Which?, 2 Marylebone Road, London, NW1 4DF
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Response to: Financial Conduct Authority consultation on *Our future mission*

Consultation Response

Financial Conduct Authority
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About Which?

Which? is the largest consumer organisation in the UK with more than 1.5 million members and supporters. We operate as an independent, a-political, social enterprise working for all consumers and funded solely by our commercial ventures. We receive no government money, public donations, or other fundraising income. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives, by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

Summary

We welcome the opportunity to respond to the Financial Conduct Authority's (FCA) proposed mission document. We agree that it is valuable for the FCA to gather in one place a clear view of how it interprets its objectives in the face of future challenges, the tools it uses to regulate and how those tools fit together. It is important that the FCA clearly communicates and explains its approach so that it is well understood by all its stakeholders, including consumers of financial services and products.

Which? recognises and welcomes the FCA's focus on ensuring there is an appropriate degree of protection for consumers in financial services, and its approach to defining harm and deciding when and how to intervene. However, the FCA could strengthen and build on its mission document by increasing its consumer focus. In particular, the mission document should identify good consumer outcomes in the markets the FCA regulates and use these to anchor and prioritise the FCA's work programme. This approach, focusing on good consumer outcomes, should also be used to measure and communicate the impact and success of the FCA's interventions. It will also help the FCA to identify and remove poor interventions that are actually causing consumer harm.

A consumer-focused approach is essential if the FCA is to drive culture change in a financial services industry with a history of significant failings and of not treating its customers fairly. The FCA should reinstate its work on banking culture, reconsider and examine the role that corporate culture plays in how banks treat their customers, and explore ways to incentivise

banks to engage actively with customers and to ask what consumers' wants and expectations are.

We broadly agree with the FCA's approach to vulnerable consumers. Vulnerability can arise for a wide range of reasons – specific groups of consumers may be vulnerable because of their inherent characteristics, or consumers can be made vulnerable in specific transactions – and this should be a factor in considering what protection consumers need. We are pleased that the FCA has committed to look further at consumers using unarranged overdrafts and we would like to see measures put in place to encourage the banks to shift to a more consumer-focused approach. This could be considered as part of a review of banks' customer focus.

We agree that effective redress arrangements are critically important in rebuilding trust in markets by providing protection for consumers when things go wrong. Redress schemes should focus not only on resolving individual complaints but also on driving improvements in firms' internal systems for complaints handling, as well as reducing the causes of complaints. The FCA should seek to maximise these benefits when designing and implementing redress schemes, and acknowledge the important role of complaints data in a consumer-focused approach to regulation. The FCA should improve its collection and analysis of data from redress schemes and make that data publicly available to at least the level of detail that the FOS publishes case data.

However, complaints-led redress is sometimes not sufficient to provide redress from widespread, systemic failings in a market, and a more pro-active approach by firms is needed. Which? advocated this in respect of mis-sold PPI, and we were disappointed by the FCA's continued approach to rely on a complaints-led approach despite it not being clear to consumers that they may have cause to complain. The FCA should amend its mission document to note the specific potential for pro-active redress schemes to deliver effective redress in cases of widespread failure and a high hurdle for consumers knowing whether they have cause to complain.

Which? welcomes the FCA's approach to the effectiveness of disclosure in leading to good consumer outcomes. While information disclosure remedies are often proposed by regulators, our work on demand-side remedies found that these remedies may not always be effective, and can sometimes be harmful. The FCA should take a more rigorous approach to designing and testing interventions, including disclosure remedies, as well as reviewing existing disclosure requirements and removing them when they are not effective. We agree with the observation that consumers rely on heuristics to make decisions. In particular, we do not believe that disclosure of terms and conditions significantly informs consumer choices. Remedies should rather be aimed at requiring firms to actively identify and draw attention to unexpected terms and conditions that would be likely to affect a consumers' decision.

Finally, there is a strong case for the FCA to be more transparent about its enforcement actions in a way that allows consumer groups such as Which? to scrutinise their effectiveness. We would like to see better information about cases (formal or informal) when they are opened, progress updates, and findings and results when they are closed, regardless of whether any action is taken. At present, the information is not available pro-actively, and the FCA has on occasion refused to provide such information when asked. Without this, we are unable to assess whether the outcome the FCA has achieved is actually a good one for consumers.

