themselves to be sophisticated about the subject take it for granted that the economic problem facing any modern nation is essentially one of competing on world markets."
- "The idea that a country's economic fortunes are largely determined by its success on world markets is a hypothesis, not a necessary truth; and as a practical, empirical matter, that hypothesis is flatly wrong."
- "The growing obsession in most advanced nations with international competitiveness should be seen, not as a well-founded concern, but as a view held in the face of overwhelming contrary evidence. And yet it is clearly a view that people very much want to hold."
- "The obsession with competitiveness is not only wrong but dangerous, skewing domestic policies and threatening the international economic system."
- "Most people who use the term "competitiveness" do so without a second thought."
- "Over and over again one finds books and articles on competitiveness that seem to the unwary reader to be full of convincing evidence but that strike anyone familiar with the data as strangely, almost eerily inept in their handling of the numbers."
- "In each case, the growth rate of living standards essentially equals the growth rate of domestic productivity — not productivity relative to competitors, but simply domestic productivity."
- "Competitiveness is a meaningless word when applied to national economies."

Question 1: Do you agree with the government's approach to add new growth and international competitiveness secondary objectives for the PRA and the FCA?

We suspect that responses to this question will cluster around two poles, with the majority from the industry welcoming it, and most from consumer organisations expressing serious concern. Given our remit - to promote the ongoing reform of the financial sector, so that it serves society better - we accept that, in principle, delivering economic growth and improving the UK's international competitiveness are among the ways that the industry can serve society, but we oppose any moves that could risk or cause detriment to consumers, especially at a time when there are well-founded concerns that the industry must be more assertively regulated to reduce the harms it causes.

Our reservations about the proposal therefore are not founded on objections to the principle that the UK should have a large, globally leading financial sector; rather, as expressed (Q4) in our response to the Phase II consultation, we believe it is reckless to send out a signal to either regulator that there is a way they can help to grow the industry that does not entail improving their operational performance against their existing statutory objectives. Indeed, in the case of the FCA, our response explains in some detail how its persistent underachievement against its three operational goals has harmed the industry, leading to difficulties in achieving equivalence-based access to EU markets and causing domestic consumers and SMEs to be wary of transacting with the sector.

As this article illustrates, the ignoble history of the Financial Services Authority provides a stark warning that a competitiveness mandate can be leveraged by corporatist politicians to place regulators under pressure to weaken regulation. Such measures enable incumbent firms to create the temporary illusion of enhanced profitability, which their lobbyists spin as a proxy for international competitiveness, but which in fact causes those firms and the financial sector incalculable long-run damage, as well as imposing harsh negative externalities on society. It's a fool's errand. This paper, by Professor David LLewellyn, which predates the go-live date of the Financial Services Authority, let alone the FCA, makes the case for effective financial regulation better than anything we've seen since. It is chastening to reflect on the extent to which the UK, its financial services industry and the regulator would be in a better place now had the principles set out therein been adopted.

Since we submitted our response to the previous consultation, our observations that lax regulation actually harms, rather than helps, the long-term competitiveness of the UK's financial sector have been vindicated. Speaking at the Mansion House dinner in June 2021, Chancellor of the Exchequer Rishi Sunak admitted that discussions with Brussels about equivalence-based access had concluded unsuccessfully. He claimed that 'the EU will never have cause to deny the UK access because of poor regulatory standards'. In fact, a Transparency Task Force volunteer provided the EU Commission with an extensive dossier on the shortcomings of conduct regulation in the UK, at the request of the relevant Directorate-General, and we have grounds to believe that this evidence was material in, as a minimum, helping the bloc justify a decision it may already have been minded to make on political grounds and, potentially, causing it to set its face against the sale of UK financial services in its markets given current regulatory deficit.

Meanwhile in the UK, in September 2021 the FCA published its consumer investments strategy, which admitted that the domestic financial services industry was missing profitable opportunities to provide consumers with mainstream investment products for three reasons:

1. Reckless prudence: consumers keep an unnecessarily high proportion of their wealth in cash [or under-occupied residential property] because they fear being mistreated by the financial sector;
2. Higher risk investments: poor or non-existent 'know your client' checks result in consumers who should be investing in mainstream products instead being sold exotic ones, often leading to consumer harms that result in them and others who become aware of their fate defaulting to reckless prudence;
3. Scams and frauds: poor or non-existent policing of the regulatory perimeter, and the proliferation of frauds within it, result in the same or worse harms and outcomes as described in point 2, above

While we consider the measures the FCA proposed to enact to address these harms and the intended outcomes to be insufficiently ambitious, we welcome the publication of the strategy, as we believe it is the first time the regulator has publicly acknowledged that inadequate conduct regulation constrains the scale and economic performance of the industry, as well as harming consumers. And while the initiative is restricted to consumer investments, we believe there is read-across to other verticals, including:

1. General insurance, where price-walking (in theory, but perhaps not in reality, now banned by the FCA), combined with practises such as misleading communications, may have led many people to be uninsured after finding renewal quotes, presented as 'best value', unaffordable;

2. SME banking, in which a series of high-profile misconduct cases[1] have destroyed growing businesses, bankrupted entrepreneurs and created a generation of business owners who are so distrustful of banks and so firmly (and justifiably) persuaded that the regulator protects banks and bankers rather than their victims that they eschew debt and are thus constrained in their ability to generate growth and jobs

