

Proposal to Introduce the Financial Regulator's Supervisory Council

A. Background

1. The Independent Reviews into the Financial Conduct Authority's ('the FCA's') handling of [The Connaught Income Fund Series 1](#) ('Connaught') and [London Capital and Finance](#) ('LCF') made a number of recommendations for operational change, which the FCA has [accepted](#);
2. The extensive underperformance described in the Reviews has at its heart serious and longstanding problems with the regulator's culture and governance that raise grave questions about its ability to perform its overarching strategic objective, namely ensuring that the relevant markets operate well, and its three operational ones, namely protecting consumers, achieving integrity in the markets and promoting competition;
3. There are many other cases in which consumers have lost significant sums of money through financial services fraud, misconduct and recklessness where they commonly feature levels of regulatory failure at least as acute as that identified in the Connaught and LCF reports¹
4. There is an urgent need to accelerate the process of achieving transparency about the causation of those losses, to remedy them, and to implement thoroughgoing reforms;
5. For these reasons, we believe that the response to the two Reports and other failures to protect consumers must go far beyond trusting the FCA's existing leadership to implement the specific and limited recommendations for operational improvement permissible under the Terms of Reference governing the reports' production. Rather, it is vital that uncomfortable truths must be confronted about the FCA's fitness for purpose and profound questions be answered about whether it should be abolished or reformed - and in the latter case, how this could be achieved in a manner materially different to the FSA/FCA rebrand exercise that took place in 2013.
6. It seems to us that proposals for addressing the FCA's failings cluster around three options:
 - a. Abolition, followed by replacement with a gold-standard regulator or regulators, under different leadership and with greater accountability;
 - b. The introduction of a Royal or Parliamentary Commission, or some other Parliamentary or quasi-judicial review to review past failings and explore future options, perhaps based on learnings from the [Australian](#) Royal Commission;
 - c. Proposals for vastly improved governance arrangements, particularly those focused on making the existing regulator far more accountable to users of financial services, perhaps along the lines of the Financial Regulator Assessment Authority to be implemented in [Australia](#)
7. The Transparency Task Force believes that the above debate is essential, and looks forward to contributing to it. However we also recognise that reaching conclusions could take a long time, and the need to improve matters is pressing. For that reason we advocate pursuing the

¹ These include, but are not limited to, Woodford, Lendy, Collateral, Funding Secure, Blackmore Bond, Store First/Park First, PremierFX and German Property Group/Dolphin Trust. There are also outstanding cases affecting small businesses in which regulatory failure and/or collusion is alleged, such as the Interest Rate Hedging Product redress scheme and the HBoS Reading fraud, in which reports are expected to be published in 2021 and 2022 respectively

third, least radical option immediately, it being the one that can be implemented fastest, possibly even without the need for primary legislation;

8. At the Transparency Task Force, we believe that transparency results in accountability, which in turn leads to change. Such reform is itself subject to transparent scrutiny, creating a virtuous circle of continuous improvement. The key to fixing the FCA therefore begins and ends with transparency and accountability. Implementing governance reform quickly, while more profound changes are debated, is an asymmetric bet: if it works, the need for more radical changes will be forestalled; if it does not, the case for them will have been proven;
9. To this end we propose a modest package of improvements to the FCA's governance structure, implementable in a short timeframe and at no cost to taxpayers, following the introduction of minor, enabling secondary legislation;
10. These changes are achievable by transferring some of the responsibilities currently divided between the FCA, the Treasury and the Department for Business, Energy and Industrial Strategy to a new statutory body, the Financial Regulators' Supervisory Council ('FRSC'), which would be comprised of stakeholders who genuinely represent the interests of users of UK financial services;
11. The aim of these changes is to improve transparency and make the FCA directly accountable to those who have at heart the best interests of those whom the regulator is intended to protect and serve. We believe that such measures, if implemented quickly and decisively, may forestall the need for more radical action, such as abolition and replacement

B. [Proposal](#)

1. We advocate the introduction of a new statutory entity, provisionally named the Financial Regulator's Supervision Council ('FRSC'), whose role would be to play a central role in representing the interests of non-industry interests in the governance structure of the Financial Conduct Authority and to provide ongoing monitoring and evaluation for politicians of the FCA's effectiveness and independence from a consumer perspective;
2. The FRSC would have the following powers and responsibilities:
 - a. To appoint, to review annually the performance of and, where appropriate, to dismiss² the following:
 - i. Jointly with the Treasury³, the Chair and Chief Executive of the FCA (currently sole responsibility of the Treasury);
 - ii. The two Non-Executive Directors of the FCA currently appointed by the Department for Business, Energy and Industrial Strategy⁴;
 - iii. Members and Chair⁵ of the Financial Services Consumer Panel⁵;

² Respecting normal employment practices and contractual rights

³ And subject to the approval of appointments by the Treasury Committee

⁴ These two positions were previously filled by candidates selected by the National Consumer Council, a practice that ended with the NCC's abolition; they were therefore always intended to be appointed to represent consumer interests

⁵ The FCA has been criticised for appointing members to the statutory Consumer Panel who have links to the financial services industry or who are not recognised campaigners for consumer interests, which may represent a breach of the [Financial Services Act 2012](#) (Part 1A, Chapter 1, 1Q(5)). In the recent past, the [Panel's website](#) (operated by the FCA) has claimed that members are often appointed 'based on recommendations from trade associations.' The FCA has subsequently deleted

