



OPEN LETTER

Financial Conduct Authority Annual Public Meeting, 26 September 2024:

Request for Correction of Misleading Statements

Tuesday, 1 October, 2024, by email only to:

- Chief Executive Officer of the Financial Conduct Authority, Nikhil Rathi
- Non Executive Chair of the Financial Conduct Authority, Ashley Alder

Plus cc'd relevant stakeholders:

- Economic Secretary to the Treasury Tulip Siddiq MP
- Shadow Economic Secretary to the Treasury Alan Mak MP
- Chair of the Treasury Committee Meg Hillier MP

Dear Nikhil and Ashley,

I write to you regarding the FCA's Annual Public meeting held online on Thursday 26th September.

During the event, Nikhil Rathi, Chief Executive Officer of the FCA and Richard Lloyd, the regulator's Senior Independent Director and Deputy Chair, made a number of statements in relation to the organisation's Consumer Duty that I believe to be factually incorrect.

I am keen to draw your attention to these errors or misrepresentations with the aim of asking the FCA to issue a public statement correcting the record, at the earliest possible opportunity.

The timings referred to below relate to [this version](#) of the recording of the Annual Public Meeting.

At about 15 minutes and 59 seconds, Ashley Alder refers to a question (from me) that is responded to by Richard Lloyd. Part of Richard Lloyd's answer includes this incorrect statement:

"...it [the context is clear that he is referring to Parliament] required us to bring in the Consumer Duty..."

And at about 54 minutes and 2 seconds, Ashley Alder refers to a question (from Mark Bishop) that is responded to by Nikhil Rathi. Part of Nikhil Rathi's answer includes this incorrect statement:

"On the Consumer Duty, it's just come into force, and it was developed after extensive engagement, as Ashley mentioned, at the instigation of Parliament..."

Taken together, these statements would lead a reasonable person to conclude that the FCA introduced the Consumer Duty at the behest of Parliament. In fact, the FCA introduced it *despite having been placed under a statutory obligation by Parliament to introduce something different, namely a Duty of Care* (my italics).

The Consumer Duty is, in effect, an inferior substitute for the measure that Parliament obligated your organisation to implement.

It may help if I reprise the chronology:

- 1) On 29 April 2021, Royal Assent was given to the Financial Services Act 2021 with a section (the relevant part shown [here](#)) placing an obligation on the FCA to 'carry out a public consultation about whether it should make general rules providing that authorised persons owe a duty of care to consumers' and 'before 1 August 2022, make such general rules about the level of care that must be provided to consumers, or particular classes of consumer, by authorised persons as it considers appropriate, having regard to that analysis';
- 2) On 13 May 2021 The FCA published [a consultation paper on a Consumer Duty](#);
- 3) On 30 July 2021 The Bar Council published its [response](#) to that consultation, pointing out that the FCA's proposed Consumer Duty did not meet the accepted legal definition of a Duty of Care, at point 9:

"Our concern in this context is the need to ensure that the use of the language of duty of care does not obscure the true policy intention. For example, in the context of liability for negligence, the "generally accepted legal meaning" referred to above would not be an adequate description of the duty of care."

- 4) On 31 July 2021, Transparency Task Force also [responded](#) to the FCA's consultation, expressing similar concerns to those of the Bar Council, namely that the FCA was consulting on a consumer Duty rather than a Duty of Care, and pointing out that the two are not the same. The following section was written with the *pro bono* assistance of a King's Council, Iain Mitchell:

"We believe that the FCA may be placing itself in breach of the law as a result of this consultation exercise, and that certain statements contained within its paper may have the effect of misleading respondents in a way that could jeopardise the integrity of their responses to such an extent that they should not be relied upon in setting policy."

These are bold claims, so it is right that we should set out the basis on which we make them.

CP21/13 exists because of an obligation placed upon the FCA in terms of section 29 of the Financial Services Act 2021 to consult on the question of whether there should be established a general rule that authorised persons should owe a duty of care to consumers. We are concerned that the consultation exercise currently being conducted by the FCA fails to address that issue and that, in consequence, the FCA is in breach of its statutory obligation."

- 5) On 21 October 2022, I wrote to the then Economic Secretary to the Treasury, Andrew Griffith, on a range of matters including our concerns regarding the FCA's introduction of a Consumer Duty rather than a Duty of Care; [this response](#) from His Majesty's Treasury, dated 19 January 2023, acknowledges that the Consumer Duty is not a Duty of Care - HMT correctly describes it as an extension of the FCA's [Principles for Business](#) - and claims that the FCA had unilaterally decided that a Duty of Care was not, in fact, required:

'The Financial Services Act 2021 required the FCA to consult on whether it should make rules giving regulated financial services providers a duty of care over their customers. Ultimately, the FCA concluded that a statutory duty of care was not necessary and that strengthening its existing Principles for Businesses would be the best approach for increasing consumer protection. The FCA has implemented this approach through its new Consumer Duty'

Thus the Bar Council, an eminent King's Counsel assisting the Transparency Task Force on a *pro bono* basis, and His Majesty's Treasury are united in holding that the Consumer Duty is not a Duty of Care. Given that Section 29 of the Financial Services Act 2021 required the FCA to consult on a Duty of Care, something that it chose not to do, the rules it subsequently brought forward to enact its Consumer Duty cannot possibly be consequential to a consultation on a Duty of Care, as required under Section 29 of the Financial Services Act 2021.