Our response to the Phase II consultation proposes a number of operational, cultural, structural and governance improvements that we believe would help the FCA - the regulator giving rise to the most profound grounds for concern, by far - to more fully execute its statutory and operational objectives, to the mutual benefit of consumers and the honest majority within the industry. Of these, we consider the following to be the most important confidence-building measures:

- Duty of care: authorised persons must owe a duty of care to consumers, breach of which gives rise to a damages claim that can be recouped through litigation. We do not care whether it is branded a Consumer Duty rather than a duty of care, but as we explained in our response to the FCA's consultation, we believe it *must* come with a private right of action to keep the industry and FCA honest, to provide a much-needed additional route to redress for consumers and to avoid the FCA placing itself in breach of Section 29 of the Financial Services Act 2021. We believe a duty of care (or the proposed consumer duty and a private right of action) would provide consumers with much-needed confidence that authorised persons (which means approved individuals, as well as firms) would be liable for their losses if they lost money through mistreatment by those on the FCA register;
- Compensation for regulatory failure: the regulators' Complaints Scheme must become a genuine route by which consumers can obtain full redress for the financial losses they suffer as a result of negligence on the part of the regulators (principally, the FCA). As we explained in our response to the consultation on proposed changes to further limit the scope of an already defective Scheme, doing so - which we believe was Parliament's intention from the outset - would not only provide a much-needed boost to consumer confidence in financial services by ensuring that full compensation flows to the many victims of legacy regulatory failures, it would also create an incentive for the FCA to raise its game (because regulatory failure costs would be charged back to it instead of socialised among consumers and shared with the FSCS) and align good actors in the industry with consumers in calling for improved regulatory performance (because

[1] Including but not limited to: the 'misselling' (usually fraud by misrepresentation or material omission) of interest rate hedging products and other derivative-based schemes; the actions of RBS' Global Restructuring Group; the behaviour of HBoS' Reading office and of Lloyds Banking Group's Business Support Units in Bristol and elsewhere

redress paid by the FCA would ultimately be passed on to authorised firms in the form of an increased levy). As with the duty of care, above, an additional safeguard would help restore much-needed consumer confidence following a long list of regulatory failure cases and alleged cover-ups;

- An effective accountability regime: the Swift report has uncovered a disturbing dynamic in the FCA's governance. While nominally independent of HM Treasury, the regulator is in fact subject to Ministerial-level lobbying by it. This clearly has to change. Our response to FRFII contained a proposal to create a supervisory council that would ensure that the FCA met its protection, competition and market integrity objectives from a consumer perspective. It is clearly needed, more urgently and more profoundly than we could have thought when we put it forward. Putting consumers front and centre in the governance of the FCA would be transformative in terms of the balance of power between producer and consumer interests, creating an environment in which the interests of those who use financial services are prioritised. This is actually in the best interests of the honest majority in the industry, who will be rewarded with enhanced consumer confidence and, through the FSCS levy, a much reduced liability for the misconduct of their peers and the underperformance of their regulator.
- Taking proactive steps to minimise the effects of corporate lobbying and regulatory capture both through consultation processes, political lobbying and revolving door between regulators and regulated. Including but not restricted to between; HM Treasury, DWP, Select Committees, FCA, PRA, TPR and Bank of England. For example we highlight the work of Preventable Surprises and its C.L.A.P project link: Corporate Lobbying Alignment Project (CLAP) - Preventable Surprises

These measures would create, for the first time, an environment in which the economic and reputational incentives brought to bear on both firms and their regulator would favour integrity over complacency and worse, resulting in a high-performance industry, ideally placed to grow its domestic market. From there, operational and cultural changes will follow.

Transparency Task Force presently has Ambassadors and members in 22 countries and believes in sharing best practice across jurisdictions. We are aware that no regulatory environment is perfect; for example, both Wirecard and Dolphin Trust raise questions about the competence and integrity of BaFin, the largest financial regulator in the post-Brexit EU. Unlike the three cases that have so far led to the publication of external reviews of the FCA's behaviour (Connaught, LCF and Swift), Wirecard alone led to the removal of the top two executives at the German regulator.

If the UK's financial services industry wants to regain access to EU markets, it should consider how it can persuade consumers in countries such as Germany to demand of their governments that they be allowed to purchase from our firms instead of those within the bloc. We believe it needs to be able to demonstrate to EU citizens that UK providers are better regulated than their domestic ones, so misconduct and scams are much less likely to occur, that redress will be forthcoming in the (what could become) very rare cases when things go wrong, and that perpetrators and complacent or captured regulators will all pay the appropriate price. It cannot credibly make such claims at present.

If HM Treasury wants to help the industry change this, it should focus on working with us and other constructive critics to devise and implement measures aimed at remedying the regulatory flaws that are holding back the UK financial services sector, instead of creating ill-defined obligations on already conflicted and perhaps captured regulators that could be interpreted as licence to be even more lenient. Such intervention, while well-intentioned, might provide short-term headroom for bad-actor incumbents, but at the expense of the reputation and vitality of the industry as a whole.

We have so far made these observations mainly in the context of the FCA; but the same principles apply to the PRA. The principal weakness of the City's growth and international expansion prospects on the prudential regulation side is that prospective customers and overseas regulators understand that there is no scenario in which it would again be politically achievable in the UK to require taxpayers to rescue banks in a financial crisis nor any public or political naivety about regulatory forbearance while bankers break the law to rebuild balance sheets. Given the huge losses the state has made on its 'investment' in RBS/NatWest, the slew of misconduct cases involving the banks, the egregious bonus culture and concerns about political and regulatory capture, British voters would be willing to accept any amount of short-term chaos if in return they could watch the banks burn.