Focusing on consumer outcomes

Which? does not believe that the regulator should set or control consumer outcomes. We are strongly in favour of the regulator promoting and facilitating competitive markets, and we support the overall intention in Section 11 of the mission document to 'take a pro-competitive approach to regulation'. Competitive markets can and often do deliver the best consumer outcomes – when they work well. But as the FCA notes, financial services markets do not always work well, and there have been a series of failures over the years from mis-selling to market manipulation and financial fraud.

The risk of these types of market failures has not gone away. Indeed, the future challenges the FCA identifies: technological innovation, increased personal responsibility for financial decisions in contexts where this might not be appropriate, product complexity and the increasing number of firms within the regulator's remit; are likely to make it more difficult to rapidly identify potential market failures and prevent consumer harm. Framing its mission document, and consequently its objectives and work programme, in terms of consumer outcomes will help the FCA address this, and a number of other challenges it identifies in its mission document.

Consumer outcomes and the competitive process

In its 2016/17 business plan, the FCA sets out a series of outcomes against which it intends to measure its success. The FCA also lists a set of consumer objectives on its website, in relation to firms' fair treatment of customers. Which? welcomes the FCA's move towards this outcomes-based approach. However, we do not consider that those the FCA has identified are really consumer outcomes. Many are inputs into the competitive process (e.g. "firms compete on clear costs", "consumers have the information they need"), or are requirements placed on firms by the regulator (e.g. "where consumers receive advice, the advice is suitable and takes account of their circumstances").

While it is right that the regulator focuses on the competitive processes in the markets it regulates and seeks to ensure that these are working as effectively as possible, this cannot and should not be at the expense of a focus on consumer outcomes. Indeed, there is a risk that a focus on the competitive processes without a clear line of sight to the consumer outcomes that will be delivered, will fail customers.

We believe this is the trap that the Competition and Markets Authority (CMA) fell into in its inquiry into personal current accounts. The CMA identified adverse effects on competition resulting in consumer harm to specific consumers – namely unarranged overdraft users and non engaged consumers who are less financially sophisticated and/or less confident in using the internet. The CMA's initial remedies were all aimed at improving the competitive process – all 10 initial remedies were related to switching – and the CMA did not choose to consider measures to control outcomes, such as directly constraining charges for unarranged overdrafts. However, it was clear to Which? that measures to improve switching were unlikely to comprehensively address the harm faced by unarranged overdraft users, when the CMA's own evidence implied that consumers in credit have low incentives to switch and heavy overdraft users are very unlikely or unable to switch. The CMA focused on the competitive process at the expense of consumer outcomes.

Although the CMA developed its thinking to some extent in the light of our and others' submissions, and introduced some prompt and control measures aimed at assisting customers at risk of breaching their overdraft limit, we remain unconvinced that the CMA's remedies will provide an effective means of addressing the identified harm. We set out our views in greater detail in our letter to Andrew Bailey on 7th July 2016, and we welcomed his response and the FCA's commitment to examine this issue further in the context of its work on high cost credit.

Process to identify good consumer outcomes

To identify the consumer outcomes that really matter to consumers, the FCA should engage directly and indirectly with consumers, building on its existing research and engagement work. It should also use intelligence from other sources, such as complaints data, to understand what issues are high on consumers' agenda. This engagement should be on-going and refreshed regularly to capture the changing expectations of consumers over time, something that is likely to be highly relevant given the pace of technological change and innovation in financial services.

By finding out what is important to consumers at a point in time, rather than what is important to the regulated firms or even the regulator, the FCA can ensure that all its interventions, including those aimed at improving the competitive process, can be mapped onto the outcomes that consumers want in the market.

Prioritising action

Once the FCA has identified the key outcomes that consumers value it should then collate the data needed to measure whether these are being delivered, or whether sufficient progress is being made towards their delivery for the regulator to be confident that consumers' needs will be met in a timely way. This will expose areas of potential detriment and should allow earlier consideration of interventions and swifter, more targeted action compared to a reactive approach that waits until significant harm has been caused.

