



DP21/2: Diversity and Inclusion in the Financial Sector; working together to drive change

Submission by the Transparency Task Force, September 29th 2021

About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector.

The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Much of our focus is on rebuilding trustworthiness and confidence in financial services. To make this possible we are busy developing a framework for finance reform which we describe as a “whole system solution for a whole-system problem” as described in [our recently published book](#)

Our response to you has been produced by a highly collaborative group of TTF volunteers, our “Response Squad,” working together to build consensus, whilst always remaining true to our “North Star” question: “What is best for the consumer?”

For further information about the Transparency Task Force see:

<http://www.transparencytaskforce.org>

Response to Questions

Q1: What are your views on the terms we have used, how we have defined them, and whether they are sufficiently broad and useful, now and in the future?

We welcome the focus on diversity of thought (also known as cognitive diversity). The principal benefit of diversity for an organisation is in the improvement in its thinking, where this leads to changes in how it behaves, and thus in how it is judged by society.

When the composition of an organisation’s workforce and leadership is broadly representative of those it exists to serve, it is more likely to think - and hence act - in ways the public expects of it, which is likely to lead to it enjoying widespread support. Conversely, when an organisation’s composition becomes unrepresentative of the communities it is intended to serve, it places itself at risk of groupthink, which can lead to suboptimal decision-making and hence behaviour, resulting in the erosion or loss of public support.

We believe that in recent years both financial services firms and their regulators have tended to become cognitively misaligned with the public, leading to behaviours that have resulted in them becoming distrusted by significant sectors of society. There is thus an urgent need to promote diversity of thinking across the industry¹.

The discussion document provides the following definition of cognitive diversity:

‘bringing together a range of different styles of thinking among members of a group. Factors that could lead to diverse thinking could include, but not limited to, different perspectives, abilities, knowledge, attitudes, information styles, and demographic characteristics, or any combination of these.’

¹ Throughout this document, we use the term *the industry* to mean, firms (as defined by DP21/2), their regulators and the professional services firms that act extensively for those two groups

We believe this is a reasonably useful definition, but that it can be improved. In particular, we identify three opportunities for improvement:

- How *organisations act* is more important than how *individuals within them think*. While cognitive diversity is a necessary precondition for an organisation acting as society would wish, it is not sufficient on its own. The decisions made by an organisation are not necessarily the weighted averages of the opinions of those within them. It is possible for some, many or even most people in an organisation to think it should act in a particular way, but for it to act differently, whether because a culture does not exist in which they feel able to speak up or because the leadership and governance structures are such that their views are either marginalised or actively overruled. The discussion document refers to *inclusion* as the cultural environment in which diverse views are welcomed and appropriately weighted. We agree this is an important factor but believe that governance structures matter too;
- How individuals think is to a large degree *path dependent*. We think the way we do largely because of our life experiences. These may include upbringing, education, work, family life, community links, lifestyle choices, social and political activity and much more;
- *Economic incentives* also shape individual thought, collective decision-making and hence organisational action. To quote the great Charlie Munger, ‘Show me the incentive and I’ll show you the outcome.’ People can shape their thinking or self-censor where it suits their interests to do so; likewise, organisations may respond to incentives (and avoid costs) when deciding how to act.

Putting together these observations, we offer this revised definition of cognitive diversity²:

‘bringing together and empowering a societally representative range of different styles of thinking among members of a group in a way that ensures and appropriately incentivises that the group acts as society would hope and expect. Factors that could lead to diverse thinking may include, but are not limited, to any combination of different perspectives, abilities, knowledge, attitudes and information styles, whether intrinsic, acquired through life experiences, or both.’

It will be seen from both the discussion paper’s definition and our proposed version that demographic characteristics are not the only drivers of cognitive diversity. Indeed, we argue that cognitive diversity exhibited by people who have specific demographic characteristics (whether protected or otherwise) may be the result of path dependency, of the lived experience of existing as a member of that group within a specific societal and temporal context, and not necessarily the result any intrinsic, immutable, biological differences. If true, this premise opens up the possibility that recruiting for cognitive diversity may be a better approach than selecting for demographic diversity and hoping this will lead to the cognitive variety.

² Italics denote our revisions

It might help if we provided a hypothetical illustration of our thinking. Regulators might decide to improve their understanding of alternatives to mainstream financial services that are most commonly practised within certain minority communities, for instance Sharia-compliant banking, Hawala money transfers and Pardner savings clubs. They might assume that employing people with heritage in the communities in which these forms of finance originated might achieve that goal. This approach could prove fallacious: those individuals might be so deeply integrated into mainstream Western culture and economic behaviour as to be at most only dimly aware of the practices in question. In contrast, an acknowledged academic expert in each topic would be able to provide depth of expertise in it, irrespective of whether he or she had ethnic or familial links to the groups in which the activity is most often found.

Likewise, a real-life example might be useful. Christine Lagarde has [argued](#) that, 'if it had been Lehman Sisters rather than Lehman Brothers, the world might well look a lot different today,' claiming that 'greater diversity always sharpens thinking, reducing the potential for groupthink... this very diversity also leads to more prudence, and less of reckless decision-making that provoked the crisis.'

It may be true that women are, on average, more risk-averse than men. But the flaw in Lagarde's argument is that investment banks don't hire average people, of either sex. If a firm is determined to hire for sociopathy, narcissism and risk-acceptance, women exist with these characteristics too, they may just be a little thinner on the ground. The solution is therefore to recruit people who do not possess those characteristics; the consequence is that more of them may be female than male.

If you doubt our hypothesis, consider Lagarde's own behaviour. In December 2016 she was convicted of ['negligence with public funds'](#) - in reality, channeling [EUR400m of French taxpayers' money](#) to a close associate of the then French President Nicholas Sarkozy, during her term as that nation's finance minister. Did her sex make her 'more prudent' or 'less of a reckless decision-maker'? Not obviously so. Indeed one might speculate whether she would have avoided imprisonment, let alone kept her job as head of the IMF, had she not been so deeply embedded in the closely entwined spheres of European politics and banking. A cognitively diverse candidate hired by the IMF would not have caused that organisation reputational harm because he or she would not have been able to rely on the establishment closing ranks to provide protection.

Our advocacy for the prioritisation of cognitive diversity through differences in lived experience should not be taken as a wholesale rejection of demographic factors. While they may not be the only, or even the most important, drivers of cognitive diversity, demographic diversity brings other benefits. These include the avoidance of breaches of the law and consequent creation of financial liabilities through unlawful discrimination against individuals with protected characteristics and the promotion of social equity by the avoidance of discrimination against those with disadvantaged and marginalised characteristics, whether protected or not.

We believe that an organisation that succeeds in becoming cognitively diverse will, necessarily and even without setting out to do so, also become demographically diverse. This is because the diversity of life

experiences that result in diverse thinking are distributed quite randomly across the population. However, an organisation that sets out to become demographically diverse and fails to prioritise the other factors we have identified is unlikely to achieve cognitive diversity because those it employs may not represent a representative cross-section of society by life experience and because the culture, leadership, governance and economic incentives may not be supportive of representative thinking or decision-making.