Against this backdrop, it is far more important for UK banks than those in many other jurisdictions to maintain adequate capital buffers, to present their accounts and regulatory returns in a prudent fashion and to avoid imprudent behaviour. Any failure to do so harms the growth prospects not only of that bank but of all UK banks, because it raises serious questions among counterparties and overseas regulators and governments about the efficacy of the regulatory regime.

We are concerned that the PRA may not be consistent in enforcing such standards. For example:

1. We believe it is reckless messaging to impose a financial penalty on a bank whose directors are guilty of misstating its financial position and failing to notify the market when alerted to this fact. While the sums involved in this specific case are modest, it is surely imprudent in principle to weaken the already-depleted balance sheet of a systemically important institution where better options exist and unwise to fine shareholders unless it can be demonstrated (for instance in an owner-managed business) that they were participants in any wrongdoing or were aware of it but chose not to stop it - such a penalty may make them reluctant to participate in any future recapitalisation. Likewise, it must be reckless to let the individual managers' role in the matter go unpunished[2];
2. Though this is presented as a Bank of England initiative, we are sure the PRA would have had to sign off on proposals to remove the obligation on regulated mortgage lenders to ensure that borrowers could afford to keep repaying if their interest rate increased by three percent. Coming at what may be the end of a long bull run in property prices, and just as the base rate has ticked up (and, if inflation proves persistent, the three percent risk becomes a realistic scenario), this has the feeling of a regulator that lacks institutional memory, at best and is negligent and captured, at worst

As with conduct regulation, if the Treasury wants the PRA to help UK financial services to grow domestically and expand internationally, it should be holding it far more closely to account in performing its existing objectives, rather than giving it an additional one that may conflict with or undermine them.

We note the current consultation stresses that the proposed obligations would not require either regulator to do anything that harmed its ability to perform its existing obligations. However, we note that the financial services industry - and, especially, the largest incumbents within it - possess a depth of lobbying power and financial resource that disparate consumers or campaign groups cannot hope to compete with. So if an obligation existed to promote growth and international competitiveness and the industry wanted a regulator to favour that over, say, a consumer protection one, the regulator would soon learn that only the industry side had the ability to get Ministers to chide it or take matters to money-no-object judicial review. Over time, regulators would self-censor in favour of the competitiveness objective.

We hope we have provided sufficient arguments and evidence that growth and international competitiveness objectives are not required and could actually be detrimental to good actors in the industry, as well as to the overall UK economy and consumers. In the event that the

[2] We believe the issue of who pays the fines imposed following bank misconduct is dealt with well in this paper by Professor David Llewellyn

Treasury is unpersuaded, we ask that it consults on the wording of any such objectives, and not just on their existence. Given the power they may have to shape the outcomes of any future judicial reviews, it is essential that they are worded in a way that cannot be used by expensive lawyers to create unintended and adverse consequences.

Question 2: Do you agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net zero economy?

We agree that the industry should be incentivised and regulated to grow “sustainably”, which must be in context to “climate change”. We call on policy makers and industry participants to observe the following 10 considerations, following the UK’s co-presidency for the Conference of Parties 26, in Glasgow, commitment to “Net Zero” and the UK’s proposed “green recovery”.

We note that the transition economy and any investment relating to it should be; “just”, inclusive but hitherto well-regulated and not used as an unseen route to deregulate or expose customers to intended and unintended risk, purely for the sake of green innovation and competition.

We are therefore concerned at attempts to reduce cost transparency and introduce expensive illiquid private equity assets into the workplace and individual defined contribution pensions. Whilst there is a clear overlap between start-up firms, green economy, infrastructure and private equity; we see private equity investments as complex, opaque and higher risk. Enhanced governance and oversight would be needed. As we note in a recent response to the DWP;

“The FCA hasn’t completed a Market Study of Private Markets in recent times. A Market Study needs to be completed prior to this Consultation Paper being produced so that all issues can be identified and managed properly before Workplace Pensions invest. We fail to see how private markets investments can be pushed into the wider investing domain without a full and proper due diligence process and accompanying improvements in transparency. [The investment company] route is already open to workplace pension schemes, in the same way as other funds typically used by institutional investors, typically without the payment of performance fees which would breach the charge cap. It is therefore difficult to understand why the removal of the cap from performance fees is necessary.”

With this in mind, we propose the following guiding principles;

- 1) Reduce Carbon and GHG emissions: Take affirmative action on carbon and Green House Gas (GHG) emitters, now, embracing the work of IPCC, ShareAction, UKSIF, Climate 100+, IIGCC and Carbon Tracker with 100% industry commitment to carbon reduction, whilst developing practical solutions for pension schemes and supporting the creation of efficient carbon unit pricing.

- 2) Evolve Investment Products & Indexation: Embrace better designed benchmarks and low-cost investment products that support a more sustainable market. Commission research into the effects and risks of introducing new asset classes into existing portfolios. For example private assets.

- 3) Protect Biodiversity - support the work of UNDP and Biodiversity Finance Initiative https://www.biofin.organd to promote banking, lending and investment markets that seek to do no harm to out biodiversity, ecology, habitats and protected species.

- 4) Support a Just Transition: Agreeing standards for a 'Just Transition' to ensure that the path to Net Zero does not disproportionately disadvantage the most vulnerable in society and minority groups. For example worker rights, employment and inflationary effects.

