

FINANCIAL SERVICES FUTURE REGULATORY FRAMEWORK REVIEW: PHASE II CONSULTATION

Joint response from the Financial Inclusion Commission and Fair By Design

19 February 2021

About the Financial Inclusion Commission

Financial inclusion remains a significant challenge for 21st century Britain, a nation which prides itself on being a global leader in financial services. Just under 1 million people do not have a bank account, 16 million adults lack home insurance cover and 10.5 million UK adults would be unable to cover one month of living expenses if they lost their source of income.

Financial exclusion is a major contributing fact to vulnerability for millions of people, and vulnerability whether permanent or temporary leads to financial exclusion for millions of others.

The Financial Inclusion Commission (FIC) is an independent body of experts drawn from UK politics, financial services, businesses, the charity sector and academia.

<https://www.financialinclusioncommission.org.uk/>

Our mission is to champion financial inclusion as a public policy priority. We work with policy makers and a wide range of stakeholders, to come up with practical policy proposals for government, business and civil society.

About Fair By Design

[Fair By Design \(FBD\)](#) is dedicated to reshaping essential services such as energy, credit and insurance, so they don't cost more if you're poor. People in poverty pay more for a range of products including energy, through standard variable tariffs; credit, through high interest loans and credit cards; insurance, through post codes considered higher risk; and payments, through not being able to benefit from direct debits as they are presently structured. This is known as the poverty premium.

We collaborate with regulators, government, and industry to design out the poverty premium. Our Venture Fund provides capital/funding to grow new and scalable ventures to innovate the market and design out the poverty premium.

The Barrow Cadbury Trust manages our advocacy work, and Ascension Ventures manages the Venture Fund.

Response to call for evidence

The FIC and FBD welcome the opportunity to contribute to the second phase of HM Treasury's Financial Services Future Regulatory Framework Review.

For more information about this response please contact Carl Packman at Fair By Design via c.packman@barrowcadbury.org.uk and Chris Pond, FIC Chair via Commission@ukfinclusion.org.uk

Summary of recommendations

We make the following recommendations to HM Treasury in this response:

1. The FCA should be required by HM Treasury to have a cross-cutting statutory duty to promote financial inclusion as a core objective.
2. Parliament via HM Treasury should give the FCA the power to take on the enforcement of individual cases relating to financial firms' compliance with the Equality Act (and equivalent to devolved nations), in addition to the Equality and Human Rights Commission.
3. FSMA should be amended to place a duty on regulated firms to act in their customers' best interests: a Duty of Best Interest (normally termed a "duty of care").
4. There needs to be the creation of a clear, open, and transparent process which consumer organisations can easily engage with on issues that involve a mixture of both regulatory and social policy. An entity needs to own this process and have responsibility for this.
5. HM Treasury and the FCA should commit to an annual perimeter review meeting, which involves engagement with consumers and their representatives.
6. Ring fenced funding should be made available for consumer organisations to engage on financial services regulation, especially in areas that are currently the least represented (for example insurance.) This money could be sourced from the annual levy on the industry carried out by the FCA, or via allocation of money from fines placed on firms each year.
7. FSMA should be amended to require the Financial Services Consumer Panel issues a formal annual consultation for consumer organisations to steer the future strategic priorities of the Panel.
8. We support representation and champions on the Financial Services Consumer Panel of people with protected characteristics, such as those related to race and disability, as well as lower socio-economic status which is a cross-cutting issue for all types of

consumers.

9. FSMA should be amended to require all consumer bodies that have been designated the right to make a “super-complaint” to the Financial Conduct Authority and to the Competition and Markets Authority (CMA), to issue a formal annual consultation for consumer organisations on what should be prioritised for future super complaints. This will formally give consumer organisations the opportunity to present evidence of features of the financial services market that they believe are significantly damaging to the interests of consumers. Super complaint organisations should provide feedback on how they use the evidence provided.
10. The FCA should fund the creation of an additional consumer panel consisting of people with lived experience of poverty, financial exclusion and wider consumer vulnerability. This would help to ensure regulatory policies are designed to meet the needs of all consumers and that the regulatory system is designed *with* people rather than *without* them.
11. Cost-benefit analysis procedures must involve extensive engagement with consumer organisations and people with lived experience of the issues being analysed. The FCA should account for how they have engaged and sought this information as well as how they have incorporated it in to their Cost Benefit Analysis.
12. Essential services, including financial services, should be designed so they are as inclusive as possible.
 - The Competition and Markets Authority, and regulators of essential services, including the FCA, should adopt inclusive design principles in regulation design
 - Government and regulators must work together to bridge the policy divide – so markets work for everyone
 - There must be a single body/open process responsible for addressing issues that fall between regulators and their sponsoring departments that is public and to which organisations can *easily* take such issues.

