AN OPEN LETTER TO THE CHAIRMAN & MEMBERS OF THE TREASURY SELECT COMMITTEE

8 September 2020

Dear Chairman and Members of the Treasury Select Committee

We are writing to you on a matter of serious and urgent concern in respect of compensation for victims of financial loss resulting from regulatory failure by the Financial Conduct Authority (FCA).

As you are aware, under the Financial Services Act 2012, the four financial regulators – the FCA, the Bank of England (BoE), the Prudential Regulatory Authority (PRA) and the Payment Systems Regulator (PSR) – are required to have in place a scheme to investigate complaints against them for regulatory failure (as opposed to complaints against the businesses they regulate).

We believe that there is an urgent need to review the existing scheme, when viewed against the backdrop of an increasing incidence of financial scandals in recent years, as identified in our widely reported *Asleep at the Wheel Report*[1] (25 February 2020). We are also disturbed to note that the total amount paid out by the FCA over the last 18 months to successful complainants in relation to its own conduct amounts to just £13,475[2]. We expect the Treasury Committee is likely to share our concerns regarding the Consultation opened by the FCA on 20 July 2020, and set to close on 14 September 2020, entitled **CP20/11: Complaints against the Regulators (The Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England).**

As we explained on BBC Radio 4's MoneyBox programme[3] on 5 September, the proposals appear to be an attempt by the FCA, by stealth, to put in place a flimsy new compensation scheme to deal with their own regulatory failures. We consider this to be intellectually dishonest, morally questionable and, from our understanding, contrary to law.

Our concerns are the following:

1. The scheme which the FCA is consulting on appears to be in technical Breach of the 2012 Act as the investigator specified by this Act would not be free at all times to act independently of the regulators because the proposed Scheme would restrict the circumstances under which he or she could investigate complaints.

2. The truncated eight-week consultation period contravenes the Consultation Principles set out by the Government as there was little media announcing the Consultation. It also took place over the summer holidays and during an unprecedented pandemic, factors we firmly believe should have required the

[1] https://www.trueandfaircampaign.com/wp-content/uploads/2020/02/report-asleep-at-the-wheel-report-into-UK-financial-services-failings-25-feb-2020.pdf
[2] https://citywire.co.uk/new-model-adviser/news/revealed-fca-paid-13000-in-complaints-redress-in-last-18-months/a1392104
[3] (6.5 minutes into the programme) - https://www.bbc.co.uk/sounds/play/m000mbqp,

111 Park Street, London W1K 7JF
0207 838 8650
www.trueandfaircampaing.com

The True and Fair Campaign was launched in 2012 by Gina and Alan Miller to increase transparency, consumer protection and competition in UK Financial Services, and is wholly funded the Millers.

FCA to give more, not less time, in order that stakeholders have the opportunity to respond to the consultation in a considered and timely way.

Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period, policy makers should consider what if any impact there may be and take appropriate mitigating action. The amount of time required will depend on the nature and impact of the proposal (for example, the diversity of interested parties or the complexity of the issue, or even external events), and might typically vary between two and 12 weeks. The timing and length of a consultation should be decided on a case-by-case basis; there is no set formula for establishing the right length. In some cases there will be no requirement for consultation, depending on the issue and whether interested groups have already been engaged in the policy making process. For a new and contentious policy, 12 weeks or more may still be appropriate. When deciding on the timescale for a given consultation the capacity of the groups being consulted to respond should be taken into consideration.

3. The new proposals not only reduce the scope for claims, thereby unfairly disadvantaging victims, but also set a cap on compensation awarded to £1,000 for victims who have experienced distress and inconvenience; and £10,000 in the case of those who have experienced financial loss.

But there is a more fundamental issue at stake. The moral imperative must be that any Consultation into compensation for regulatory failure should take place *after* the three independent reviews of major financial scandals – that will necessarily include an assessment of any regulatory failure by the FCA – are published.

The fact that an underlying theme of the delay to both the Dobbs Review and the Gloster Review is the FCA dragging its feet and in the latter case, acting to delay the review by belatedly disclosing a further 3,500 documents that "*should have been provided previously*" [4], stands in stark contrast to the FCA's desire to quietly and quickly conduct this Compensation Scheme Consultation.

We would urge the Committee to note the response of the outgoing Financial Regulators' Independent Complaints Commissioner, Antony Townsend, in which he expresses significant concern that the proposals may *"represent an explicit fettering of compensation for direct financial loss"*[5]. It is also worth noting that, in 2019, the Complaints Commissioner published 63 final reports: 62 relating to the FCA, one to the PSR and none to the BoE and PRA.

[4] https://www.thetimes.co.uk/article/dame-elizabeth-gloster-hits-out-at-financial-conduct-authority-over-london-capital-amp-finance-delays-66nd32kqt .
[5] https://www.thetimes.co.uk/edition/business/financial-conduct-authority-rushes-to-minimise-compensation-for-its-failings-jzwpmjvr6

In view of the above and the extent of harm caused to individuals and small businesses by regulatory failure in financial services by the FCA, we urge the Committee to take action to protect UK financial consumers. The most practical manner of achieving this is for the FCA to suspend the Consultation until such time as the three major independent reviews of financial scandals have reported and published. Following this, the consultation should recommence but over a more considered and orderly timescale, and with the attending publicity that properly reflects its importance.

We would be happy to assist the Committee in any way that the Committee and its members may find helpful.

Yours sincerely,

Gina Miller

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Alan Miller

Alan Miller

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