- 5) Invest Sustainably: Beyond Net Zero, and SDG13, develop a broader discussion and frameworks based on all 17 Sustainable Development Goals (SDGs), for example as per work carried out by Global Ethical Finance Initiative for local government pension schemes

- 6) Reduce Policy Capture: Address Corporate policy, lobbying and regulatory capture - specifically to reduce the ability of corporates to lobby for the dilution of legislation and requirements aimed at addressing climate change, governance and social issues, by addressing politicians in boardrooms and influence on legislators, taking into account the 'C.L.A.P' work of Preventable Surprises.
https://preventablesurprises.com/corporate-political-capture/
https://preventablesurprises.com/issues/corporate-lobbying-alignment-project-clap/

- 7) Improve Stewardship: End to Stewardship and engagement box ticking. Support new international standards.

- 8) Eliminate/Reduce Greenwashing: For regulators to adopt a zero tolerance policy towards greenwashing activities by issuing companies, banks and asset managers by building robust disclosure requirements and reducing poor metric practises.

- 9) Embrace Social Capitalism: Promote a more socially- aligned form of Finance that takes into account diversity and inclusion and fights inequalities within our industry and as funded by it. This could be partly achieved through better representation of customers such as citizen assemblies or panels.

- 10) Build Better Transparency - disclose, report and communicate activities towards a more sustainable market in a way that is fair, clear and not misleading, casting out unnecessary complicated jargon and difficult to access reports without undermining regulatory protections.

Question 3: Do you agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary?

Yes. However we believe that revelations of Treasury lobbying of the FSA to be lenient toward banks revealed in the Swift review means that measures are urgently required to protect the operational - and not just rule-making or governance - independence of the regulators from the Treasury, which may itself be subject to capture by the industry, and especially the banks.

The matters referred to by Swift are likely to result in a police investigation, since it appears clear that the evidential test for undertaking such an exercise - that there are reasonable grounds for suspecting that officers of a statutory body failed to launch an Enforcement investigation or create a mandatory redress scheme without reasonable cause - has been met. It may be that in the wake of any prosecutions there may be a profound re-evaluation of our system of financial regulation; but given the seriousness of the allegations and the need to rebuild confidence in the system in the meantime, we believe interim measures are required.

We suggest the following:

1. An absolute prohibition against un-minuted conversations between officers of the FCA and those of the Treasury and Bank of England, with the unredacted minutes of all

on-the-record meetings to be deposited at the National Archives, where they should be accessible to the public, and circulated to the non-executive directors on a timely basis;

2. A requirement on all officers of the FCA to record in full their reasons for making decisions relating to Enforcement matters, as recommended by Swift. We recognise that these documents may be market-sensitive and may contain passages subject to legal and professional privilege or information protected by Section 348 of FSMA, so we accept that they should not be routinely available to the public. However they should be circulated to the non-executive directors and retained in case of any future judicial review, external review or police investigation

Question 4: Do you agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements?

Yes.

Question 5: Do you agree that these measures require the regulators to provide the necessary information on a statutory basis for Parliament to conduct its scrutiny?

Given the justified concerns about Treasury capture by banks and lobbying of regulators identified by Swift and discussed in our response to question 3, which raise grave concerns about the FCA's supposed independence from HMT, we are alarmed at the proposal (par 4.36) to introduce an informal, early-stage opportunity for the Treasury to comment on any proposed new rules before any public consultation or involvement of Parliament. While any risks might be mitigated somewhat were our proposal actioned to formalise and place on public record all interactions between Treasury and regulators, we doubt that this recommendation will be accepted; without it, the scope for Treasury to steer the regulatory regime behind closed doors and without accountability or electoral mandate is such that we consider it essential that no such step is inserted into the process of rule formulation. If the Treasury wishes to comment on any proposals from a regulator, it is free to respond to public consultations, and all its inputs should be published.

Likewise we are concerned at the observation (par 5.12) that 'Parliament can also use industry and regulator secondments to further enhance technical expertise where required.' While secondees may bring expertise, they also bring a very specific agenda, namely that of the industry or the regulator from which they are seconded. It is vital that Parliament takes steps to ensure that people with vested interests are excluded from policy formation. They may, indeed should, be consulted once policy options have been formulated, but always on the same basis as consumer representatives.

We are aware of secondments of FCA employees into the private office of the Economic Secretary to the Treasury and the Secretariat of the Treasury Committee. We believe that these appointments represent a risk that information critical of the regulator might not be passed on to politicians, or might be subject to a 'spin' that reduces their impact; there must also be potential for seconded employees to give their employer the 'heads up' about any incoming criticism, whether from the public or politicians. This privileged access to politicians is in our view inappropriate, and should end.

These issues aside, we are broadly supportive of the measures proposed in this section of the consultation paper.

Question 6: Do you agree with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation?

We believe that strengthening the role of the Panels could, in principle, help improve the quality of policy formulation and decision-making, and could do more to hold the regulators to account. Given that our principal concerns are about the FCA, we will focus largely on the Panels relating to that organisation. Currently there are three statutory Panels representing industry perspectives, and one non-statutory one; there is only one statutory Panel on the consumer side.

The biggest step that could be taken to address this imbalance, and assert the primacy of the FCA's statutory objectives, would be to implement our proposal for a Financial Regulator's Supervisory Council, which builds on the Financial Regulator Assessment Authority recently introduced in Australia.