This key issue - the FCA's understanding of how well a market is delivering consumer outcomes – should be factored into the intervention framework described in Section 5 of the mission document as well as being used to inform the prioritisation of the FCA's overall work programme.

Designing, testing and reviewing interventions

Consumer outcomes must be central not only to decisions on when to intervene but also to the design of interventions. A review of demand side remedies commissioned by Which?, and conducted by Amelia Fletcher, found that regulators and competition authorities have been inclined to impose demand side remedies in particular without sufficient assessment of their impact and the potential for unintended consequences. In some cases this has actually harmed consumers interests. For example, the CMA's inquiry into the energy market found that interventions made by Ofgem in the retail energy market actually harmed the competitive process in that market, and thus harmed consumers' interests.

Which? would like to see a more rigorous approach to designing, testing and reviewing demand side interventions that is firmly rooted in consumer outcomes. First, by establishing a clear view of the consumer outcome that the remedy is designed to achieve, the impact of that remedy

can be tracked and monitored for effectiveness. If it is ineffective, or even causing harm, it can be modified or removed. This focus on consumer outcomes is missing from the approach described in Section 10 of the mission document, in which the FCA says it wants "all parties to be able to clearly track FCA action from harm to causes identified to interventions". The FCA should strengthen their approach, by allowing all parties (especially consumers and consumer groups) to be able to track interventions to consumer outcomes.

Second, where testing and trialling is possible, regulators should not avoid this, especially not on the grounds of costs. The real cost to consumers comes from ineffective or harmful remedies, so more widespread testing is critical if regulators are to avoid imposing those that may actually cause harm or may be ineffective. This may lead to fewer demand side remedies being imposed, but those that are, should be more effective. Which? welcomes the work that the FCA has started to do in this area, for example on insurance renewals and in the remedies that have been implemented following the cash savings market study. The FCA is well positioned to continue to lead this work.

Where it is not possible to conduct meaningful tests before the introduction of a remedy, there should be clearly defined review points where the effectiveness of the remedy in achieving the desired consumer outcome is reviewed, and there should be a presumption that remedies that are not proving effective will be removed.

Third, we would like to see greater innovation in the design of remedies and the process for finding solutions opened up to more actors, including private actors and intermediaries. Examples of this could be by establishing open data and APIs for consumer information, using prize funds or through payment by results.

Finally, it is important that the FCA does not reach for demand side remedies as an automatic default, simply because they are easier and less costly to impose than supply side remedies based on competition policy. A rigorous approach to demand side remedies will recognise the limits to what demand side remedies can achieve and allow the FCA to identify where consumer protection via a supply side remedy is needed or that an intervention cannot be designed that would improve the situation.

Measuring success and communicating impact

With an understanding of good consumer outcomes and effective mechanisms for monitoring and reporting on progress towards those outcomes, the FCA will be better placed to explain and judge the real impact of its work.

Often regulators have tracked success by measuring indicators of the competitive process, for example switching levels, the number of entrants into a market, or the levels of investment or regulated returns. These measures are important, but they are not always meaningful to consumers, consumer bodies or politicians. Measuring and explaining progress and how work contributes to good consumer outcomes can reduce the risk of consumers or politicians losing patience and calling for or actually intervening in a way that is in fact unhelpful or harmful.

The FCA needs to do much more to measure the success of its work. It is important to note with concern the findings of a report by the NAO on mis-selling and redress published in February 2016. The report states: "the FCA does not evaluate its chosen redress schemes formally, making it hard to assess whether schemes achieve their intended outcomes". As a

consequence, the NAO stated that the FCA "cannot be confident that its actions are reducing the overall level of mis-selling".

