Treasury Select Committee Call for Evidence
Future of Financial Services
The True and Fair Campaign

19 February 2021

Introduction

The True and Fair Campaign, founded in 2012, is focused on delivering reform within the UK Investment and Pension industry to achieve better consumer-facing outcomes and restore trust in the Financial Services sector.

The Campaign's Founders, Gina and Alan Miller, have combined practitioner experience in the sector totalling more than 60 years, and became campaigners following the Financial Crisis in 2008-09. The Millers believe in the importance of creating an efficient and effective regulatory framework that enhances consumer protection; promotes competitiveness through transparency, diversity; and supports pro-active regulatory enforcement. They also believe that this is vital to boost the UK's attractiveness to international investment and ensure the UK optimises its credentials for quality and competitiveness in international markets.

True and Fair believes the UK's approach should be informed by what is right for UK Financial Services and UK consumers. However, it is important to recognise that any diminution of regulations and standards will most likely come at the cost of EU equivalence.

1. ***How can the UK Financial Services sector take advantage of the UK's new trading environment with the rest of the world?***

An outward looking UK can revitalise existing relationships with current trading partners and forge strategically important and dynamic new ones based on the expertise, success, and reputation built up in Financial Services over many decades.

Becoming a third country from 1 January 2021, without equivalence provisions in the EU/UK Trade Deal, has ended passporting and will have a knock-on effect on related professional services sectors. The UK has granted equivalence to the EU in most areas, but the EU has only adopted time-limited market infrastructure equivalence decisions relating to UK central counterparties and central securities depositories. In the weeks since 1 January 2021, there appears to be limited prospects of

the EU granting the UK full equivalence, with the memorandum of understanding on future collaboration likely to be very modest. In view of this, HM Treasury should urgently commission a Domestic and International audit of the sector to preserve and build on the UK's international stature in financial services.

The UK has unilaterally granted the EU equivalence but, to date, no reciprocal offer has been made. This must not be repeated in arrangements with any other countries. It is crucial, however, for the UK to communicate that there will be continuity of international principles on money laundering checks, terrorism finance, data, KYCs, consumer protections, ESG benchmarks, environmental standards, and legal certainty. That there will be no race to the regulatory bottom.

2. ***What changes should be made to the UK's Financial Services regulations and regulatory framework once the UK is independent of the European Union?***

The UK now has a golden opportunity to re-consider and re-evaluate its existing regulatory framework and should ensure future regulations consider the key overarching objectives of enhanced consumer protection, competitiveness, and simplicity.

2.1 Changes to the FCA

The regulator has repeatedly demonstrated that it is not fit-for-purpose in a modern fast moving Financial Services environment and will be further tested by the necessary repatriation of regulatory functions from the EU.

It should have been unnecessary for the True and Fair Campaign to have had cause to demand the FCA take urgent steps to prevent Mr Woodford being licensed to trade before publication of the report into his previous failed funds that resulted in 500,000 investors having their financial security jeopardised. This only heightens the extent to which the FCA is manifesting its inability to fulfil its key regulatory functions and duties. Its own investigation into Woodford commenced some 18 months ago, has no end date in sight, and appears unlikely to assess the regulator's own responsibilities and failures.

A litany of past high-profile scandals has powerfully demonstrated the need for urgent regulatory 'fixes' in order to protect consumers. The conclusion of recent reports into LC&F, Connaught, as well as the anticipated Dobbs Report, and other scandals detailed in the True and Fair Campaign's 2020 *Asleep at the Wheel* report, attest to this.



We suggest that change needs to encompass the following:

- Reducing the size and fragmentation of the FCA Handbook by focusing on efficient regulation rather than cumbersome, overly detailed / prescriptive regulation.

- Smart use of technology and digitisation of compliance requirements to assist authorised firms, and new entrants.

- Total costs information is critical in terms of improving customer outcomes, but details need to be presented in a coherent and understandable way. The FCA should seek to improve fee disclosure by formulating a Total Cost Methodology and harmonise across pensions and investment products.