A further way to increase the diversity of opinions heard by the FCA, and to improve the representation of consumer voices, would be to introduce further Consumer Panels. Just as the industry ones are segmented by type of firm, so the Consumer ones could be divided by consumer typology; for instance, Retail, SME and Vulnerable. This would address the underrepresentation of vulnerable consumers identified in the consultation paper and also begin to remedy the cultural shortfall in the FCA's treatment of businesses identified in the Swift report. We accept that this would require a minor amendment to legislation; but we believe that doing so is warranted.

While we welcome the focus on improving the diversity of people who serve on the Panels, we believe it is crucial that they bring diversity of thinking, which is based on lived experience and economic and cultural alignment. Diversity of identity is part of this, but it is only a small part, as we argue in our response to the regulators' consultation on Diversity and Inclusion in the Financial Sector. As our paper explains, we are concerned that the regulators, the FCA especially, may place undue emphasis on the promotion of diversity of identity over genuine cognitive diversity, of which it is a poor, though not wholly irrelevant, predictor.

In the context of the Panels, we expressed concern in our response to FRF2 that the FCA abuses its right to choose who sits on the Consumer Panel to appoint individuals who have no significant (or, indeed, any) track record in consumer advocacy in the sector, some of whom also have significant industry links that may present obvious conflicts of interest. We therefore welcome, in principle, the involvement of Government in setting clearer expectations on both process and outcome. It is vital that there is a clear path for genuine consumer representatives to be appointed to the Consumer Panel and alarming that, in 2021, both the Founder of Transparency Task Force, Andy Agathangelou, and its Head of Strategy and Public Affairs, Mark Bishop, applied for the two vacancies that arose on the Panel and neither was even offered an interview. We cannot help suspecting that TTF's status as a very public 'critical friend' of the FCA may be the reason why the applications did not proceed, and await with interest news about who was chosen instead. Creating the FRSC would make it impossible for the FCA to pack out the Consumer Panel with patsies, because the appointments would be made by that body.

Question 7: Do you agree that the proposed requirement for regulators to publish and maintain frameworks for CBA provides improved transparency to stakeholders?

We see this as a small step in a positive direction. Cost-Benefit Analysis, if carried out rigorously and transparently, is a valuable exercise, in that it creates the basis for challenging both bad policy and bad operational decision-making. We observed in reply to question 3 that Swift has recommended that the FCA set out in preserved minutes the basis on which it makes Enforcement decisions, including negative ones (such as the decisions not to launch

Enforcement investigations or create a mandatory redress scheme for SMEs impacted by 'mis selling'[3] of interest rate hedging products).

We believe that CBA should form a mandatory component of any such exercise. Who benefits, and who loses, what, in financial and non-financial terms, from a regulator's decisions matters very much; there should be an obligation to carry out such assessments, and an expectation that they may be challenged by Parliament, and in judicial review. They may also constitute evidence, for either side, in any police investigations. Certainly in the case of the forthcoming police investigation into alleged misconduct in public office relating to the FSA's decisions not to use its statutory powers in relation to IRHPs, the officers' position is materially weakened by the fact that they have been unable to provide Swift with *any* evidence supporting the basis on which those decisions were made. It is not necessary to prove that they caved in to lobbying by the Treasury, merely that their decision not to exercise their powers was made 'without reasonable excuse or justification.'

On the policymaking front, another benefit of CBA is that it can be performed both *ex ante* and *ex post*. That way, it is possible to test the accuracy of the former against the latter. Should projections prove to be unrealistically optimistic or pessimistic, this feedback can be fed into future *ex ante* evaluations. For this reason, it is crucial that the regulators revisit past decisions and publish *ex post* assessments.

Question 8: Should the role of the new CBA Panel be to provide pre-publication comment on CBA, or to provide review of CBA post-publication?

We believe it should provide review at two stages: post-publication ('do we consider this CBA realistic?') and post-implementation ('and has it turned out to be accurate, given events?')

Our rationale for favouring post-publication over pre- is that we believe there is a risk, if the Panel were involved pre-publication, of it becoming a participant in the creation of the model. It is much better that it operates in public than in private, as a critical friend rather than an engaged contributor.

Our rationale for advocating a second-stage involvement, post-implementation, is as set out in our answer to question 7. It is vital that any modelling is tested against implementation, and not just against theory and hypothesis. For the regulators to improve, they must become learning

[3] Normally, fraud by misrepresentation or material omission

organisations, keen to revisit past actions and decisions and evaluate how they might do better next time; this is a process known as *kai-zen*. One of the many feedback loops by which they could do this would be through the introduction of post-implementation reviews to establish how accurate predictions made at the policy formulation stage, CBA included, turned out to be, with feedback provided and where necessary changes made to ensure that the process is more accurate in future. The involvement of an outside Panel in this assessment is essential, to avoid regulators marking their own homework.

It is therefore crucial that the CBA Panel is genuinely independent. It should not be packed with industry insiders, nor with people from the professional services firms that count the sector's major players among their major clients. Instead, the Panel should consist of modellers and superforecasters from outside the sector, people who do not work for the regulators or authorised firms and who are willing to undertake not to do so for a reasonable period following termination of their Panel membership.

Question 9: Do you agree that the proposed requirement for regulators to publish and maintain frameworks for how the regulators review their rules provides improved transparency for stakeholders?