Our views on the general regulatory principles in the FSMA and the existing statutory objectives for regulators

The response to the Covid-19 pandemic has shown the importance of evidence-based, flexible, and reactive regulation. It has also shown how vital it is that regulation takes into consideration wider societal and public policy issues. We think this is the type of regulation needed to face future challenges as well.

By way of comparison, the consultation paper mentions a different regulatory approach:

“There is an argument that one of the reasons for regulatory failure leading up to the financial crisis was an excessive concern for competitiveness leading to the acceptance of a ‘light-touch’ approach to regulation and supervision.”¹

We don’t think this would be the correct approach for the future of regulation.

A stronger role on financial inclusion for the regulator

The consultation paper notes that the:

“overarching statutory objectives for the PRA and FCA set in FSMA are an effective way of ensuring appropriately strong regulatory focus on the policy priorities of financial stability, consumer protection, the integrity of financial markets and competition”.²

The paper goes on to describe the main line of debate relating to the adaption of these objectives:

“Much of this debate has centred on whether there should be an objective to support the competitiveness of the UK financial sector. Given the importance of a thriving financial services sector for UK economic growth and prosperity, it is argued that the regulators should have a statutory duty to support the economic viability of financial services and the ability of the sector to compete internationally”.³

We disagree that this objective is a priority. Instead we are more inclined towards what Nikhil Rathi, the FCA’s chief executive, has previously described as “Maintaining high regulatory standards rather than having a “competitiveness” mandate [as] the best way to preserve the City of London’s status as a dynamic financial centre.”

Instead the FCA’s objectives must include more focus on social purpose. In these difficult times, the FCA aligning to social purpose is the best way to maintain high standards and market dynamism in a way that also protects and includes consumers.

¹ P.24

² Ibid

³ Ibid

Recommendation: The FCA should be required by HM Treasury to have a cross-cutting statutory duty to promote financial inclusion as a core objective.

Currently the FCA has no clear statutory requirement to address financial inclusion issues at all. It also does not routinely have regard to issues of financial inclusion across all of its work, wherever it is appropriate. By their very nature essential services, such as credit, payment systems and insurance are needed by everyone. However, currently poorer people pay more for products and services than those better off and products and services often do not meet people's needs. Some people are excluded altogether. This is the justification for having a social objective like financial inclusion.

With our proposed new objective, the FCA will have responsibility for addressing the ways that markets often exclude those that are most vulnerable or disadvantaged. These might include:

- not being able to afford, or having to pay extra for, appropriate products and services because they are deemed to be a higher risk/not as desirable to serve;
- not being able to access products and services that meet their needs because they are 'nonstandard';
- being excluded altogether.

Responsibilities between Parliament and Regulators

We agree that a key policy challenge today is making sure independent regulatory bodies take full account of broader public policy issues and priorities when designing standards, policies and interventions.

We particularly agree where it states in the consultation paper:

“making sure that the regulators effectively internalise the full range of relevant public policy issues will be essential. If the framework does not provide for this, the regulators' policy-making process risks leading to poor outcomes and could lack credibility and legitimacy.” (p.16)

As the consultation paper continues, a working policy-making framework must ensure Parliament sets out broader public policy priorities and that regulators are open about how the full range of relevant policy issues have been considered. Clarity on responsibilities by Parliament and regulators also benefits other external stakeholders such as consumer organisations to know where to address policy concerns when they occur.

As it stands, for many external stakeholders there is a lack of clarity on where responsibility for certain issues sits. That's why we welcome acknowledgement of this issue in this consultation paper.

Consumer organisations are routinely signposted from the FCA to HM Treasury (or, occasionally, the Equality and Human Rights Commission or Competition and Markets Authority), and vice versa – usually unable to meet in the same room together. A catch 22 situation evolves where consumer representatives are unable to gain traction on issues that involve more than one organisation. This demonstrates a lack of clarity about who owns what among these organisations. (There is a strong argument for increased scrutiny by the TSC of all regulators whose work touches on financial services, including the FCA, the Payment Systems Regulator, the CMA and EHRC – ensuring a joined up approach to regulation.)