We are concerned that there is a disconnect between the emphasis on diversity of thought in the first section of the discussion paper and the focus on demographic diversity throughout the rest of the document. This may itself be indicative of groupthink, one of the organisational flaws that diversity policy should set out to first minimise then eradicate. If we are right about this, we think it is vital that the regulators challenge their own groupthink, which requires them to improve their own performance on cognitive diversity, before they try to impose their views on firms. The imposition on the sector of groupthink by regulators, whether through nudges, rules or incentives - all of which are mooted in the discussion paper - would be an exceptionally regressive step.

Q2: Are there any terms in the FCA Handbook, PRA Rulebook or Supervisory Statements or other regulatory policies (for any type of firm) that could be made more inclusive?

We see this question as illustrative of our concern that the regulators may have fallen victim to groupthink. Most people in the UK, we believe, would hold that the use of terminology such as the cited example ('Chinese walls' in the FCA Handbook), does not materially impair cognitive diversity, provided it is clear from the context in which the term is used that there is no intent to deter people of Chinese heritage from entering the industry, progressing within it or having their views heard and weighed appropriately³. Worse, the introduction of policies prohibiting the use of widely-used terms can act as a cultural barrier inhibiting normies⁴ from joining an organisation, thereby making it less cognitively diverse.

Meanwhile, the FCA continues to use, with impunity, loaded language such as 'mis-selling'. We see this term as a euphemism for, at best, breach of a duty of care⁵ and, at worst, fraud by false representation, failure to disclose or abuse of position, or some combination of the foregoing. Such language impairs cognitive diversity, both by alienating diverse thinkers and by exercising linguistic control over the Overton window. We believe the FCA should work with us and other consumer advocates to introduce

³ We would add that it is not self-evident to us that being of Chinese heritage necessarily equips someone with a cognitively diverse approach to financial services regulation

⁴ People who hold mainstream social and political beliefs, as opposed those who are members of an in-group holding alternative or high-status opinions

⁵ Where one exists, typically through the existence of a contractual relationship between provider and client; we hope in the future that a duty of care will be introduced that applies to the relationships between all authorised persons and consumers, even where there is no contractual link

training initiatives that challenge the use of language that implies unconscious bias within its workforce and seed the organisation with diverse thinkers from consumer backgrounds who will counter it on an ongoing basis.

What concerns us even more is that the above question is the only one asked following the second part of Section 1 and the entirety of Section 2 of the discussion document, which set out the regulators' views on the industry's and their own performance respectively. Why is there no opportunity for respondents to offer feedback on how the regulators are performing when it comes to diversity and inclusion? Could it be that they are reluctant for their opinions and track record to be subject to scrutiny?

In the absence of a formal question, we felt we should contribute some constructive suggestions about how the regulators could improve cognitive diversity. We have focused largely on the FCA, partly because its objectives mean it is the most closely aligned with Transparency Task Force's mission to promote ongoing reform of the financial sector so it serves society better, but also because, from the publication of New City Agenda's report into the culture of the regulators in October 2016⁶ and of the Independent Reviews into the FCA's handling of [Connaught](#) and [London Capital & Finance](#) in December 2020, it is clear that the FCA faces greater challenges than the PRA and the Bank of England in establishing a high-performing organisational culture and earning widespread public confidence. These suggestions should be viewed as illustrative rather than exhaustive, and many may be transferable to the other regulators, and to firms.

Avoid insider and crony hires

All jobs, consultancy contracts and projects above a *de minimis* value should be advertised externally, with care taken to use the media, search firms and social channels best suited to attracting cognitively diverse candidates. Particular care should be taken to avoid giving the impression of rewarding past failure, and the granting of appointments as rewards for favours, such as leniency.

The FCA has in recent times caused itself significant and avoidable reputational harm by breaching the above principles of best, or indeed acceptable, recruitment practice. Examples include:

- The appointment of Megan Butler to the newly created role of Executive Director for Transformation, without the role being advertised externally and with only one other internal candidate⁷ considered. The decision was [criticised](#) by the Treasury Committee, which described it as 'a missed opportunity to consider fresh leadership', observed that 'a buck that does not stop with an individual stops nowhere' and questioned whether the FCA had applied the same

⁶ ["Cultural Change in the FCA, PRA & Bank of England: Practising What They Preach?"](#)

⁷ We assume Jonathan Davidson; both his and Megan Butler's roles were effectively made redundant by the creation of a new, unitary Supervision department; Jonathan Davidson subsequently left the organisation

standard to itself that it seeks to impose on authorised persons through the Senior Managers and Certification Regime;

- The secondment of Nausicaa Delfas to the position of Chief Executive Officer and Chief Ombudsman at the Financial Ombudsman Service. While the move has been [presented](#) as an interim one, we believe that the inclusion of an observation (item 13.1) in recent [FCA board minutes](#) to the effect that the meeting was to be Nausicaa Delfas' last is evidence that the intention is for the move to become permanent in due course. Nausicaa Delfas oversaw the Complex Events Team heavily criticised in the Connaught review and she was at the centre of the Interest Rate Hedging Product redress scheme that we expect will be similarly treated by John Swift QC's [review](#) of that controversial period in the regulator's history. She has also been Chief Operating Officer of the FCA. There are many complaints considered by the Ombudsman in which failure by the FCA to prevent or curtail misconduct is a factor; we are concerned that her history with the regulator may render her conflicted in this new role. If so, the appointment is in breach of an obligation placed on the FCA by the [Financial Services and Markets Act 2000](#) to secure the independence from the regulator of the person appointed to that role;
- The engagement of Richard Lloyd to write a report into the whistleblower allegations against the Ombudsman publicised by Dispatches. Richard Lloyd [had links to the Service](#), is accused of [producing a whitewash](#) and was subsequently [given a job at the FCA](#). In that role, Richard Lloyd defended embattled FCA CEO Andrew Bailey and criticised consumer campaigners for [challenging the regulator](#) over its failures



- The engagement of Raj Parker to conduct the independent review into the FCA's handling of The Connaught Income Fund Series 1, despite him having professional links to two senior executives at the FCA (at least one of them, Nausicaa Delfas, closely linked to the events under scrutiny). The appointment was [criticised](#) by Complaints Commissioner Antony Townsend, who recommended that the FCA should 'instead consider a more open tender process, asking stakeholders to suggest names and using a professional search and selection service' and expressed surprise at the failure to take account of 'equality, diversity and inclusion considerations';

- The further engagement of Raj Parker, following publication of his report, as a part-time [Senior Legal Adviser](#) to the FCA. A Freedom of Information Act request by a TTF member revealed that the position was not advertised, no search consultants were engaged and no other candidates were considered. While it is possible the appointment was made in good faith, the departure from accepted practice is so egregious - especially given Antony Townsend's previous admonition - that it is difficult to avoid the suspicion that it constituted a reward for a relatively lenient review

Promote educational and class diversity

We suspect that the FCA's workforce over-indexes for graduates, especially of Russell Group universities and their international equivalents, and that it does so particularly for those with law degrees. While there are rightly some roles at the regulator for which degrees in law, and perhaps some other subjects, are necessary, we suspect there are many for which there is no such need, but for which the FCA nevertheless disproportionately hires graduates, law ones especially.

Graduates may tend to share values not widely held among non-graduates and to have had different life experiences; they are also typically from more economically and socially advantaged family backgrounds. Lawyers likewise may be inclined toward groupthink and in-group biases. To give just one anecdotal example, we wonder whether the disproportionate power held by lawyers accounts for the undue caution in the exercise of statutory powers identified in both the Connaught and LCF reviews.