We are supportive of the view that bad or redundant regulations should be removed; however, we are concerned that a poorly designed process for doing so could be captured by industry interests, and could disenfranchise consumers. There is significant inequality of arms when it comes to responding to consultations by regulators and the Treasury. The larger industry firms, and their professional bodies, are able to employ full-time public affairs and public policy staff. The former lobby for consultations to remove rules they dislike; the latter respond to the consultations, backed up by compliance officers, technical specialists and, where required, expert legal advice. Most consumer bodies have none of these assets. Transparency Task Force, which we understand to be the largest consumer body in the UK solely focused on financial services policy matters, cannot afford to employ such people; this, and most consultation responses, are written largely by volunteers.

This imbalance could be remedied in part by the creation of the Financial Regulator's Supervisory Council, which would be funded by a 0.5 percent top-slice of the FCA's income. It would therefore be able to employ professionals to submit responses, and might also be able to provide modest amounts of grant funding to genuine consumer groups otherwise lacking the resources necessary to engage with such exercises.

Until then, all consultation processes should be designed in a way that minimises the burden on those who represent consumers. So we would suggest one annual consultation document consisting of proposed retirements of and variations to existing rules, with plain English explanations of each rule, why it was introduced and why it is considered redundant. Where an issue is contentious, it should be accompanied by a legal opinion from a named QC to reduce the risk of misdirection, which is what we believe (pages 2-11) the FCA did in its consultation on the proposed Consumer Duty, where we believe it provided an incorrect legal definition of a duty of care and wrongfully claimed that its Consumer Duty, without a private right of action, amounts to a duty of care.

We note that the Treasury (par 6.38-9) does not currently plan to introduce an external scrutiny body focused on independent challenge of the regulators and external scrutiny of rule-making. Our FRSC proposal is not for an organisation that would perform such roles; rather, it would play a role in certain key appointments, but in the main, it would review the FCA's performance against its statutory objectives, both annually and where required to do so on an ad-hoc basis by Parliament or following an event in which regulatory failure is alleged.

The current consultation paper was written before the Swift review was published; it provides further evidence of regulatory capture and bias against action. We hope that the Treasury will remain open to our proposal, which together with other measures advanced in our answer to question 1, we believe offers the best potential to turn the FCA into a fit-for-purpose regulator. If it does not evolve rapidly in that direction, we believe that its continuance will eventually become non-feasible, and fear that its demise may occur in circumstances that cause irretrievable and avoidable harm to the reputation of the UK's financial sector, and hence - ironically - to its growth and international competitiveness.

Question 10: Do you agree with the government's proposal to establish a new Designated Activities Regime to regulate certain activities outside the RAO?

We recognise that there is legitimacy to the point made in paragraph 7.18, that a firm that is not authorised by the FCA and that does not operate principally in financial services, may in the ordinary course of its business need to enter into a contract that touches upon regulated financial services, and that it should be empowered to continue doing so without the need to become an authorised firm.

That said, there is a risk that where one party to such an agreement is a sophisticated financial services firm, for instance an investment bank, and the counterparty is not, there may be an inequality of information and understanding that could result in the latter being mistreated. This is what happened in the sale of Interest Rate Hedging Products ('IRHPs') by banks to SMEs; John Swift QC's recent Independent Review confirms that more than 90 percent of such sales were defective.

This state of affairs was able to develop because EU MiFID rules were largely not applied and certainly not policed or enforced by the UK regulator; indeed, Swift claims that the product category was poorly understood by those responsible for supervising the banks at that time and even once problems had emerged.

Given the intrinsic inequality of understanding between authorised and unauthorised firms and the complexity of many of the products likely to be covered by the DAR, we think any implementation of such provisions must be combined with an obligation on the regulator to supervise proactively and enforce assertively at an early stage if problems arise. We worry that giving the regulators the power to create rules for such products could result in such rules being lax, and the supervision and enforcement thereof, ineffective.

The mention of the DAR extending to new areas of activity also concerns us. Is there a risk that existing financial services firms could create unauthorised subsidiaries and new, unauthorised firms could enter the market, and that they could trade with each other and with authorised firms in complex products, in a 'light touch' DAR regulatory environment? There are obvious stability risks if a shadow (investment) banking sector were able to come into being in this way.

Question 11: Do you agree with the government's proposal for HM Treasury to have the ability to apply ''have regards'' and to place obligations on the regulators to make rules in relation to specific areas of regulation?

In broad terms, yes.

Considerations from a Former Regulator - Professor David T Llewellyn

The Transparency Task Force is very grateful to Professor David T Llewellyn for his contribution to our submission:

Professor LLewellyn has an international reputation in the theory and practice of financial regulation, the analysis of financial crises, and the business strategies of financial institutions.

He has previously worked at the UK Treasury and the International Monetary Fund and has been a consultant to several international organisations in the theory and practice of financial regulation, and to financial firms in the area of business strategies.

Until recently he was Chairman of the Banking Stakeholder Group of the European Banking Authority (the pan-EU regulatory agency for banking). He previously served as a Public Interest Director of the UK's Personal Investment Authority which was responsible for the regulation of retail financial services until it was succeeded by the Financial Services Authority.

He has published widely (including over 20 books) in the areas of financial regulation, financial crises, and business strategies and models of financial firms. He serves on the editorial boards of several finance journals and often contributes to media outlets.