- iv. The Financial Regulators' Complaints Commissioner;
 - v. The directors of the Financial Ombudsman Service and its Independent Assessor;
 - vi. Such employees as the FRSC requires to perform its statutory role
- b. Where appropriate, to commission, review and oversee implementation by the FCA of recommendations of:
- i. Periodic Reviews⁶ of 'the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions';
 - ii. Periodic Reviews of the FCA's treatment of whistleblowers and its response to the evidence they provide;
 - iii. Independent Reviews⁷ of the FCA's conduct in circumstances in which there are reasonable grounds for believing that there has been material regulatory failure
- c. To establish operating guidelines for the operation of the Complaints Scheme⁸ insofar as it relates to complaints about the FCA, and to monitor the effectiveness of the Scheme and of the FCA's responses to it;
- d. To act as a designated consumer body by order of the Treasury in submitting, where appropriate, [super-complaints](#) to the FCA⁹ should it identify examples of market behaviour which it reasonably believes are operating against the interests of consumers;
- e. To publish papers, consultation responses and other documents intended to contribute to debate about financial services regulation in the UK;
- f. Once a year, or additionally on request, to report to Parliament on its view about the performance of the FCA and suitability of the regulatory environment, together with any recommendations for change
- g. Provide information and advice as required to the Treasury and Work and Pensions Committees, other Select Committees and All Party Parliamentary Groups as appropriate

C. FRSC membership, staffing and funding

1. The FRSC's Members would be recruited by open, transparent competition to be representative of financial services consumers and independent from government, regulators and the industry. Genuine consumer advocacy groups operating in the sector, Transparency Task Force included, should be closely involved with the construction and operation of the selection process, to ensure that those appointed enjoy stakeholder support;

that passage and disassociates itself from it. We are unable to determine whether the claim is true or untrue, but we remain concerned that the Panel's composition does not accurately reflect the views of financial services consumer advocates

⁶ Under Section 1S of [Chapter 1 of Part 1A](#) of Part 2.6 of the Act

⁷ Replacing the obligation on the FCA under [Section 73](#) of Part 5 of the Act

⁸ As described in [Section 84](#) of the Act

⁹ Under [Section 234C](#) of the Financial Services and Markets Act 2000 ('FSMA')

2. The FRSC would employ such people as it sees fit to enable it to perform its statutory functions;
3. Members and employees would be subject to the [Nolan principles](#) and to terms and conditions of engagement that bar them from entering into arrangements (including employment or consultancy contracts) during and for an extended period following their service with the FRSC that could reasonably be considered to represent potential or actual conflicts of interest or inducements;
4. The FRSC would be funded by a levy of 0.5 percent of the Annual Gross Income of the FCA¹⁰ and would have the right to recover from the FCA the reasonable costs of commissioning Independent and Periodic Reviews of the latter's conduct and performance, mirroring the arrangements in place between the FCA and the industry for funding the production of Section 166 reports.

D. [Benefits of this approach](#)

1. The FCA would remain an independent statutory body, but responsibility for ensuring that it performs satisfactorily and that consumer interests are foremost, currently fragmented, will be concentrated in a single entity, creating the transparency and accountability that is currently lacking;
2. Creating the FRSC would place at the heart of the governance of the FCA those with a genuine and demonstrable interest in ensuring that the regulator performs its statutory duties to a high standard, and in the best interests of users of financial services in the UK;
3. The FCA's two key executives - Chair and Chief Executive - would be, in part, appointed and at risk of dismissal by a body that represents consumer, rather than producer, interests, while two of the organisation's Non-Executive Directors and the Financial Regulators' Complaints Commissioner and directors of the Financial Ombudsman, whose work relates largely to the actions and inactions of the FCA¹¹, would be wholly so. There is an ever-present risk that any governance arrangements for the FCA may become captured by industry interests, a criticism that has been levelled at the Financial Services Consumer Panel¹². The FRSC proposal avoids this risk by ensuring that the majority of the Initial Members are genuine representatives of consumer and whistleblower interests, and by guaranteeing that all replacement Members are appointed by Members, rather than by the FCA, the Treasury or the industry;
4. The cost of operating the FRSC will be only 0.5 percent of the annual income of the FCA - a small investment intended to ensure that far more value is obtained than currently from the 99.5 percent retained by the regulator;

¹⁰ ~£3.2m in [2019/20](#)

¹¹ 74.5 percent in [2019/20](#)

¹² Its website, as at 5 January 2021, states: 'Membership of the Financial Services Consumer Panel is constructed to *represent the various sectors within which regulated financial businesses operate*, often based on *nominations made by trade associations*.' [our italics]. Appointments are made by the FCA, which is under a statutory duty as a result of the [Financial Services Act 2012](#) to 'secure that membership of the Consumer Panel is such as to give a fair degree of representation to those who are using, or are or may be contemplating using, services otherwise than in connection with businesses carried on by them.' We are concerned that it may be in breach of this requirement

5. These changes may not require primary legislation; it is possible that they may be achievable through a series of relatively minor amendments to the Financial Services Act 2012 and to FSMA;
6. This means that the proposed changes can be implemented swiftly, enabling long-overdue and much-needed positive change to take place in the near term while longer-term and more profound changes are considered. It is possible that the recommendations contained in this document, if implemented, may obviate the need to go further; but if not, they will at least ameliorate the situation materially in the meantime.