While the FCA should be praised for operating an apprenticeship scheme, we believe that consideration should be given to the introduction of positive action initiatives to boost the number of non-graduates and non-lawyers in the organisation at management and executive levels, especially those from outside the organisation, in order more rapidly to redress any imbalance. The operation of an apprenticeship scheme focused on entry-level roles does not meet this need, because it does not impact sufficiently on the cognitive diversity of those in decision-making positions.

An example of how class-based diversity enhances cognitive diversity would be in the awareness (or lack thereof) of potential and actual harms focused on the economically marginalised. For instance, many victims of rapacious behaviour by payday and doorstep lenders such as Amigo Loans and Provident Financial face receiving incomplete redress because the firms lack sufficient resources to compensate consumers in full. Had the FCA's authorisations and supervision teams tested those firms against the threshold conditions it would have realised they lacked the financial resources, whether in their own balance sheets or through insurance provision, to meet the nature and scale of claims that might have been expected to arise. And had those teams more fully understood both the claimed and the actual business models of such firms, they would have recognised far sooner the likely scale of the redress that would in time have become due, and thus been able to reduce such losses by forcing earlier changes to those models.

Employing more people at strategic levels in those departments who hailed from disadvantaged economic backgrounds would have given the FCA insights from the communities that use such services and created cultural alignment with the victims.

Demographic diversity intersects with cultural diversity

The FCA's [annual diversity report](#) identifies some interesting disparities between the regulator's workforce and the general population. In particular, there is a shortfall in those aged 45.

It may be that these disparities reflect the FCA's London-centric employment skew. We understand that the FCA is considering [a more regionally-diversified operating model](#) (page 18). We are keen to ensure that it is neither tokenistic nor skewed toward call centre and associate-level employees. It matters where decisions are made, not just where people are located. We also respectfully suggest that doubling down on a premises strategy based on university cities will not solve the problem of over-indexing for graduates.

It may be that the new ways of working engendered by Covid could present the FCA with an opportunity to consider whether employees need to be based in London, or indeed in any major conurbation; flexing this assumption could facilitate the employment of a more mature and more ethnically representative workforce.

As the discussion paper rightly observes, intersectionality is an important consideration. It may be that certain demographic factors interact with each other to create cognitive biases. For example, the engagement of a workforce skewed toward young, London-based, graduates brings with it a preponderance to hold particular political and social views that are not, in aggregate, typical of those backed by the populace as a whole.

Conduct a gap analysis

Tom Peters wrote that 'what gets measured gets done.' If the FCA wants to improve its cognitive diversity, it should build on its heritage of measuring demographic characteristics and start measuring cultural and cognitive ones. We hinted above at whether the regulator's workforce possesses similar beliefs and values to the wider population; the solution is not simply to make its workforce more demographically representative of the population and hope this solves a hypothetical problem but, rather, to measure and compare the views of consumers and employees through the Financial Lives and annual staff surveys respectively then to recruit people whose expressed and lived values indicate that they redress any imbalance.

We suspect that in addition to political differences we might see certain differences in attitude to values statements relating to financial services. Questions such as whether it is preferable to prosecute and

imprison bankers instead of fining bank shareholders, or whether lawyers can be trusted to deliver up complete and undoctored evidence when required to do so, are just two examples of attitudinal questions that we hypothesise might highlight significant disparities.

Both the Connaught and LCF reviews, the latter especially, paint a picture of the FCA being an organisation that lacks street smarts. Its staff tend to be incapable of spotting frauds and other wrongdoing, and complacent when confronted with undeniable proof of it. We believe that the evidence suggests the FCA is too ready to find excuses for inaction, such as a lack of clarity over the regulatory perimeter or their statutory powers. Disclosure demands are preferred to dawn raids.

It may be that attitudinal surveys might reveal a deficit of people whose careers to date suggest that they are more streetwise and proactive than the median FCA employee, and more driven by a desire to protect ordinary consumers. Positive action may be required to boost the numbers, especially at middle management level and above. Professions from which such people might be recruited could include:

- Law enforcement, especially detectives and CPS operatives working in complex investigations and prosecutions;
- The intelligence services, including former military operatives with intelligence experience;
- Investigative journalists;
- Financial services campaigners, including current and past leaders of case-specific action groups

As anecdotal evidence of the risks of allowing graduate trainees to conduct work more appropriately assigned to cognitively diverse experienced professionals, we offer the following tweet from the FCA's careers team:



FCA Careers
@FCA_Careers

Following



"There aren't many jobs where you have the opportunity to question CEO's of banks at the age of 22!" - Sean, Graduate

We respectfully suggest that the fact that this tweet was sent is itself evidence that the FCA is subject to a pervasive form of groupthink. Most UK citizens would immediately realise that the FCA is boasting about bringing a pencil sharpener to a gunfight. That the Careers team failed to spot this points to an urgent need to improve cognitive diversity in that part of the organisation.

For evidence of how this lack of diverse thinking results in complacency, tardiness and a lack of integrity and candour, check out [this case](#), in which the FCA took more than three years to ban a convicted child

sexual groomer from the register, and was heavily criticised by the judge. We see the episode as a damning indictment of the cultural and cognitive defects of the regulator, and as compelling evidence that much-needed change must be driven by external stakeholders and an infusion of diverse thinkers, because it is clear that the evidence suggests it is beyond the capabilities of the incumbents.

An isolated case? Perhaps. But consider this: in September 2021, a survey of FCA staff showed that [56 percent of them didn't understand why the organisation needs to transform](#). While some of the blame must rest with the leadership team for watering down instead of amplifying the urgency and seriousness of the demands for change being made by external stakeholders, this ignorance also points to a disturbing lack of situational awareness on the part of those employed by the regulator. A positive action recruitment campaign aimed at bringing in a critical mass of people, at a strategic level, from cognitively and experientially diverse backgrounds such as those identified in this section, is a necessary first step if the FCA genuinely wants to fix what Dame Elizabeth Gloster considers to be its greatest problem - its defective culture.

'First do no harm'

As identified above, it is possible that one reason for a cognitive gap between the FCA and those whose interests it is intended to care for is that some of those responsible for hiring and promotion decisions and for training have been labouring under misapprehensions about the regulator's goals and society's reasonable expectations of it.

For example, until relatively recently the organisation ran advertisements that claimed that working for the FCA represented an opportunity to help those working in the financial services industry:



Be part of the UK's success – help us shape the future of Financial Services

There are few jobs where you can **make a real difference to the 2 million people who work in the UK Financial Services industry**, the 40 million consumers of financial products and the stability of our economy as a whole.

From regulating Consumer Credit to driving action on Foreign Exchange manipulation or helping strengthen accountability in the banking sector, the FCA is working with the industry to protect consumers, ensure the integrity of the UK financial system and promote fair and effective competition.

Our remit has expanded significantly since our creation in 2013, with the number of firms we regulate growing from 23,000 to 73,000. We oversee conduct across the full span of the financial sector from global investment banks to high street payday lenders, and are now preparing to implement a new strategy that will sharpen our focus to face the regulatory challenges ahead.

Our people are integral to our success as an organisation, working alongside industry, visiting firms and speaking to consumers every day as we strive to ensure the FCA is setting the standard for other regulatory bodies across the world.