- Simplify and reduce the number of poor-quality investment and pension products available to retail investors and savers.

- In the area of ESG products, the Government could announce at COP 26 that the UK will act to introduce transparency of holdings across the investment sector. This will go a long way to addressing the issue of 'greenwashing' in the sector. The UK should also seek to create a Common Form Template that surpasses the EU Sustainable Finance Disclosures Regulation ("SFDR"), to improve the ease of use and veracity of ESG disclosures.

- Review of the FCA register to exclude firms and individuals not fully authorised by the FCA. The register is widely used by the public and the current listing of unauthorised intermediaries, agents, and marketing firms gives users misplaced confidence with potentially dangerous consequences.

- Introduce a Lobbying Register in relation to the FCA, to reduce conflicts of interest, build consumer trust in the FCA, and reflect Lobbying Registers that are a statutory requirement in other sectors.

- A review of the FCA perimeter. As past heads of the FCA have reported, there are issues with the FCA perimeter in terms of regulating firms that fall outside it. This is likely to increase as the industry evolves and changes due to product and service innovations, and the perimeter needs to reflect this. For example, misleading financial

- promotions – often for products outside the FCA's perimeter – were key in the LC&F minibonds scandal.

- Improve Whistle-blower procedures, protections and rewards.

- Review the independence and contribution of the five-independent statutory panels. A simple but effective reform would be to move the panels out of the FCA building which would enhance their ability to independently contribute to FCA policy making. They should also be tasked with increased consumer research such as mystery shopping exercises which could be funded by reducing the number of FCA Consultations which have proven expensive, burdensome, and often result in little or no change.

3. What role does Parliament have to play in influencing new Financial Services regulations?

The number and increasing frequency of scandals that have collectively negatively affected over a million UK consumers requires Parliament to play a more influential role in Financial Services regulations. Parliament and MPs have an important strategic role in interrogating, debating and testing the overall direction of policy for financial services, the existing regulatory regimes, and replace work formerly undertaken by Technical Committees within the EU regulatory framework.

The competitiveness and stability of the financial services sector is far too important for MPs not to be proactively involved in the design and implementation of new Financial Services regulations.

4. How should new UK financial regulations be scrutinised?

4.1 Improved scrutinising functions

Leaving the EU institutions requires the urgent replacement of legislation, scrutiny committees, and technical committees being set up in the UK.

Unless this capacity and resource implication is addressed, consumer protection, industry stability, and competitiveness cannot be assured. It is therefore vital that Parliament clarifies what they want regulators to prioritise in the future – competitiveness, treating customers fairly, or stability with growth. Once a political framework is agreed, the review of regulation can sensibly commence against that strategic backdrop.

In view of the capital contribution of Financial Services to the UK economy and the direction of global travel in terms of convergence in financial standards, we suggest Parliament should act very cautiously in respect of pressure to pursue a light touch approach to Financial Services that could ultimately damage the UK's competitiveness and international standing.

True and Fair believes that, whilst the cross-party Treasury Select Committee (TSC) is the correct vehicle to hold regulators to account, in conjunction with HM Treasury, we are also mindful of the TSC's resource limitations.

Financial Services is a highly technical sector and, as such, it would both be prudent and proportionate that the TSC should be supported by a Technical Secretariat or Sub-Committee. This proposed new Technical Sub-Committee would also ensure that the intentions of legislation are being correctly interpreted and scoped out in regulation.

Such a Secretariat could take evidence from industry and consumers in order to inform the deliberations and programme of work of the eleven members of the TSC, and would be better able, for example, to hold witnesses to account.

4.2 Reviewed and reorganised regulatory bodies

As politicians seek to review regulations and exploit the scope to focus on ***Effective Regulation,*** consumer outcomes should be paramount in politicians' minds, which logically includes a review of the FCA and PRA perimeters.