Driving culture change in financial services

The financial services industry has a history of significant failings and of not treating its customers fairly. When confronted by those failings, the industry has not responded in a way we would expect if it had a customer focused culture. For example, Which? first raised concerns about problems in the PPI market in 1998, and for many years published research highlighting the multiple failings of firms, including the fact that they continued to sell PPI long after concerns were raised. The response of the industry was not to accept the consequences of its actions and put things right, but rather to seek to limit its liability for PPI complaints. Some banks and their trade association, the British Bankers Association took action to resist dealing with complaints fairly and delayed the payment of redress to consumers. They first objected to the Competition Commission's 'point of sale' remedy in 2009 and then requested a judicial review of the FSA's policy statement in 2010.

The FCA should explore further the reasons why banks have shown such an absence of customer focus, concentrating on the role that corporate culture plays in this. In this context, we are disappointed that in 2015, it appeared as though the FCA dropped its plans to carry out further work on the culture of banks.

The FCA should reinstate its work on banking culture, and explore ways to incentivise banks to engage actively with their customers and foster a culture at all levels of the business that continually asks what consumers want and how they would expect the firm to act.

Vulnerable consumers

Which? broadly agrees with the FCA's approach to vulnerable consumers. Vulnerability can arise for a wide range of reasons – specific groups of consumers may be vulnerable because of their inherent characteristics, or consumers can be made vulnerable in specific transactions. We agree that this should be a factor in considering what protection consumers need.

For example, in our responses to the CMA's banking inquiry, we argued that users of unarranged overdrafts may be vulnerable because they are in financial distress and effectively they self-identify to the bank as being vulnerable by their use of the product. The response of the banks, which is to charge excessively high fees that cause significant consumer detriment to this group of consumers, is evidence of a sector that does not have a culture of treating consumers fairly. An alternative response of denying any credit to these consumers would also be harsh and unwarranted and would not accord with a consumer-focussed culture.

To shift the banks' culture towards one that treats its consumers honestly and fairly, Which? proposed a package of remedies for the CMA to consider, including:

- considering equating unarranged overdraft charges with those for arranged overdrafts
- improved consumer challenge in the banks decision making
- increased clarity for consumers about the 'deal' for unarranged overdrafts
- improved clarity on buffer zones and other flexible mechanisms to allow customers to manage their overdrafts
- measures to support customers in financial difficulties

- putting consumer outcomes at the heart of service quality metrics

We also proposed that the CMA required banks to make better use of prompt and control measures to give consumers better control over their accounts, which it did.

We are pleased that the FCA has committed to look further at the harm caused by unarranged overdrafts. We welcomed the specific market intervention the FCA made to cap the cost of payday loans, and would like to see the FCA take a strong approach to directly constrain unarranged overdraft charges. More generally, we would also like to see measures put in place to encourage the banks to shift to a more consumer-focused approach. The FCA should consider the banks' treatment of vulnerable consumers as part of a review of banks' customer focus.

We agree with the FCA's overall view that people can become vulnerable at any time. The risk of substantial harm is not only greater for particular groups of consumers, but also for consumers in particular situations. For example, in our recent super-complaint to the Payment Systems Regulator, we highlighted how consumers can be vulnerable when in the situation of transferring large sums of money from one bank account to another. The PSR acknowledged the considerable consumer harm caused when people are tricked into transferring money to a fraudulent account, identified evidence to suggest that the scale of the problem may be significant, and concluded that the prevalence of these scams is likely to increase.

While the FCA recognises that it will need to give some groups of consumers higher levels of protection that others, we are disappointed that consumers vulnerable in the situation of making large payments via bank transfer are not given the same protection as, for example, consumers who are making payments using other methods, such as debit or credit card transactions. We proposed that banks be required to take new measures and greater liability for losses, to ensure consumers are better protected when they have been tricked into making a bank transfer.

The PSR agreed that banks could to do more to protect their customers: they need to improve the way they respond to bank transfer scams, and do more to identify fraudulent payments. The PSR has proposed a package of work for the industry to take forward, developing common standards to collect data, an approach to responding to instances of reported scams, and proposals for better sharing of information.

Which? notes that the FCA's preferred approach to conduct regulation is preventative, which involves the regulator looking at how providers are given the right incentives to act. Which? remains concerned that until banks are required to take more responsibility and liability for consumer losses where the consumer has been scammed into authorising a payment, they have little incentive to develop the mechanisms and systems to spot high-risk payments and prevent bank transfer scams.