It is difficult to gain any traction on the issues that matter most to those in the most precarious financial circumstances in the UK today. For example, access to affordable credit and insurance, and ability to access cash easily and free of charge.

Furthermore, the Equality and Human Rights Commission (EHRC) has oversight of compliance with the requirements under the Equality Act. So, regulators will typically not consider that they have a mandate to actively assess firms' compliance. However, whilst the EHRC is clearly the specialist, expert agency, it faces challenges in practical supervision and enforcement, especially in the highly technical and complex markets of financial services.

The EHRC has previously stated to the TSC, for example, that it does not have the relevant resources to investigate whether individual insurance firms' treatment of customers with disabilities is compliant with the Equality Act or not. The FCA has told the Committee it does have the expertise and resources.⁴

Recent discussions have challenged whether the sector regulators should do more to support the EHRC and expressed concern at the degree to which fundamental and important legislation is falling through the cracks. The issue of whether regulators should take more responsibility for compliance with the Act has been considered recently by two House of Commons Select Committees – both of whom have recommended that regulators should be given powers to secure compliance with the Act in the sector for which they are responsible. The Treasury Select Committee has recommended that: 'The Government should give the FCA the power to take on the enforcement of individual cases relating to financial firms' compliance with the Equality Act, in addition to the EHRC'.⁵

Additionally, recent consultations from the FCA point to the equalities impact process appearing to focus on avoiding negative consequences to groups with protected characteristics, on avoiding exclusion rather than actively seeking inclusion. Shifting the focus towards inclusion would support more meaningful compliance with the PSED.⁶

⁴ [House of Commons Treasury Committee \(2019\), Consumers' Access to Financial Services](#)

⁵ [House of Commons Treasury Committee \(2019\), Consumers' Access to Financial Services](#)

⁶ [Fair By Design & Money Advice Trust, Inclusive Design in Essential Services](#)

Recommendation: Government should give the FCA the power to take on the enforcement of individual cases relating to financial firms' compliance with the Equality Act (and equivalent to devolved nations), in addition to the EHRC.

Duty of best interest

At present, the regulatory principle that firms should "treat customers fairly" (TCF) only enshrines a weak duty to the consumer, further weakened by the principle in FSMA that consumers should 'take responsibility for their decisions'. TCF does not remove conflicts of interest and so does not deter firms from mis-selling products and services, and indeed has the potential to normalise firms' unethical behaviour. The 'consumer responsibility' principle fails to take into account the imbalance in power between firms and their customers.

We support the proposal of the Financial Services Consumer Panel that the Financial Services & Markets Act (FSMA) should be amended to place on regulated firms a duty to act in their customers' best interests. The FCA should supervise and enforce against this overarching duty, utilising all rules, powers and tools to support it.

We are not proposing a fiduciary duty, but a duty that would oblige providers of financial services to always act in the best interests of their customers. A similar duty (normally termed a "duty of care") already exists for other sectors, for example, for legal and medical professionals through the Solicitors Regulation Authority's Principles⁷ or the General Medical Council's Good Medical Practice Guide^{8 9}. We are recommending a review Duty of Care requirements elsewhere, to find the most appropriate with the longest history of case law.

As part of the Future Regulatory Framework Review, the Government should:

- Amend FSMA to introduce the new duty of best interests.
- Amend the present FCA duties and objectives to align with delivering the duty.
- Amend provisions that would weaken the new duty (for example, the consumer responsibility principle).

A suite of suitably crafted amendments would:

- Place an anticipatory duty on firms to act in accordance with their customers' best interests, rebalancing the information and bargaining position asymmetries between firms and consumers, and operating to *prevent* poor conduct and minimise consumer harm.
- Provide Board responsibility for ensuring required actions are taken.