Such a review should consider a ***Tiering Regulatory*** approach across all Financial Services sectors. At present the PRA has a different approach to supervising smaller firms '*due to their limited potential to cause harm to the financial system'* whilst ensuring '*the safety and soundness of all the firms it supervises'*. The same principle could be applied by the FCA, thereby enabling the survival of existing smaller firms and, very importantly, encouraging new entrants to set up in the UK.

Serious consideration should also be given to breaking up the FCA as it has become an unwieldly organisation covering too many product areas. This has contributed to its inability to both pre-empt scandals through proactive enforcement, or investigate adequately or in a timely manner when failure/scandals occur. For example, consideration should be given to new Sub-Regulators or Agencies for Green Finance and Digital Finance (especially if Financial Harm is not included in the forthcoming Online Harms Bill). This model would be akin to the

Australian Council of Financial Regulators (CFR) which is a coordinating body for Australia's financial regulatory agencies.

5. ***What should the Government's Financial Services priorities be when it negotiates trade agreements with third countries?***

We fully understand that this is a political decision as there necessarily is a balance between the desire by the UK Financial Services sector for priority, as well as the sector's strategic and economic importance in supporting all other sectors of the British economy, and people's livelihoods.

6. ***What progress has the Government and regulators made in facilitating key financial services equivalence agreements with third countries; and would an alternative mechanism serve the interests of the UK market better?***

The UK has an opportunity to establish an efficient regime of equivalence that is outcome-based. The British government should prioritise an equivalence framework in which other third country banks, investment firms, infrastructure providers, and other actors are able to provide diverse financial services and activities across the UK, and for the UK to do so across their countries or networks, such as the Commonwealth and CANZUK.

This should, we suggest, be established based on compliance with their home regulatory and supervisory framework where the UK deems the counterparty third country's framework equivalent to the new efficient regulatory framework that the UK has or intends to put in place. It should also include a cooperation arrangement between relevant national supervisory authorities.

The UK would be following a model familiar to international financial regulation whilst being more flexible, nimble, outcomes focussed and able to better protect consumers. It would avoid duplication or conflicting rules and regulatory arbitrage.

From a competition perspective, a new UK-led third country efficient regulatory regime that focuses on outcomes-based equivalence would be attractive as it would enable firms to be more competitive. For example, by avoiding the need to establish a host country subsidiary or branch to satisfy host state regulatory requirements – especially in the digital age. This

unified approach to third countries could cover, for example, pension products, investments, payment and settlement systems, and green products.

7. ***Should the UK open its financial services markets to external competition from countries outside of Europe, or should the UK maintain the current regulatory barriers that apply to third countries?***

Given that the UK has already granted full passporting rights unilaterally to individual EU member states, albeit on a temporary basis for up to three years, the UK should be cautious in opening its Financial Services to countries outside Europe in any deal that is unfavourably weighted against UK Financial Services companies.

Financial Services should lie at the heart of the UK's pipeline of forthcoming trade deals. The. This is the case with the UK-Japan deal, for example, which makes it easier for UK financial firms to apply for licences to operate in Japan.

8. ***What skills and immigration policy will the UK financial services sector need once the UK has left the European Union?***

We fully understand that this is a political decision, as there is a balance to be struck between the wishes of the UK financial services sector which benefits from a free and open system, making it easier to attract the highest skilled people internationally, and the wider economic and social implications of such a policy.

9. ***How can Government policy and the UK regulators facilitate the emergence of FinTech and new competition; develop new areas of growth for the financial services sector; and promote the UK as the best place to incubate new financial technologies and firms?***

The FCA provides little or no assistance to new firms, which is profoundly unhelpful. The FCA should move away from a tick box culture to a template culture in which firms can easily understand not just the rules but, more importantly, what they need to do to comply with them. This would ensure firms are more compliant whilst their regulatory and administrative burden would be greatly reduced, enhancing their competitiveness and their ability to survive and thrive in more challenging trading conditions.