We are offering key positions in the new senior leadership team for exceptional strategic thinkers with the ability to lead change and perform in a demanding environment. Reporting to our CEO, these are unique opportunities to make a long term and fundamental difference to this most crucial of UK industries.

We understand that the highlighted wording is no longer used, but it is likely that employees who were hired as a result of such advertising, and those who placed such ads, are still within the organisation. It is

vital that there is an urgent and high-profile cultural change programme designed to communicate unambiguously that their understanding of the regulator's role is incorrect. Without it, there is a risk that further hires and promotions will be determined on the basis of perverse criteria.

Proximity matters

The FCA operates a graduate trainee scheme, beneficiaries of which tend to rise rapidly through the organisation. Early in their traineeships, they are seconded to (large) authorised firms:



We question the wisdom of this policy, since we fear that it presents an opportunity for norming and identification to occur. Those working in the firms will, naturally, present themselves as good actors, keen to comply with all regulations, and may also complain about the sometimes intrusive or burdensome nature of regulatory requirements. There is a risk that graduate trainees, receiving such messaging early in their careers, may come to identify and empathise with those in the industry, and thus with their concerns.

We believe that it is appropriate for FCA trainees to acquire a good understanding of the effects of regulation on firms, though it should be balanced by exposure to smaller regulated entities and, crucially, to consumers.

At present, consumers are required to contact the FCA only through its call centre (heavily criticised in the LCF review, both for its inability to respond to credible evidence of fraud and to escalate matters within the organisation). If they call the switchboard and ask to speak to named officers, calls are not transferred. As a result, we suspect that the vast majority of FCA employees interact principally with firms and with colleagues, and minimally if at all with consumers. We believe this should change as a matter of urgency

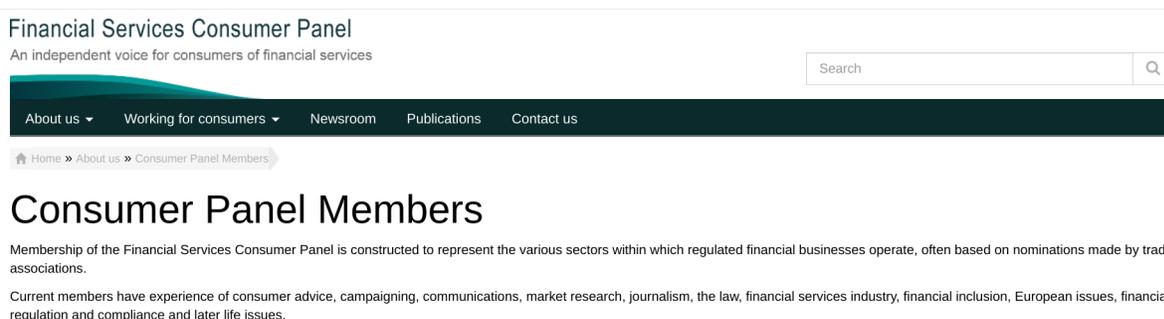
One way to remedy this might be to require all graduate trainees, and indeed all new FCA employees, to attend 'empathy briefings' at which consumers who have suffered as a result of financial services misconduct, catastrophic regulatory failure or both, speak about the impact it has had on them and their loved ones. They should also be exposed to those individuals' views about how regulation might improve and their expectations from the new employees.

Another might be to establish a ‘buddy system’ under which people from the abovementioned stakeholder group are paired to all FCA employees on an ongoing basis, so FCA employees can provide practical and emotional support to consumers while also receiving continuity of exposure to their views and the impacts on their lives. Such initiatives apply the principle of allyship developed in the field of demographic diversity to the far more impactful one of cognitive diversity.

The FCA could also implement a positive action programme aimed at boosting the number of campaigners for consumer interests that it employs. People who have led action groups that investigate financial services misconduct cases are individuals who have demonstrated that they possess transferable skills that would not only equip them to perform exceptionally well at the regulator but would also redress the weaknesses identified in that organisation. These include:

- A drive to do the right thing, even at considerable personal cost, both emotional and financial
- Resilience and determination
- The ability to investigate complex misconduct, often better than the FCA, despite having minimal resources and no statutory powers
- An understanding of financial services regulations and, in many cases, of the cognitive, cultural and governance shortcomings of the regulator

The FCA could do more to hear the voices of consumers on an ongoing basis. It has been criticised for appointing members to the statutory Consumer Panel who have prominent links to the financial services industry and are not recognised campaigners for consumer interests, which may represent a breach of the [Financial Services Act 2012](#) (Part 1A, Chapter 1, 1Q(5)). In the recent past, the [Panel's website](#) (operated by the FCA) has claimed that members are often appointed ‘based on recommendations from trade associations’:



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An independent voice for consumers of financial services

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Consumer Panel Members

Membership of the Financial Services Consumer Panel is constructed to represent the various sectors within which regulated financial businesses operate, often based on nominations made by trade associations.

Current members have experience of consumer advice, campaigning, communications, market research, journalism, the law, financial services industry, financial inclusion, European issues, financial regulation and compliance and later life issues.

The FCA has subsequently deleted that passage and disassociates itself from it. We are unable to determine whether the claim is true or untrue, but we stand by our position that the Panel’s composition does not in our view fairly reflect the views of financial services consumer advocates in the UK. We also know that prominent figures including our founder Andy Agathangelou have in the recent

past applied to chair or sit on the Panel but been rejected, in most cases without even getting to interview.

Finally, the FCA claims to consult with consumer representatives through its 'Consumer Network', a series of voluntary organisations, most of which are adjacent to but not in the centre of financial services campaigning.

The FCA has informed us that these are the organisations in its 'Consumer Network':

- AdviceUK
- AgeUK
- Alzheimers' Society
- Christians Against Poverty
- Citizens Advice England
- Citizens Advice Scotland
- Citizens Advice Wales
- Consumer Council Northern Ireland
- Financial Services Consumer Panel
- England Illegal Money Lending Team
- Macmillan Cancer Support
- Money Advice Scotland
- MIND
- Money Advice Trust
- MoneySavingExpert.com
- Money & mental Health Policy Institute
- Scope
- Scottish Illegal Money Lending Unit (SIMLU)
- Shelter
- StepChange
- The Money Charity
- NASMA
- Toynbee Hall
- Wales Illegal Money Lending Unit (WIMLU)
- Which?
- Money & Pensions Service
- Fair By Design
- Money Advice Liaison Group
- DebtCamel
- The Institute of Money Advisers (IMA)
- The Standard Life Foundation
- Clean Slate (QuidsIn! Magazine)

There is no clarity about how organisations were selected for the Network or how others might apply to become part of it. Again, we would welcome an opportunity to work with the FCA to remedy this, and have asked to be included within the Network ourselves; at the time of writing, a decision is awaited.

The Transparency Task Force has over 4,000 members, many of whom are consumers who have suffered as a result of financial services misconduct and catastrophic regulatory failure, and we are in touch with many other campaign groups. We would be pleased to work with the FCA to help bring cognitive diversity based on lived experience into the organisation through empathy briefings, a buddy system, positive action recruitment, broadening the candidate base for the Consumer Panel and turning the Consumer Network into a more transparent and effective process for engaging with stakeholders who genuinely understand the issues involved in financial services regulation from a consumer perspective.