⁷ <http://www.sra.org.uk/solicitors/handbook/code/part2/content.page>

⁸ http://www.gmc-uk.org/guidance/good_medical_practice/duties_of_a_doctor.asp

⁹ Some regulated firms are already bound by such a standard (e.g. insurers and insurance intermediary under ICOBS 2.5-1R)

- Clearly set out that consumers can only reasonably be expected to take responsibility for their decisions where firms have complied with the duty of best interests and informed consent has been achieved i.e. customers have been provided with the information they need to fully understand the terms of the agreement, and the protections applicable.
- Enable the FCA to use its extensive powers and tools to the full in its pursuit of bad actors and low standards.
- Enable amendments to FCA principles, rules and policies to ensure that sanctions and enforcement create appropriate incentives for firms to comply with the new duty.
- Reduce the burden on after-the-fact remediation, which is prolonged, stressful and uncertain for consumers and imposes a huge cost on firms, which bad actors can too often avoid paying.

Recommendation: FSMA should be amended to place a duty on regulated firms to act in their customers' best interests: a Duty of Best Interest (normally termed a "duty of care").

Evidence and insight on financial inclusion, access to financial services, and the poverty premium

In this section we provide supporting evidence for why financial inclusion should be a cross-cutting statutory duty for the FCA. At the moment, the FCA may take this information into consideration when forming regulatory policies, rather than taking responsibility for them as a key pillar of its work.

Financial inclusion and wellbeing

Financial inclusion remains a significant challenge for the UK, a nation which prides itself on being a global leader in financial services. It should be noted that:

- Just under 1 million people do not have a bank account.
- 13.2 million working age adults (40%) do not have home contents insurance.¹⁰
- In 2016, almost 19 million UK adults had outstanding debt on an High Cost Credit product and 6.7 million people took out 11.8 million High Cost Credit products.¹¹
- High Cost Short Term Credit includes payday loans and short-term instalment loans. These products are often accessed by those who struggle to access mainstream products. There were 1.46 million HCSTC loans made in the second quarter of 2018, an increase of 11% on the first quarter of that year (FCA, 2019a).¹²
- 10.5 million UK adults would be unable to cover one month of living expenses if they lost their source of income.¹³

¹⁰ <https://www.birmingham.ac.uk/research/chasm/financial-inclusion/2020/index.aspx>

¹¹ [Financial Conduct Authority \(2019\). 'Consumer credit — high-cost short-term credit lending data'](#)

¹² Ibid

¹³ <https://financialinclusioncommission.org.uk/>

- From March 2018 to March 2020 there was a 15% reduction in the number of free cash access points across the UK. The largest contributor to this decline was from free to use ATMs which fell by approximately 19% over this period.¹⁴
- At the end of May 2020, 4.6 million people had accumulated £6.1 billion of arrears and debt, averaging £1,076 in arrears and £997 in debt per adult affected. As of late May, 2.7 million people had accessed payment holidays on mortgage and credit products¹⁵.

The poverty premium

The term ‘poverty premium’ describes how people on low incomes pay more for essential goods and services compared to those on higher incomes. Examples of poverty premiums include:

- Lack of access to affordable credit pushing people towards high cost loans.
- Higher than average insurance premiums where people live in poorer areas.
- Having to make costlier payments through not being able to benefit from direct debits as they are presently structured, or their need to use cash.
- Higher costs due not having the resources and ability to shop around, including digital exclusion.

The poverty premium affects almost every person on a low income and costs the average low income household £490 a year. But for more than one in ten of low income households it costs at least £780. Bristol University’s seminal work found that 99% of low income households paid at least one poverty premium.¹⁶ Experience of the poverty premium is compounded by factors such as vulnerability, digital exclusion, and geography.

In our most recent research of 1,000 low income households accessing the services of national poverty charity Turn2us, evidence shows that poorer households are spending the equivalent of 14 weeks’ worth of food shopping just to access the same services as people who are better off.¹⁷

It should be noted that:

- **Car insurance** was the biggest contributor to the poverty premium, with some people paying nearly £300 more a year simply because they live in a deprived area.
- **Credit** is expensive when on a low income, whatever form it takes. A sub-prime credit card costs around £200 more a year and personal loans cost more than £500 extra.
- Being on the best **energy** prepayment tariff could still be £131 more expensive than the best online-only one. But being on a fixed tariff could still be costly: **not paying by direct debit** costs up to £143 more a year.