THE LINK BETWEEN FINANCIAL REGULATION AND ECONOMIC GROWTH: THEORY AND IDEOLOGY *VERSUS* EMPIRICAL EVIDENCE

David T Llewellyn

For the first time, the Treasury plans to give clear guidance to the two main financial regulatory authorities in the UK (the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA)) that they should give greater emphasis to competiveness and growth in the economy. Historically, financial regulatory authorities have had a more focussed objective of safety and soundness of financial institutions and consumer protection. The competition dimension has historically been the responsibility of specialist agencies such as the current

Competition and Markets Authority. There have been good reasons for this separation which are outlined below. Such a division of responsibilities has been the norm in most countries.

However, in its November 2021 report (*Financial Services Future Regulatory Framework Review: Proposals for Reform* CP548)) the Treasury argues strongly that:

> "the government intends to provide for a greater focus on growth and competitiveness by introducing new, statutory secondary objectives for the PRA and FCA. For [both] the PRA [and FCA], the government intends to introduce the new growth and international competitiveness as a secondary objective….The PRA will be required to act in a way that, subject to aligning with international standards and so far as is reasonably possible, facilitates the long-term growth and international competitiveness of the UK economy…The government will also require both regulators to report on their performance against their growth and competitiveness objectives on an annual basis.".

This is clearly part of a more general de-regulation agenda following the government's objective of taking advantage of the greater flexibility enabled by Brexit. Regaining alleged "sovereignty" and freedom for new approaches to regulation is regarded by the government as part of a "Brexit dividend".

In this context two closely related, though separate, issues need to be considered: whether regulation should give greater emphasis to growth in the economy, and more specifically whether the PRA and FCA should have this responsibility rather than the Competition and Markets Authority or the government directly.

There is no quarrel with the two general objectives of enhancing growth and competitiveness in the financial system and the economy more generally. The issues are whether financial regulation is to be a route to this objective, and where the balance is to be struck in situations where there is a trade-off between the growth objective on the one hand and consumer protection on the other.

THE CASE AGAINST DE-REGULATION

Regarding the supposed link between financial regulation and economic growth, in the interests of evidence-based policy-making a distinction needs to be drawn between theory and ideology (e.g. “get Brexit done”), and the empirical evidence.

The theoretical rationale of the Treasury’s approach can be summarised in four stages of analysis each of which requires empirical evidence:

(1) Does existing financial regulation reduce the efficiency and effectiveness of the financial system in the performance of its role in the economy?

If true, this would work by either raising the cost of financial intermediation and/or other financial services, or by reducing the supply and availability of financial products and services including loans. There is no evidence that either has happened and, in any case, it would be small if it existed at all. Furthermore, there is no clear evidence that regulation has either stifled innovation or imposed entry barriers into the financial services sector (see the impact of FinTech companies and the emergence of Challenger Banks)..

(2) If there is an impact of regulation on financial system efficiency and effectiveness, does this have an adverse impact on growth and efficiency in the wider economy?

This would be the case only to the extent that regulation has a significant impact on either the price or availability of credit and financial services. Again, there is no empirical evidence supporting this.

(3) Does existing regulation adversely affect the international competitiveness of the UK’s financial institutions and markets?

It is difficult to believe that this is a significant problem, if a problem at all. The UK has one of the most efficient financial systems in the world as indicated by, for instance, it being one of the world’s few international financial centres conducting a wide range of business where the customers are not from the UK. It conducts substantial entrepot business where neither counterparty is in the UK but both choose to use financial institutions and markets located in London. Indeed, good regulation offers an international competitive advantage. Also, there is concern in the City of London that post Brexit deviation from EU financial regulation is in danger of undermining the competitive position of London as a financial centre (see, for instance, *Financial Times*, January 27th 2022). Furthermore, regulation is sometimes welcomed by financial institutions as it creates common standards, and enhances consumer trust and confidence.

(4) If the answers were to be "yes" to these questions, would this justify measures of de-regulation?

A central concern with the Treasury's requirement that regulators are to have growth in the economy as an objective is that a primary objective of regulation – consumer protection – will be compromised when conflicts between regulatory objectives emerge. There is ample evidence (for instance mis-selling of financial products, the substantial sanctions that have been imposed on financial firms for hazardous behaviour towards customers, the Libor rigging episode, etc) that regulation is needed and in some areas needs to be enhanced.. Effective regulation is necessary for consumers to have trust and confidence in the financial firms with which they transact and there is an evident consumer demand for effective consumer protection regulation. For many years, the Edelman Trust Barometer has indicated that trust in financial firms is lower than in virtually all other areas, and yet consumer trust is vital in financial services..

The debate about the costs and benefits of regulation can be seriously distorted by the way cost-benefit analyses are conducted. The management costs of regulation of financial firms can be fairly easily measured in accounting terms. On the other hand, consumer benefits, whilst real and substantial, are more difficult to precisely quantify. This asymmetry clearly creates a bias against regulation. This is an example of the view expressed by Albert Einstein: “everything that can be counted does not necessarily count, everything that counts cannot necessarily be counted”.

A different perspective can also be offered: instead of regarding regulation as a *cost*, it should equally be regarded as the *price* of consumer protection that consumers are willing to pay.

THE ROLE OF FINANCIAL REGULATORS

Leaving aside the arguments about regulation and its assumed role in fostering economic growth, there are several arguments against requiring the FCA and PRA to incorporate growth as part of their range of objectives:

- Constructing regulation for the core objectives of safety and soundness of financial institutions, systemic stability, market integrity, and consumer protection is itself a difficult mandate. The more objectives that are added to the regulators’ remit, the greater the chance that they will fail in all of them as conflicts will inevitably arise from time to time. Regulatory authorities work best when they have clear, unambiguous and limited mandates.