In the absence of any other legislation or statutory instrument requiring the FCA to consult on a Consumer Duty, it cannot be said that the Consumer Duty was in any way the result of

the FCA being instructed to introduce such an entity by Parliament. On the contrary, it is the consequence of the FCA breaching a statutory obligation to consult on a Duty of Care, as required under the 2021 Act.

Given that misleading statements contradicting the above were made by the FCA's CEO and Deputy Chair at last week's Annual Public Meeting, it is important that the regulator issues, at the earliest possible opportunity, a public statement that sets the record straight. We would suggest something along the following lines:

'At our Annual Public Meeting on 26 September 2024, Nikhil Rathi and Richard Lloyd made statements that gave the impression that the FCA introduced the Consumer Duty at the behest of Parliament. This is not the case, so we are keen to correct the record. In fact, Parliament placed us under a statutory obligation to consult on a Duty of Care, and subsequently to implement rules based on the results of that exercise. We chose not to consult on a Duty of Care; instead, we consulted on and introduced the Consumer Duty, which is not the same thing.'

We ask that this statement or something similar is placed prominently on the FCA website and distributed by email to:

- All who registered to attend the Annual Public Meeting
- All the journalists who attended any press briefings that accompanied the Annual Public Meeting
- Any entity regulated by the FCA that it has previously misinformed that the Consumer Duty had been introduced at the behest of Parliament
- Any and all recipients of FCA news and alerts

We also believe that it would be prudent to take measures to reduce the likelihood of anything similar happening at a future event. As you will be aware, the FCA introduced online-only public meetings in [2020](#), due to the Covid-19 pandemic. This was a reasonable response to exceptional circumstances. But with life back to normal, we believe it is time to return to in-person or hybrid events.

The great benefit of having an engaged audience physically present at the Annual Public Meeting is that contentious statements can be subject to questioning and constructive challenge. Had last week's event taken place on such a basis, I and others would immediately have taken issue with the misleading statements about the Consumer Duty, and the correct position would immediately have been placed on record.

By coincidence, the morning after last week's event, *The Times'* Patrick Hosking published a [column](#) advocating this measure. Describing the public meeting as a 'charade' and 'a squirm-inducing car crash', he pointed out that, 'There was no chance for the questioner to

have their own voice heard or to contradict the speaker or to interject with a follow-up question, a much-needed requirement when Alder's team blathered and dodged the issues.'

We therefore ask that the FCA engages with us to discuss how best to structure future Annual Public Meetings to allow for effective scrutiny by in-person audiences.

In conclusion:

- 1) The FCA failed to consult on a Duty of Care, and in so doing breached an obligation placed on it by Parliament;
- 2) Nikhil Rathi and Richard Lloyd incorrectly stated at the FCA's Annual Public Meeting held on 26th September 2024 that Parliament had instigated the FCA's consultation on and implementation of a Consumer Duty
- 3) I have asked that the FCA corrects the record, at the earliest opportunity;
- 4) To reduce the risk of other misstatements being made without challenge at future FCA Annual Public Meetings I have proposed that the FCA engages with us to discuss how best to reintroduce and operate in-person events

My concerns are driven by the very obvious economic necessity for the reputational integrity of the UK's financial services sector and the reputational integrity of the FCA as its primary conduct regulator to be restored; currently, just 11 per cent of adults strongly agree that they have confidence in the sector (according to the FCA's [own data](#)). Only when this figure is raised substantially is there a realistic prospect that the financial sector's full potential contribution to the government's growth objectives will be realised.

I look forward to hearing from you without delay; meanwhile I am looking into whether other, unrelated statements made by FCA officials at last week's meeting may also require the record to be corrected.

Yours sincerely,

Andy

Andy Agathangelou FRSA

Founder, [Transparency Task Force](#); a Certified Social Enterprise

Chair, Secretariat Committee, [APPG on Investment Fraud and Fairer Financial Services](#)

Founder, [The International League of Ethical Financial Services Leaders](#)

Founder, [The March for Justice](#)

Chair, [Violation Tracker UK](#) Advisory Board

Co-Founder, [The Woodford Campaign Group](#)

Founder, [RSA's Financial Services Network](#)

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