¹⁴ [University of Bristol \(2020\), Where to withdraw: Mapping access to cash across the UK](#)

¹⁵ <https://www.theguardian.com/money/2020/jun/09/uk-households-face-6bn-debts-because-of-covid-19-says-charity>

¹⁶ [University of Bristol \(2016\), Paying to be poor: Uncovering the scale and nature of the poverty premium](#)

¹⁷ [University of Bristol \(2020\), The poverty premium: a customer perspective](#)

The experience of the poverty premium varies among different age groups. For example, for the under 35s, it might be seen in struggling with the costs of owning a car. While for the over 65s it could be because of digital exclusion and an inability to access and engage with the market, such as not being able to switch online to the best energy or insurance deal. Switching rates among families with young children tend to be higher, however, they are more likely to use expensive forms of consumer credit for household goods like washing machines or fridge freezers.

Poverty premium and protected characteristics

Many people affected by the poverty premium have characteristics which are ‘protected’ under the Equality Act. Whilst living in poverty or on a low income is not in itself a protected characteristic, people with some protected characteristics are often more likely to be poor or living on a low income than people without that characteristic. For example, the Personal Finance Research Centre highlights that people from non- white groups, single parent and disabled households are more likely to be living in poverty and points to evidence that certain groups with protected characteristics are more likely to incur poverty premiums, compared with low income households as a whole.¹⁸

Activity-specific regulatory principles and cross-cutting regulatory principles

We welcome discussion in this consultation paper on activity-specific regulatory principles. The purpose of these principles is, as the paper states, “to enable government and Parliament to direct the regulators to have regard to specific broader public policy issues that may be relevant to the particular financial services activity being regulated.”

We feel that regulators having regard for wider public policy issues is justified on the grounds that markets don’t exist outside of wider society. And especially not essential services markets. There is an interaction between, for example, the use of particular financial services and the wider social context of those individuals that are using them.

An example of this working in practice can be found in the recent Woolard Review into change and innovation in the unsecured credit market¹⁹.

One of the recommendations to the FCA Board by Christopher Woolard in his review was “the FCA should provide government with evidence and analysis on the impacts of different social policies, including Universal Credit, on the demand for high-cost credit so that government can identify ways to reduce consumer harm in this area.”²⁰

¹⁸ Personal Finance Research Centre, University of Bristol. The Inequality of Poverty. Forthcoming research exploring the link between the poverty premium and protected characteristics.

¹⁹ <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf>

²⁰ Ibid, p.8

This is on the grounds that issues which fall neatly under the existing financial services regulatory framework do interact with wider public policy issues. Joining up these dots is fundamental to achieving a proportionate regulatory/social policy response.

We also welcome the discussion to have more cross-cutting regulatory principles. In practice we understand this to mean a simpler process for considering what areas of regulation particular policy considerations are relevant to.

In order for these principles of regulation to work well we feel it is appropriate to create a system for dealing with issues that involve a mixture of social and regulatory policy.

As noted above, it is very difficult for consumer representatives to make progress on issues that involve a mixture of both social and regulatory policy because of:

- The lack of clarity on who owns which issues when the solutions sit across regulatory and social policy.
- Lack of clear, constructive communication to consumer organisations from HM Treasury and the FCA, as well as the Competition and Markets Authority and Equality and Human Rights Commission, on how to progress such issues, each often pointing to the other as being responsible. The Equality and Human Rights Commission also struggles with resource to engage on financial services equality matters.²¹
- The lack of an open and transparent process for dealing with these issues, in which consumer organisations can engage.

Issues that span regulatory and social policy include, for example, access to affordable insurance and credit, and suitable payment systems.

Recommendation: There needs to be the creation of a clear, open and transparent process which consumer organisations can easily engage with on issues that involve a mixture of both regulatory and social policy. An entity needs to own this process and have responsibility for this.

²¹ [House of Commons Treasury Committee \(2019\), Consumers' Access to Financial Services](#)

Our views on accountability and public engagement mechanisms for regulators, the role of Parliament, HMT, and the improvement of regulatory process

Reviewing the regulatory perimeter

We agree that reviewing the perimeter would benefit from a more systematic engagement between HM Treasury and the regulators. Therefore, we agree with the government commitment to an annual perimeter review meeting. This gives both bodies the opportunity to quickly adapt regulations to relevant social or market changes. However, since much harm to consumers happens outside or near to perimeter, this process needs to ensure appropriate engagement with consumers and their representatives. See recommendations below.

Recommendation: HM Treasury and the FCA should commit to an annual perimeter review meeting which involves engagement with consumers and their representatives.

Improvements to stakeholder engagement

We agree that the policy-making process risks being deficient if it does not draw on the experiences and expertise of those who may be impacted by regulation. We also support the idea of meaningful stakeholder engagement as a means of supporting the policy-making process, mentioned in the consultation paper.