10. How should financial services regulators be funded?

We would suggest that the model move towards a "polluter pays" model whereby the FCA, and not HM Treasury, receive fines from "industry polluters" as a source of funding. This would serve to reduce costs for good firms, stimulate firms to operate by the substance and principles of the rules, and lead to lower costs to consumers. This principle is not just fairer but would be more transparent and bring down costs, and therefore prices, of financial services products. The sharp escalation of costs, for example the FCA regulatory levies and Professional Indemnity Insurance over recent years, has led to many UK financial advisers, on which so many UK consumers depend, becoming unsustainable.

11. Should the mandate and statutory objectives of the financial services regulators change to include wider public policy issues?

In terms of the Financial Services industry, the current mandate and statutory objectives of the financial services regulator are simple and straightforward but frequently ignored by the regulator. It would be better to ensure that the FCA is fit for purpose and meets its current objectives, before discussing new ones.

Consideration should be given widening the statutory objectives to include financial literacy and education – for example, in the first year of further education/university – with a view to achieving a more financially knowledgeable and confident population.

There should also be FCA input into environmental policy in respect of the deployment of capital and funding of green initiatives, companies and products.

12. How important is the independence of regulators and how might this best be protected?

Independence is crucial. There is a basic conflict of interest between the independence of the regulator and the role of HM Treasury. The independence would be better protected if it were the Treasury Select Committee who appointed the CEO, not the Treasury, and that the performance of the Chair and CEO of the FCA was automatically reviewed every 3 years.

It is unacceptable that the current FCA Chair, Mr Randall, given his tenure covers many of the current scandals, has never been properly or independently reviewed. This is especially

important as culture flows from the top and confidence in the system of regulation is predicated on it.

13. How can the balance between lighter touch regulation and prudential safeguards be best secured?

By a sense of perspective and outcomes. Not all rules have the same importance and the FCA would function much more effectively and efficiently were it to place emphasis on ensuring the overriding principles are met by firms rather than focusing on minor and less consequential rules.

By concentrating resources and enforcement on areas such as fraud or consumer detriment, this would ensure that regulation and safeguards are maintained and enforced in a proper and proportionate way, whilst other areas, in which the risks are lower, would operate under a lighter touch scheme of regulation. A strengthening of enforcement would send a clear and strong message to the industry, consumers, and those looking at strategic inward investment into the UK.

14. How should consumer interests be taken into account when considering potential regulatory changes?

Regrettably, the FSCP is not fit for purpose and cannot be independent whilst it remains housed in the FCA which, in its turn, takes conspicuously little heed of its recommendations. A new panel should be established at the earliest possible opportunity, comprising experts of firms and consumer groups alike, with the common goal of improving standards, protecting consumers and promoting public confidence in its system of regulation.

Its recommendations should be presented and reviewed by the Treasury Select Committee on a regular (and, at least, annual) basis, who should be mandated, in turn, with ensuring that the FCA endeavours to follow, wherever practicable, its recommendations. This would confer on the FCA greater authority, public confidence, and prestige.



15. What are the strengths and weaknesses of the European Union model of scrutinising financial services legislation?

The European regulator, ESMA, manages to protect consumers with a staff of about 200, whereas the FCA maintains an establishment in excess of 4,000 staff and has a different modus operandi. A key strength of ESMA is that it regularly consults with consumer groups, highlighting potential areas of concern, as well as reacting much faster than the FCA on such issues. This is demonstrated by True and Fair's own research into closet indexing which the UK regulator, unlike ESMA, neglected to address with due seriousness. This is notwithstanding the fact that ESMA must consult with 27 Member States, several of which have conflicting national interests. As the domestic regulator of a unitary and independent state, the UK regulator and UK financial services ought to be able to benefit from a clear competitive advantage.

16. Should the UK seek to replicate the EU's model for drafting and scrutinising financial services regulation?

Any future scheme of regulation should, if it is to command public confidence, combine the best of existing UK, US and EU models. Regulations should be drafted professionally and in good time, with the genuine participation of interested industry and consumer groups. Anti-consumer lobbying from self-interested parties would be significantly reduced were there to be a dedicated Lobbying Register along the lines of those already provided for by existing statutory legislation. This would help to ensure lobbying was conducted on an open and transparent basis.