Where are the whistleblowers?

A prominent theme in the Connaught and LCF reviews was the appalling mistreatment of whistleblower evidence - and, in the former case, of a whistleblower. Specifically, in both cases, information appears to have been ignored, not escalated upward, not acted upon - and even lost or destroyed.

The FCA responded by launching '[In confidence, with confidence](#)', a new whistleblowing initiative in which anyone providing intelligence would be provided with a dedicated case manager.

We believe the FCA should go further. We believe its efforts to improve cognitive diversity should include positive action to increase the number of former whistleblowers in its workforce. They constitute one of only two groups of citizens we can think of (the other being leaders of action groups representing victims of financial services misconduct and regulatory failure) who have demonstrated both an ability to identify and challenge wrongdoing in the sector and a willingness to pursue that belief, often at considerable personal emotional and financial cost.

The most obvious place in which former whistleblowers should be employed is the FCA's whistleblowing team. However their engagement should extend into other areas of the organisation that might be expected to interact with whistleblowers, or to act on their evidence. In support of this assertion, we offer two examples of what can go wrong when groupthink harmful to whistleblowers and whistleblowing, is allowed to take root.

First, we refer to the [press release](#) announcing the FCA's new whistleblowing initiative. It contains the following quotation, from Executive Director of Enforcement and Market Oversight Mark Steward:

'We listen to all whistleblowers and, if they shine a light on serious misconduct, we want to make sure we act responsibly.' (our italics)

The inclusion of the italicised qualification may well deter people from blowing the whistle. An individual who is considering taking that step often feels isolated and uncertain. Questions in their mind may include whether the matter is serious enough, whether it amounts to misconduct and how they'll be treated if they go to the relevant authority. Someone considering going to the FCA might reasonably infer from the above statement that it is interested only in misconduct, that the misconduct must be serious, and that if the whistle blow does not meet these criteria, the FCA may not 'act responsibly.'

We doubt that Mark Steward intended to deter people from blowing the whistle, but we suspect that this will be the effect of his statement. Perhaps worse, we fear that his comment reflects attitudes that pervade the Enforcement team to which whistleblower evidence may be escalated. Do we think it's misconduct? Do we consider it serious? If not, who cares what happens to the whistleblower, or the evidence provided?

Mark Steward provided further evidence of his dysfunctional attitude toward whistleblowers at the FCA's Annual Public Meeting, held online on 28 September 2021. Asked about the FCA's alleged inaction in response to whistleblowing evidence about Blackmore Bond provided by [two whistleblowers](#), he claimed that no whistleblowers came forward in that case or London Capital & Finance, '[under the Public Interest Disclosure Act.](#)' Mark Steward knows as well as we do that the principal weakness of that Act, which is addressed by the [Office of the Whistleblower Bill](#), is that it deals only with internal whistleblowers, meaning individuals currently employed within the organisation about which they provide intelligence. Clearly, the term 'whistleblower' has a wider meaning in general usage, and for the FCA's Executive Director of Enforcement and Market Oversight to seek to narrow down the definition to deny the existence of at least three highly credible and professional whistleblowers from within the industry across those two cases of regulatory failure to excuse the FCA's failure to act on their intelligence must surely have sent a message to other prospective external whistleblowers: don't bother, the FCA will ignore you, and it may not even protect you. His comments went unchallenged by senior colleagues present, including the Chief Executive Nikhil Rathi and Chair Charles Randell.

We respectfully suggest that the above statements indicate that there persists in the FCA, at the highest level, a lack of cognitive diversity with regard to whistleblowers and their evidence, which can only be solved by the insertion into the team, in numbers and at a level at which they can operate with autonomy, former whistleblowers. Provided there is inclusion, their voices and opinions will be heard by those around them, and attitudes - and behaviour - may start to change. Until then, the appalling casual disregard of these individuals and the intelligence they provide, which was a central factor in Connaught, LCF and many other regulatory failure cases that have yet to be made subject to independent reviews, will continue.

This link between attitudes and behaviour is illustrated by data the FCA is required to include in its [Annual Report and Accounts](#) (pp46-47). Of 1,046 whistleblower reports it received between April 2020 and March 2021, covering 2,754 separate allegations, the regulator took 'significant action to mitigate

harm⁸ in just 15 cases and took ‘some action’ - which could mean as little as writing to the firm in question seeking further information - in 135 cases. In the rest it did nothing - due in no small part to the fact that, by the end of June 2021 when the report went to press, it had not even begun to look at 654 of the cases, some 62.5 percent of the total. A whistleblowing department led and staffed by whistleblowers would not tolerate this astonishing and shameful level of complacency and inaction from other parts of the organisation.

A second incident suggests that these cultural biases exist even closer to the top of the FCA. I refer to its treatment of Nicholas Wilson, known as [Mr Ethical](#), who has been campaigning since 2005 for customers of HFC Bank (subsequently acquired by HSBC) to be refunded charges illegally added to store card debts. Many of those impacted were vulnerable consumers, in arrears with unsecured, high-cost credit.

For years, the FCA maintained the bank had done nothing wrong, then claimed to be investigating; eventually it admitted to £4m of customer detriment (despite Nicholas Wilson providing evidence of much more). Now, the bank is sending out redress cheques, perhaps totalling as much as £223 million.

Unusually, it is doing so [without explanation](#). We suspect this is because the FCA helped HSBC by turning a blind eye to the misconduct during the lifespan of its US deferred prosecution agreement, and if the bank were to give the true reason for the payment of compensation to customers it might create reputational difficulties for the regulator by implying that it ignored evidence of wrongdoing for an extended period to protect the firm.

Nicholas Wilson recently wrote to the FCA asking for a full explanation of the remediation process and whether any Enforcement action was to be taken; he also asked to be connected to the dedicated case manager to which he, as a whistleblower, is entitled under the regulator’s new ‘In confidence, with confidence’ scheme. The response, which came from the FCA’s Executive Casework team - which handles correspondence on behalf of the Chair and Chief Executive - not only failed to provide satisfactory answers to Nicholas Wilson’s questions but requested that he provide evidence that he is a whistleblower:

In your email of 3 June, you ask us to confirm who your dedicated case manager is, in accordance with our press release of 24 March. I believe this is a reference to our ‘In confidence, with confidence’ whistleblowing campaign and that, by inference, you would like us to treat your email of 24 May as a whistleblowing disclosure. If this is correct, then I would be grateful if you could answer the following questions to help us determine the most appropriate team to review your information:

- Please confirm the status of the individuals who have contacted you directly: are they consumers; employees/ex-employees of HSBC, HFC or John Lewis; or otherwise?
- Please confirm whether you require confidentiality or anonymity in respect of the information you have shared with us, and, if so, the reason(s) why, noting your intention to make your email of 24 May public.

Best wishes,

Dave Eaton
Manager / Executive Casework Unit



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⁸ Such as enforcement action, an s166, or variation of permissions

Nicholas Wilson has interacted extensively with the FCA, including at CEO level, over a period of many years. He has met with Andrew Bailey. The case has featured in the print media and on TV and radio and questions have been asked in Parliament, all of which would have led to engagement with the FCA's press and public affairs teams, and with its leadership team. We know that the FCA has a database⁹ it uses to track correspondence with stakeholders. It is frankly impossible that someone working at such an elevated level in the organisation would not be aware of Wilson's track record as a whistleblower, or indeed of the emotional, financial and mental health challenges he has suffered as a result.