We do acknowledge that currently there is a process in place for external engagement by policymakers. For example, there are requirements for the financial services regulators to seek input from external stakeholders. There are also opportunities before final rules from regulators are set, to give an explanation on how stakeholders have been given a meaningful opportunity to feed into the development of policy.

But improvements still need to be made to address what constitutes meaningful engagement.

For example, the regulator should provide evidence for how it understands consumer issues at a regional level. Since regulatory interventions will have different impacts for different consumers across the UK, it is right that the FCA demonstrates it has properly considered these differences.

The regulator should also increase its engagement with consumer organisations on enforcement and monitoring specifically. Currently through the FCA's supervisory work, firms are asked to demonstrate how their culture, policies, and processes ensure the fair treatment of all consumers, including those who are vulnerable. But closer work with consumer organisations will help the FCA's work on what questions to ask, what skills and capabilities should be required of firms, and what good outcomes should be for consumers.

‘Accountability’ is one of the Government’s six Principles for Economic Regulation. It stresses the importance of regulatory decisions being taken by bodies that have “the legitimacy, expertise and capability to arbitrate between the required trade-offs”.²² However, for this to occur regulators need to be able to engage all stakeholders, and to ensure that those with little resource are appropriately engaged and their concerns are of *equal* measure to those with greater resource.

Due to the amount of resource regulated businesses are able to (and do) invest in working with and influencing their regulators it is essential that this imbalance in representation is addressed. This is especially the case when industry and regulatory professionals working within a similar space (financial services) are able to frame issues in a similarly understood way.

If regulators do not fully understand the needs, wants and behaviour of the consumers on whose behalf they regulate, their work risks becoming disconnected from the real world. In an environment where many people share a similar professional background and mindset it is necessary to proactively engage with the full spectrum of consumers to avoid regulation becoming an academic and myopic activity.²³

This situation exacerbates the disconnect that exists between policymakers/regulators and people’s *lived experiences* of poverty and exclusion. Regulatory policy making is not inclusive and does not use inclusive design processes to supplement current measures – which are currently built around limited engagement with poorly resourced consumer organisations and commissioned consumer research. (Commissioned consumer research is usually created to fit around the remit of an organisation (FCA) rather than the needs of the consumer.)

The ability of consumer representative organisations to engage on complex financial services issues is severely restricted due to resource constraints. And there are certain subjects, such as insurance, where consumer representatives struggle to engage at all. (Many consumer organisations dedicate what extremely small resource they have to matters involving credit and debt, as their main focus is dealing with crisis intervention.)

It can also be difficult for regulators to receive many consumer organisation responses, despite there being clear implications for consumers. The FCA has created a range of engagement methods, including the creation of a consumer network for meetings and a limited number of strategic secondments. However, this falls well short of the measures needed to *balance* representation between firms and consumers.

The statutory Financial Services Consumer Panel is a welcome resource and should continue. However, this cannot be relied upon to be the main consumer voice. There are

²² [UKRN Consumer Working Group \(2014\), Involving consumers in the development of regulatory policy](#)

²³ Ibid

multiple panels representing industry, therefore for balance there should be more than one for consumers.

There exists a real issue around plurality of consumer voices, as well as representation of people with lived experience of issues such as poverty, exclusion, and wider consumer vulnerabilities. To start to address this we support representation and champions on the Panel of people with protected characteristics, such as race and disability, as well as lower socio-economic status which is a cross-cutting issue for all types of consumers.

In the future we would like to see the Consumer Panel engage with other consumer organisations on a statutory basis through a formal annual consultation. This would give consumer organisations the opportunity to steer the Panel's strategic priorities. This could be carried out at the start of the year. Funding made available for consumer organisations to engage with the Consumer Panel and the FCA – and bodies such as HM Treasury – would allow for a range of voices being heard.

Recommendation: Ring fenced funding should be made available for consumer organisations to engage on financial services regulation, especially in areas that are currently the least represented (for example insurance.) This money could be sourced via the annual levy on the industry carried out by the FCA, or via allocation of money from fines placed on firms each year.

Recommendation: The appropriate section of the Financial Services and Markets Act is amended to require the Financial Services Consumer Panel to issue a formal annual consultation for consumer organisations to steer the future strategic priorities of the Panel.