The FCA acknowledges that wealthy consumers may be vulnerable to financial scams, and highlights its work to protect consumers through educational campaigns. With scams being increasingly sophisticated, this approach of relying on educating consumers to protect themselves will only go so far.

A duty of care

Which? shares the view of the Financial Services Consumer Panel (FSCP) that firms are still failing their consumers, despite the obligation on firms to treat customers fairly (TCF). We also note that the risks of further failings may be increasing given emerging trends such as technological innovation, increased personal responsibility for financial decisions, product complexity and the increasing number of firms within the regulator's remit.

As we have outlined above, it is our view that the continued failings of financial firms arise from a culture that is not sufficiently consumer focussed. Firms that considered consumers throughout their decision-making processes would never make some of the decisions we have seen that have led to widespread consumer harm. It is therefore clear that the FCA needs to address the absence of a consumer focussed culture within financial services firms.

The FSCP suggests that imposing a duty of care would engender long-term cultural change in financial services providers. However, it is not clear why the FCA cannot tackle the underlying causes of poor consumer outcomes in financial services under the existing TCF obligation along with its general duties. We agree with the FSCP that the causes of poor consumer outcomes are not yet being effectively tackled, and the FCA should act now to apply the TCF obligation more strongly in financial services.

We recognise that the TCF obligation has no clear legal significance outside of public law, but that a duty of care, on the other hand, has a very clear legal meaning: namely that the parties have a sufficiently proximate relationship and it is foreseeable that certain losses will flow if the bank (in this case) does not exercise "reasonable care". The introduction of a duty of care would therefore make it easier for a consumer to make out professional negligence and so claim damages.

The FCA should reinstate its work on corporate culture in financial services firms, and consider the potential benefits and impacts of introducing a duty of care as part of this work. Should a duty of care assist the FCA to improve consumer outcomes, or strengthen consumers' rights, we would not object to its introduction.

Effective consumer redress

We agree with the FCA that effective redress arrangements are critically important in rebuilding trust in markets by providing protection for consumers when things go wrong, not least because of the repeated and widespread failings of the sector over the past decades. To do this well, such schemes need to be designed with three key benefits in mind.

First, they need to deliver effective redress to individuals in cases where services go wrong. This benefits all those individuals who complain to an Ombudsman where the scheme is complaint driven, or all those individuals who are contacted by firms where they are required to do so as part of a redress scheme. Second, the complaints information gathered by redress schemes should be used to help drive improvements in firms' internal systems. This brings benefits to a larger group of people, i.e. all those who have cause to complain to the firms, and is in line with the FCA's view in Section 7 of the mission document that "effective, accessible and trusted internal complaints systems operated by firms themselves are of fundamental importance to treating consumers fairly". Third, information about the issues consumers are complaining about can be used to identify systemic consumer issues. This is a valuable source

of information for the FCA in identifying the outcomes that matter to consumers at any point in time, and prioritising action to address those outcomes. This type of action benefits the greatest number of consumers by driving improvements across entire sectors.

In designing and implementing redress schemes and in its work with the FOS, the FCA should seek to maximise these benefits fully. The FCA's mission document should acknowledge the important role of complaints data in a consumer-focused approach to regulation, particularly with regards to the ability to evaluate outcomes.

To maximise the benefits of redress schemes in helping identify trends and emerging consumer concerns, as well as to measure the impact of such schemes on consumer outcomes, the data collected through the schemes should be made transparently available to interested parties, such as Which?. The FCA should improve its collection and analysis of data from redress schemes and make that data publicly available to at least the level of detail that the FOS publishes case data.

Pro-active redress schemes to tackle systemic failings

There are some circumstances when complaints driven redress schemes may not be sufficient to remedy the harm that has arisen from widespread, systemic failings in a market. This is most likely when the failing goes back over a long period of time and it is not clear to consumers that they may have cause to complain. In those circumstances, the firms are better placed to know what customers, or groups of customers are most likely to have suffered harm and so redress schemes should place the requirement on the firms to identify and contact all affected customers and proactively offer redress, rather than relying on consumers to complain.