To deny a whistleblower's legitimacy in this way, both by refusing to credit and thank him for the actions he took that led to redress being paid, and by asking him to prove his status in order to access a case manager, is in our view a *prima facie* example of gaslighting, a form of bullying and emotional abuse. To do so to an individual with known vulnerabilities is especially egregious. And for this behaviour to come from a direct report to the Chair and Chief Executive of the FCA, responding to an email to the Chief Executive, is in our view beyond the pale.

The Transparency Task Force believes that it is better to work constructively with other stakeholders to achieve positive change than to sit on the sidelines criticising. For this reason we offer a constructive suggestion: the FCA should employ Nicholas Wilson. The regulator should take him under its wing and help him rebuild his financial, mental and physical wellbeing in a role in which his considerable expertise in investigating financial services misconduct and understanding of what it is to be a whistleblower can benefit the regulator.

Weld shut the revolving door

There is no reason why a cognitively diverse financial services regulator should not employ some people who've worked in authorised firms; likewise, cognitively diverse firms may legitimately wish to employ some former regulators. But care must be taken, and rules may be required, to ensure that such appointments are made in a way that avoids the suspicion or actuality of conflicts of interest. We would suggest the following:

- FCA employment contracts should prohibit employees from accepting employment or supplier contracts from firms whose operations they may have affected, or from the professional services entities that act for them, in the five years following the cessation of their employment with the regulator;
- The FCA should not employ people from authorised firms or from professional services entities that act for them, in roles in which they might be expected to affect the operations of those firms

Similar safeguards exist in other jurisdictions, such as South Korea.

⁹ Salesforce, or similar

There have been many high-profile instances in recent years of hires going both ways that would appear to have fallen far short of best practice. These include:

- The engagement of Jon Pain, formerly a managing director with the regulator, as [Head of Conduct and Regulatory Affairs at RBS](#). He subsequently [socialised](#) with former colleagues while the FCA was investigating his employer's conduct in the Global Restructuring Group case, including with Simone Ferreira, Head of Event Supervision whose team was working on the aforesaid investigation¹⁰;
- The engagement of [Jane Attwood](#), formerly a Director at Lloyds Banking Group, in which role she investigated internal whistleblowing allegations, to a similar role at the FCA. One LBG forex trader, Paul Carlier, who blew the whistle on discriminatory pricing policies while at the bank and escalated the matter to the regulator found that his complaint had been passed by the FCA to Jane Attwood despite her also having looked at it at Lloyds. When he brought to the regulator's attention this conflict of interest, citing her LinkedIn profile as evidence, the profile was amended so the reference to Lloyds was changed to 'large financial services company' - an obvious case of concealing the conflict rather than resolving it;
- The engagement of [David de Souza](#), who played a key role in creating the controversial Interest Rate Hedging Product Redress Scheme while at the FCA, into the position of Manager, Corporate Governance and Regulatory Affairs at RBS, the single biggest beneficiary of the alleged 'mis-selling'¹¹ of IRHPs

There are a great many lower-profile examples of such appointments, going both ways. Placing people in positions in which they are potentially conflicted and unlikely to enjoy the confidence and trust of colleagues and other stakeholders is no way to build a cognitively diverse organisation. Creating economic incentives that imply the possibility of lax regulation being rewarded by well-paid 'thankyou jobs' in authorised firms also risks creating an environment in which regulators self-censor and overrule well-intentioned colleagues, further suppressing such diversity of thought.

Seconds out!

We are aware that, at any given time, at least one FCA employee is seconded to key positions in each of the Private Secretariat of the Economic Secretary of the Treasury and the staff of the Treasury Committee. We believe that it is essential for the cognitive diversity of the Minister and the MPs on the Committee that they are exposed to the unfiltered opinions of all stakeholders in financial services, including consumers, consumer groups and whistleblowers. The presence of FCA secondees in sensitive roles must inevitably raise concerns in the minds of some people that any intelligence they provide about firms or the regulators might not be passed on to lawmakers, could be misrepresented, or could

¹⁰ Simone Ferreira was a direct report of Nausicaa Delfas

¹¹ We prefer the terms 'fraud by misrepresentation' and 'breaches of MiFID'

even be passed back to the FCA. Even if these fears are wholly unfounded, it is not unreasonable to suggest that such concerns may exist and that they may result in a reluctance among some stakeholders to engage fully or at all in the provision of complaints or other sensitive information to politicians.

A past Freedom of Information Act [response](#) also indicates that there exists a culture of secondment of FCA personnel to authorised firms and, more so, the professional services sector that serves them. We suspect that this persists and may have grown since the cited FoI response was received. If secondments happen with consumer-focused organisations, we suspect that this later FoI response is representative, in that they occur on a much smaller scale, are confined to groups only tangentially involved with financial services regulatory issues and operate in only one direction (outward secondment of FCA staff):

Thank you for your request under the Freedom of Information Act 2000 (the Act), for the following information:

*"Today (20 January 2016), Tracey McDermott told the Treasury Select Committee that the FCA has a number of people currently working in the organisation who have been **seconded** from consumer organisations.*

*Please clarify how many staff are currently working in the FCA who have been **seconded** from consumer organisations, broken down by the name of the original employer and the FCA division in which they are currently working."*

Before considering your request it is worth noting, that according to the transcript, Tracey McDermott said the following at the Treasury Select Committee on 20 January:

*"...There are six people from the FCA out on secondment at the PRA/Bank of England, and we have people on secondment to us from a number of other organisations, both regulator and consumer organisations, and vice versa. That is the way that secondments work. You work for the organisation that you are **seconded to**."*

In reference to the statement Tracey McDermott made above, she refers to having secondees coming in and going out to other regulatory and consumer organisations. The FCA currently has three individuals who are **seconded** out to consumer organisations. These organisations are the Citizens Advice Bureau (12 months secondment), Money Advice Service (12 months secondment) and Money Advice Trust (18 months secondment). At this point in time, there are no individuals **seconded** in from consumer focused organisations.

Yours sincerely
Information Access Team / Finance and Business Services

We are concerned that the practice of seconding FCA staff to authorised firms and the professional services sector, especially when not balanced by a similar scale and depth of secondments out to financial services campaigning groups, may impair the development of cognitive diversity at the FCA by encouraging employees to identify with the interests and agendas of those organisations and the people working in them, and perhaps also by exposing them to the salary and career expectations that are associated with crossing the divide at some future date.

Likewise, we are uncomfortable with the presence of employees of authorised and professional services firms within the FCA. Not only can this process of socialisation and identification with such organisations' agendas impair cultural diversity within the FCA, but there may also be scope for the inappropriate passage of sensitive data to occur. It is a reasonable supposition that secondees may have access to information held on FCA IT systems, to formal and informal exchanges of fact and opinion by FCA personnel and to the correspondence, alerts, complaints and other information received by the FCA from consumers, whistleblowers, politicians and stakeholders. While the FCA may claim that it has instituted Chinese walls to prevent inward secondees accessing information useful to their original employers, we wonder how effective these are. And even if they are wholly effective, for as long as it remains a reasonable suspicion of such stakeholders that such measures either do not exist or are not wholly effective, there must be a risk that stakeholders could be deterred from providing such information because of fears about how it will be protected.