Recommendation: We support representation and champions on the Financial Services Consumer Panel of people with protected characteristics, such as those related to race and disability, as well as lower socio-economic status.

Recommendation: The appropriate section of the Financial Services and Market Act is amended to require all consumer bodies designated the right to make a “super-complaint” to the Financial Conduct Authority to issue a formal annual consultation for consumer organisations. This will formally give consumer organisations the opportunity to present evidence of features of the financial services market that they believe are significantly damaging to the interests of consumers.

Recommendation: The FCA should fund the creation of an additional Consumer Panel of people with lived experience of poverty, financial exclusion and wider consumer vulnerability. This would help to ensure regulatory policies are designed to meet the needs of all consumers and that the regulatory system is designed *with* people rather than *without* them. (See below for more detail on how this can work.) This panel could be created in a way that allows it to be used across essential services regulators and sponsoring government departments – with funding gained from across different markets.

Regulator's consultation obligations and beyond

We welcome the opportunity to discuss how a regulator's obligations and practices can be adapted to improve the policy-making process.

There is real potential for regulators to support external stakeholders on technical aspects of policymaking. Particularly on setting cost-benefit analyses.

Cost-benefit analysis is a key tool used by regulators, including the FCA. One of the major impediments to ensuring the value of 'benefits' are truly assessed is the lack of consumer representation in such matters. Without adequate engagement with consumer organisations and people with lived experience of the issues being considered, there is a danger of continued focus on quantifiable costs, as opposed to benefits. There is a real danger that, due to the ability of firms to engage with the regulator on such matters, the cost/benefit analysis process becomes a vehicle for prioritising the consideration of costs over benefits.

If Parliament and HM Treasury want to achieve certain outcomes for consumers the process must recognise fully that costs are an essential element of meeting such outcomes.

Recommendation: Cost-benefit analysis procedures must involve extensive engagement with consumer organisations and people with lived experience of the issues being analysed. The FCA should account for how they have engaged and sought this information as well as how they have incorporated it in to their Cost Benefit Analysis.

Independent review of regulator rules and inclusive (policymaking) design

We welcome the discussion of adding more systematic rules in the regulation process. Particularly where this involves the inclusion of more expertise. We fundamentally agree with expert and evidence-led policymaking.

There is a consideration in the consultation paper for independent, expert reviewers to carry out more significant reviews, "such as the review of a whole regulatory regime." We recommend an adjacent role for an expert by experience (or panel of experts) to have similar responsibilities (see our recommendation above).

Inclusive Design builds expertise by experience into the process for creating policies. At the heart of inclusive design is the premise that policies start with consumers. It is about giving staff the permission and guidance to build skills in inclusive design and to co-design and test solutions with the people who will need to access and use essential services. It is about placing lived experience of people at the centre of decisions and exposing decision makers to people 'not like them'.

Fair By Design, with our partners, Toynbee Hall, currently facilitate this process for firms operating in the essential services market²⁴, as well as regulators. For example, we have recently held one lived experience session with the Payment Systems Regulator on access to cash. However, it is rare for regulators (especially senior decision-makers) to engage directly with people living in poverty in this way. We would be delighted to talk to you more about this model and inclusive design more generally.

We are aware that currently there is not a well-developed, shared understanding of what inclusive design means in the specific context of financial services, and other essential services. Nor is there a current understanding of how it relates to current regulation and UK law, or how it should be incorporated into the strategies of regulators. Our work with the Money Advice Trust aims to fill this gap, and we have recently published a practical toolkit²⁵, as well as mapping inclusive design to regulators' objectives and their obligations under the Public Sector Equality Duty.

Recommendation: Essential services should be designed so they are as inclusive as possible.

- The Competition and Markets Authority, and regulators of essential services, including the FCA, should adopt inclusive design to:
 - help set their priorities;
 - develop and implement interventions;
 - assess their effectiveness; and
 - guide their expectations of business.
- Where inclusive design cannot solve issues, the government and regulators must work together to bridge the policy divide – so markets work for everyone.
- There is a single body/open process responsible for addressing issues that fall between regulators and their sponsoring departments that is public and to which organisations can take such issues. See previous recommendations.

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²⁴ See p33 [Young Foundation \(2020\), Nothing about us without us](#)

²⁵ [Fair By Design and Money Advice Trust, Inclusive Design in Essential Services](#)