In addition, where the failing has been very widespread and a very large number of consumers have been affected, case-by-case consideration of such each individual complaint can be very resource intensive and inefficient. This means that a case-by-case approach is not the best way to deliver effective timely redress to consumers who have lost out in cases of widespread mis-selling.

In our response to the FCA's consultation on its proposal to introduce a time bar on redress claims for mis-sold PPI, Which? argued that the complaints driven approach has not been successful in the case of PPI mis-selling, and that a more pro-active approach, placing responsibility with firms for identifying consumers entitled to redress, was needed.

To guard against similar issues in the future, the FCA should amend its approach in its mission document to note the specific potential for pro-active redress schemes to be more effective in delivering redress to consumers where failures have been widespread and the hurdle for consumers knowing whether they have cause to complain is high.

Claims Management Company costs

The emergence of Claims Management Companies (CMCs) to address a failure of the redress scheme in cases of widespread mis-selling, such as PPI mis-selling, is evidence that financial services providers could do much more to find these customers in the first place. If the banks were sufficiently pro-active in finding customers and providing redress, there would be no market for CMCs.

By seeking out consumers who may have reason to complain, CMCs increase the overall number of consumers receiving redress. However, by taking a significant percentage of the overall redress payment when they are successful, they reduce the potential amount individual consumers could have received had they complained directly to the scheme. In line with our view that firms should be more proactive in seeking out such consumers, Which? proposes that firms should be made liable for paying the CMCs' costs where the consumers' claim is successful, as we set out in our April 2016 response to the Ministry of Justice's consultation on proposals to cap CMC fees. This would place an incentive on the firms to seek out the consumers before CMCs find them and offer the redress directly, thus reducing the overall costs to the firms. When the FCA takes over the regulation of CMCs, it should consider changing the incentives on firms to offer proactive redress, by making them liable for CMCs cost when they are at fault.

The role of disclosure in consumer choices

Disclosure of information by firms is a remedy that is often proposed by regulators as a means of improving the ability of consumers to play an active role in markets. This approach is based on the assumption that if consumers have more/better information they will make better choices. Such remedies are also often simple to impose, for example by requiring information to be presented in a different way. However, our review of demand side remedies found that, because the reasons behind consumer inactivity are usually deeply rooted, remedies of this type may not always be effective, and can even be harmful.

While supplying more information to consumers can help to tackle consumer detriment, in many cases it is not enough. For example, we found it is hard to increase how much consumers search for better deals simply by providing more information. Such remedies can also fail because of the way they are implemented by market participants, and they can even make things worse for consumers. For example, forcing current suppliers to provide information about alternative suppliers can lead consumers to trust their current supplier more, and become less likely to switch, while poorly designed remedies can provide consumers with too much information or too many options.

We agree with the observation in Section 9 that consumers rely on heuristics to make decisions. For example, we do not believe that disclosure of terms and conditions, even if simplified, significantly informs consumer choices. Instead, remedies aimed at ensuring that consumers understand terms and conditions should be focused on requiring firms to actively identify and draw consumers' attention to any unexpected terms and conditions that would be likely to affect a consumers' decision.

The FCA recognises that consumers focus in on headline returns or other upfront product features and do not take account of associated contingent charges like early exit charges. In our response to the FCA's consultation on its proposed handbook changes to reflect the introduction of the Lifetime ISA, we highlighted the risk posed by the 25% early withdrawal charge, the impact of which may not be understood by the consumer. We proposed that sellers must be responsible for communicating when the withdrawal charge applies, and highlight to investors that the charge will remove more than just the government bonus, and that therefore consumers should be cautious when considering the LISA as a savings product.

In its mission document, the FCA also notes that risk warnings can be ineffective if delivered too late in the sales journey. If firms get customers bought in to the benefits of a product,

before giving them the risks or downsides, these warnings are unlikely to get through to customers and so will be ineffective. In 2015, Which? welcomed the introduction of the requirement for firms to give appropriate retirement risk warnings to consumers. However, our research found a variation in how well these risk warnings were communicated. While some firms delivered the warnings during the initial communication, others relied on follow up paperwork, which we are concerned might be missed. The FCA's own supervisory interactions also identified good, poor and non-compliant practice. In 2016, the FCA's updated rules and guidance only required firms to deliver risk warnings after the consumer has made the decision of how to access their pension savings. We proposed that risk warnings should be given verbally, and during the initial communication, where possible.