Increase staff turnover

The FCA is proud of its low staff turnover, which stood at 9.4 percent in [2019/20](#) (page 83). Given the legacy of historical underperformance and the urgent need to achieve far greater diversity, efforts should be made to increase this figure. Removing underperforming employees not only improves median performance and disrupts groupthink but also creates space for the engagement of capable, cognitively diverse replacements.

We are disappointed that the publication of the Connaught and LCF reviews was not followed by a slew of departures. It is not too late. More broadly, with additional reviews being demanded in cases such as Lendy, Funding Secure, Collateral, Blackmore Bond, Dolphin Trust and more, we would expect the FCA to embark on an organisation-wide review of staff capabilities, with the intention of identifying underperformers and supporting them to either remedy shortcomings or leave the regulator.

During this period, attention should be paid to whether and to whom bonuses should be paid. We are disappointed to note that in [2019/20](#) the proportion of employees to whom bonuses were not paid was only 11 percent, a figure unchanged from the previous year. Given that the FCA board was aware of the direction of travel of the two independent reviews at the time the bonus decisions were made, it might have been more alert to the risk that employees receiving bonuses might reasonably assume their employer deems their performance to be acceptable, or even good¹².

Evaluation of existing employees for continued employment, and for bonuses, should include cognitive diversity considerations. Does the employee exhibit resilience in challenging groupthink? Does he or she demonstrate pro-consumer attitudes and behaviours?

The FCA is currently operating a Mutually Agreed Resignation Scheme (MARS). This is a tool found mostly in the public sector that provides redundancy-level financial incentives for employees, especially those in management positions, to resign from posts that are not due to be made redundant, in order to create vacancies that can be filled by more diverse candidates.

While we welcome an increase in staff turnover, we are concerned at media reports suggesting that the scheme's objectives include '[creating more career opportunities for younger talent](#)'. Given that the FCA's workforce is, as we have already observed, skewed younger than the UK working population, the result is likely to be the entrenchment, rather than reduction, of a demographic imbalance, perhaps constituting unlawful discrimination against those with a protected characteristic. We also fear that if the vacated

¹² We understand the FCA may recently have capped bonuses at 25 percent of employees. If true, we think this could be an appropriate ceiling for a high-performing organisation, but remain sceptical about the message sent out by continuing to pay bonuses at all at a time when the regulator is so widely perceived to be [unfit for purpose](#)

positions are filled while the FCA remains obsessed with specific demographic groups at the expense of cognitive diversity, groupthink may become further entrenched, rather than challenged.

Finally, we are concerned that £7m has been spent so far on a scheme that may be resulting in capable individuals leaving the organisation at a time when it is not overburdened with competence. We believe that staff turnover should be accelerated at lower or no cost through the introduction of rigorous, competence-based staff evaluation procedures designed to manage out those whose capabilities and motivations are not aligned with the reasonable requirements of their employer and who do not respond to performance management support, rather than by the expensive removal of older employees. At a time when the FCA is under sustained criticism for its low activity levels and is citing resource limitations in its defence, further money must not be wasted on this destructive initiative.

Stay out of the culture war

We have expressed concern elsewhere in this document that excessive emphasis on demographic diversity may 'crowd out' the more important goal of achieving cognitive diversity and argued that focusing on the latter results in the former happening without the need to actively target it. Controversially, we further posit that some forms of over-zealous expression of demographic diversity goals may actively damage cognitive diversity, both because they are of themselves forms of groupthink and because some diverse thinkers might be deterred from joining an organisation they perceive to have taken a particular ideological stance that they find offensive.

We argued in response to Q1 that demographic considerations represent only one factor, and probably not the most important one, in the regulators' definition of diversity. We also made the case for a revised definition which recognises that demographic factors may not always result in cognitive difference but that they can do so if they result in differences in lived experience.

We recognise that there is a community of belief that opposes both definitions, a constituency for which demographic factors are the principal drivers of diversity. We refer to this belief set which holds that a person's cognition is driven principally by their demographics as [identity politics](#).

We suspect that the regulators may over-index for people who hold this view, at least within the cadre that holds power. Our evidence for this belief is that the greater part of the discussion document is concerned with the measurement of demographic factors and with increasing the numbers of people who fit within specific identity groups, a position that is at odds with the regulators' own definition of diversity provided in 1.13.

The challenge with identity politics is that it is a niche affiliation, one most often found among young, urban graduates from affluent backgrounds and least likely to be encountered among the economically disadvantaged. For some, it is an example of a [luxury belief](#), an ideology that confers social advantage on those who advance it, at the expense of others. Organisations that signal support for identity politics

might therefore come to be perceived as hostile environments by people from socially diverse backgrounds and those whose political values run counter to the prevailing ideology within those entities. Thus in placing undue emphasis on demographic diversity despite having acknowledged the importance of the cognitive variety, the regulators risk condemning themselves to being sucked into a downward vortex of identity politics in which current signalling shapes future staffing and hence the direction of travel.

We note that the FCA operates eight employee [networks](#) (page 5) based on identity factors; while we believe that it is appropriate for employees to socialise with whom they wish, provided they do so in their own time, the existence of such groupings can sometimes create the impression or actuality of bias in appointment processes, or can exclude those in the out-groups. Measures should be taken to manage such activities appropriately in order to avoid discrimination against and marginalisation of those who do not qualify for membership of such groups.

More generally, if the regulators are serious about achieving social and cognitive diversity, we believe they should challenge themselves on whether their focus should shift from demographic factors to cognitive ones, both when promoting diversity in their own organisations and when encouraging it within firms.

Those for whom it is an article of faith that demographic factors drive cognitive ones may be inclined to see those who disagree as dinosaurs, intent on preserving the privileges of historically overrepresented groups. One flaw in this argument is that we have identified in this document specific groups who are definitely *under-represented* at the FCA: 'outsiders' (people who have not worked in the financial services industry); non-graduates; the working class; people aged over 45; consumers; whistleblowers and people with experience in occupations in which it is necessary to demonstrate a desire and the ability to investigate and expose wrongdoing. Opposition to throwing open the regulator to these disadvantaged groups may in fact be a form of covert in-group preference, a form of protectionism intended to advantage incumbents.

The other flaw in the case presented by the demographic diversity enthusiasts is that those who oppose them are not exclusively stereotypical white, straight, able-bodied cisgender males. For evidence, we offer [this story](#) about a non-Caucasian FCA employee, censored by the regulator for daring to stand up to the groupthink. It's a damning indictment of an organisation captured by a dominant ideology, setting out to marginalise and repress the views of an ethnic minority employee who dared challenge its groupthink. In our view this is a *prima facie* example of weak and intolerant leadership and explains in no small part why the FCA now finds itself on the wrong side in the culture war. An obsession with demographic diversity is itself a form of groupthink and a tool by which the type of diversity the regulators claim to want to promote - that of thinking - is actively suppressed. The regulators should urgently adopt the measures identified in our response paper to tackle their own biases, before attempting to reform the behaviour of the rest of the industry.