- When conflicts and trade-offs arise from time to time the danger is that consumer protection will be compromised.

- The Treasury’s paper requires the FCA and PRA to report annually on their mandates to consider the role of regulation in fostering economic growth. It is generally agreed that regulatory authorities should have operational independence. The danger with adding more objectives is the potential for greater political interference as political priorities change. This creates an element of uncertainty for consumers and regulated firms.

- Accountability is likely to be compromised the more objectives the regulators are required to follow. Failure in one objective can always be rationalised as some other objective being given priority. The wider the area of responsibility, the less likely it Is that the regulator will be effectively accountable.

- A multitude of objectives is likely to confuse consumers and undermine their trust and confidence that consumer protection is the primary objective. Trust and confidence in the consumer protection role of the FCA is as important as consumers' trust and confidence in financial institutions: indeed, there is a symbiotic relationship between the two elements of trust and confidence.

Taken together, these considerations argue against the Treasury's requirement that the PRA and FCA should incorporate economic growth as an addition to the range of objectives they are required to follow.

CONCLUSION

Bringing the strands of the analysis together, several conclusions can be summarised as follows:

- There is no robust empirical evidence supporting the propositions that regulation has adverse impacts on the efficiency of the financial system and its international competitiveness.

- Equally, there is no empirical evidence that financial regulation has a negative impact on the economy's growth.

- Any weakening of financial regulation is not an effective route to enhanced financial system efficiency or improved economic performance.

- On the other hand, there is compelling evidence that effective regulation is a requirement for consumer protection.

- Irrespective of these considerations, it would be unwise to cloud the role of the FCA and PRA with additional objectives which they are not suited to deliver and which are likely to compromise their central objectives and particularly consumer protection.

- Just as consumer trust and confidence in financial institutions and markets is essential for an effective financial system, so it is important that all users of the financial system have trust and confidence in its regulation, with the regulatory authorities having clear, unambiguous, and credible objectives.

David T Llewellyn

Professor of Money and Banking

Loughborough University

Overall conclusion

HMT's Financial Services Future Regulatory Framework Review is a 'once in a generation' chance to improve the rules for UK financial services, to support the government's vision for a financial sector that creates jobs, supports businesses, and drives sustainable economic growth for communities and citizens across the UK. A flagship proposal is to give financial regulators (the FCA and PRA) statutory objectives to promote the "international competitiveness" of the industry.

However, this should be strongly opposed, since the model of "competitiveness" being pursued will damage the UK economy, even while benefiting parts of the financial sector. It will return us to risky policies that helped cause the last global financial crisis, and force us to lower standards in an effort to "win" a regulatory race to the bottom with other countries. New efforts to water down 'ring fencing' public safety protections for banks in the name of "competitiveness" are a case in point.

The UK government, including in this Review, openly acknowledges tension balancing competitiveness objectives against other public-interest goals. FCA Chair Charles Randell noted: "It would be a big ask of our society to say that the interests of consumers . . . and market integrity should be traded off against the interest of the financial services sector." Statutory objectives need to benefit the whole UK economy, not just a part of it.

UK finance already has many capable lobbyists: there is no need to support them by hobbling regulators with a competitiveness objective.

This objective would, among other things:

> **Sow the seeds of new financial crises:** In 2012 UK parliament acknowledged that regulators' focus on competitiveness contributed to the Global Financial Crisis of 2007/08 – which saw millions lose their savings, homes, and jobs, and cost an estimated £1.8 trillion in lost GDP from (p10). As Andrew Bailey said in 2019 (then CEO of the FCA, today Governor of the Bank of England), the regulator "was required to consider the UK's competitiveness, and it didn't end well, for anyone."
>
> **Harm national security.** A competitiveness objective generates pressure to relax enforcement and policies, so as to attract dirty money from overseas. This poses national security risks. For example, parliament's Intelligence and Security Committee said that our pursuit of Russian dirty money gives oligarchs **"**connections at the highest levels with access to UK companies and political figures" and has turned some finance-linked UK professionals into "*de facto* agents of the Russian state."
>
> **Undermine levelling-up.** A competitiveness objective to prioritise UK finance over other parts of the economy will benefit relatively few people, mostly in and around London, while weakening other parts of the country. For example, recent cuts to the surcharge tax on bank profits in the name of competitiveness, offset with national insurance rises for workers, will transfer net wealth from left-behind regions to the metropolis - and to shareholders, many overseas or offshore.
>
> **Undermine Net Zero:** A 'competitiveness' objective will undercut the Chancellor's laudable aim to be the world's first net-zero financial centre. By incentivising a relaxation of standards so as to maximise financial flows, it risks promoting 'greenwashing'.

Overall, a competitiveness objective seeks to increase UK finance's power at the expense of other areas. It will reduce prosperity, unbalance our economy, and harm stability, resilience and national security.

For all these reasons, the future regulatory framework must have good governance and transparency at its very heart, and it should deliver far greater scrutiny and accountability.

It should be obvious to all that financial regulators must never be tasked with becoming cheerleaders for the financial sector, because that would set them on a catastrophic collision course with their duty to protect consumers. Regulators should regulate and not act as servants to the commercial interests of those they regulate.

There's just no sense in having highly hazardous conflicts of interest baked into the system – why risk the reputational damage, economic turmoil and catastrophic consumer detriment that such conflicts could so easily lead to?

We repeat the question:

Why risk the reputational damage, economic turmoil and catastrophic consumer detriment that such conflicts could so easily lead to?

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