The FCA should take a more rigorous approach to designing and testing interventions, including disclosure remedies, and consider behavioural insights as part of this approach. The FCA should also review existing disclosure requirements to see if they are effective and remove them where they are not.

In 2014, Which? called on the FCA to require insurers to show customers their previous years' premium at renewal, recognising that detailed information about premiums, without specifying what was previously paid, was neither prompting nor incentivising consumers to shop around. People who renewed their insurance with their existing provider often faced significant premium increases. We were pleased to see the FCA test, then introduce, new requirements on insurers last year.

Transparency of enforcement cases

There is a strong case for the FCA to be more transparent about its enforcement actions in a meaningful way that allows consumer groups such as Which? to scrutinise the effectiveness of such actions.

We recognise that enforcement can involve a formal decision taken by the regulator, or be less formal where the regulator can accept certain commitments from a firm in lieu of taking them to court or exercising formal enforcement powers. We also recognise that investigations may or may not lead to any enforcement action or commitments, and sometimes cases are settled on an even less formal basis. In that context, we note the FCA's use of private warnings.

We are interested in the broad scope of 'enforcement' actions, which could include:

- An agreement (or commitments) to cease the behaviour that is causing the breach of the law or regulations.
- Putting consumers back where they would have been without the breach: this might involve ensuring that consumers who were affected receive appropriate redress where possible.
- Creating a deterrent effect for the firm that has been responsible for the breach by punishing the firm for the misbehaviour: this could be in the form of a financial penalty, a requirement to pay additional redress to consumers, a public statement of the breach which would damage reputation, or other actions beyond those necessary to just stop the breach.
- Creating a wider deterrent effect by showing other firms the potential consequences of a breach: this requires firms to be able to see and understand the actions of the regulator.

Our interest stems from ensuring we represent the consumer voice and making sure there is a balance in the arguments between operating a workable enforcement regime, the interests of businesses and the interests of consumers.

Regardless of how formal the action, in order to be able to judge whether enforcement action is effective, and to be able to hold regulators to account for their use of their enforcement powers, sufficient detailed information needs to be made publicly available on each case. This would allow consumer bodies like Which? to understand the decision made by the regulator, the reasons for the decision and why the outcome is appropriate.

Without such transparency, in informal settlements of cases in particular, the results often appear to have been negotiated between regulators and firms behind closed doors. We recognise that there may be benefits to all parties in avoiding formal, resource intensive action, and informal settlement and commitments in lieu of action, can be the right outcome. However, there are significant downsides to this course of action, notably when regulators do not publish details of how less formal commitments were agreed or why they consider them sufficient in each case. The details of what the firm did wrong are often hidden, with it a condition of settlement that full details are not released. As a result, it is not possible for Which?, or any other body, to assess whether the commitments are indeed sufficient, or whether consumers have received redress where relevant.

Given the asymmetry of information that exists between a firm and a regulator, and the pressure of work and the finite resources that the regulator has, there is a danger that regulators will accept commitments that are less than ideal, compromising too much on the remedies required, and agree to withhold details of findings that rightly should be published.

Which? would like to see greater transparency of FCA enforcement actions, including better information about cases (formal or informal) when they are opened, progress updates as they progress, and findings and results when they are closed, regardless of whether any action is taken. The FCA's current practice falls short of such an approach. Information is not available pro-actively, and the FCA has on occasion refused to provide such information when asked. For example, in November 2015 Which? asked for more detail behind two press releases about investigations into payday loan firms CashEuronet and Dollar. The FCA refused to provide the requested information, including whether the firms has been fined or punished by the regulator, or how the FCA interpreted consumer detriment in this case.

Without such information, we are unable to assess whether the outcome the FCA has achieved is actually a good one for consumers. This lack of transparency risks undermining confidence in the FCA's enforcement actions.

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