Conclusion

We have focused on cognitive diversity (or lack thereof) in the FCA because we consider it to be the most prone to groupthink of the three regulators covered by this consultation. However, we note that the existence of this culture must to a large degree reflect the leadership style and priorities of Andrew Bailey, Chief Executive of the FCA between July 2016 and March 2020. Given that he was previously Chief Executive of the Prudent Regulatory Authority and is now Governor of the Bank of England, we suspect that many of the observations we make about the FCA may also be applicable to the PRA and may become so, if they are not already, in respect of the BoE. And given the impact those organisations have on setting the tone and culture of the firms they oversee, we believe there may also be read-across to them.

While our first instinct in response to the remaining questions is to suggest that the regulators should be acutely wary of getting involved with firms' diversity issues until they have got their own houses in order, we do believe that some of the measures we've recommended for the FCA (and perhaps by extension the PRA and BoE) could also be relevant for them. So we have answered most of the other questions, albeit, in the main, briefly.

Q3: Do you agree that collecting and monitoring of diversity and inclusion data will help drive improvements in diversity and inclusion in the sector? What particular benefits or drawbacks do you see?

Q4: Do you have a view on whether we should collect data across the protected characteristics and socio-economic background, or a sub-set?

In principle, collecting data about something can be a valuable first step toward improving the thing in question, because it leads to the identification of shortfalls and biases and, if published, can result in pressure for change. However, collecting data about something other than the actual problem can impede attempts to address that challenge, because it may shift the emphasis away from where it really needs to be.

We have set out in detail why we believe that demographic factors, while relevant, are not the only drivers of cognitive diversity - especially in the context of the financial services industry, where path dependency and economic alignment may be more significant determinants of opinion and, more important, action. So we are concerned that almost all of the emphasis in sections 3 and 4 of the discussion document relate to the creation of guidelines and collection of data in the area of demographics, when much of the problem is in the only loosely area of cognition, or diversity of thinking.

An alternative approach might be to collect data on factors more likely to drive diversity of thought - either instead of, or in addition to, these demographic considerations. For instance, how many whistleblowers does a firm employ, and are there (genuine) consumer representatives on its board?

Q5: What data could the regulators monitor to understand whether increased diversity and inclusion is supporting better decision making within firms and the development of products and services that better meet customers' needs?

Diversity data (as defined above) for those in positions of significant control within a firm may be more useful than aggregate data for a firm as a whole, if the goal is to understand to what extent diversity is supporting decision-making and product strategy.

Analysis of whistleblows, both within a firm and from its employees to the regulators, can be helpful in determining to what extent a firm has an inclusive culture, by which we mean a culture in which people are willing to speak up and their views are heard and acted upon. It is crucial to establish to what extent

such alerts are acted on by firms and to analyse what happens to those who provide the intelligence, and those about whose conduct they express concerns, to establish the true nature of the culture.

Q6: What are your views on our suggestions to approach scope and proportionality?

Q7: What factors should regulators take into account when assessing how to develop a proportionate approach?

We have no views on these issues, other than to again express reservations about the regulators, the FCA especially, taking other than a *de minimis* monitoring and advisory role until their own cognitive biases are resolved.

Q8: Are there specific considerations that regulators should take into account for specific categories of firms?

With effect from 30 September 2019, Authorised Fund Managers ('AFMs') are required to have a minimum of two directors (and 25 percent of the total board) [independent](#) from the firm's executives. We question whether this has been achieved, and believe that the FCA should monitor data at the level of each firm and investigate any evidence that some directors may not be fully independent.

We believe there may be a need to go further. We hold this view for two reasons:

1. There are concerns about whether annual fair value assessments are being performed at all in some cases and to a satisfactory standard in others;
2. The Woodford debacle has raised concerns about the independence and effectiveness of the directors of third-party Authorised Corporate Directors ('ACDs') and Investment Trusts ('ITs')

Potential improvements to the governance of AFMs, ACDs and ITs could focus on improving cognitive diversity by measures such as: increasing the number and proportion of independents; providing more rigorous guidance about what constitutes independence; policing the rule more assiduously and introducing a minimum expectation in terms of directors who are not only independent but specifically represent consumer interests. The broad issue of independent directors provides a clear illustration of when demographic and cognitive diversity issues collide. We are aware of one highly committed and qualified campaigner for consumer financial services interests who has expressed an interest in joining the boards of several AFMs, ACDs or ITs but been rebuffed by recruiters specialising in the sector who report that the only demand they receive for first-time NEDs in the sector is for those who are female, BAME or both. This individual is a Caucasian male. We question whether a demographically diverse candidate from a fund management, accountancy or legal services background would necessarily bring

greater diversity of thought to such a board than someone free from such cultural and economic alignments and who has a genuine depth of understanding of and empathy for consumer, rather than producer, interests.

Clearly, we are not in any way against females or BAME people in any way; we are simply arguing that coming from a consumer background is in itself a form of diversity based on economic alignment and life experience and should therefore be a legitimate priority for consumer-facing businesses.

Q9: What are your views on the best approach to achieve diversity at Board level?

Q10: What are your views on mandating areas of responsibility for diversity and inclusion at Board level?

The best way to make a board more cognitively diverse is to appoint people who are dissimilar to those already on it. Given that the regulators accept that cognitive diversity is the desired goal, it follows that they must be cognitively different to the incumbents. We have posited that demographics may contribute somewhat toward cognitive difference but that path dependent factors are at least as important.

The regulators' requirements for banks to establish ring-fenced UK operations with separate boards created a number of new vacancies for non-executives at a time when there were diversity expectations. Some of these appointments provide further evidence of the tension between demographic and cognitive diversity. They include the engagement of [Jo Dawson](#) as Chair of the Governing Body of Citibank UK Limited and of [Dame Clara Furse](#) as the Chair of the Governing Body of HSBC (UK) Limited.

Jo Dawson was [blamed](#) by the late whistleblower [Paul Moore](#) for establishing the reckless and unprincipled sales culture and incentives that resulted in HBoS incurring the sector's biggest costs for PPI remediation (eventually met by Lloyds Banking Group shareholders), creating an aggressive and bullying environment, for replacing him as Head of Risk despite no relevant qualifications or experience, and in that role for ignoring evidence of reckless commercial property lending and the need to impair loans.

Dame Clara Furse, meanwhile, has been criticised by the [Treasury Committee](#) for being a cheerleader for Belgian bank Fortis' acquisition of ABN Amro in 2007 and for failing to identify that the bank was over-reliant on wholesale funding, despite being on its Risk and Capital Committee. These errors resulted in the bank having to be bailed out by three Benelux countries following ABN's collapse the following year.

We believe that introducing into the corporate governance structures of banks individuals who have demonstrated previous cognitive errors leading to taxpayer bailouts is a negative contribution to

cognitive diversity, and we see a risk that a claimed intent to promote demographic diversity has the potential to be exploited as cover for this activity.

We hold that there are many people in academia, journalism, politics and on the fringes of the financial services industry (not least whistleblowers) who have a far better understanding of risk, who are culturally and economically aligned with taxpayers' interests rather than banks', who could have contributed positively to diversity of thinking on the boards of ring-fenced boards, and who would have been far more likely to stand up for their views if they saw behaviours they found concerning. Many of them do not have protected characteristics; but we believe they are far more diverse than the two insiders who happen to hail from 'the underrepresented gender' who were hired.

Until the regulators - two of which would have had to have signed off on the abovementioned hires - demonstrate an ability to understand and apply this thinking, we are wary of any suggestion that they should be issuing mandates to firms.

Q11: What are your views on the options explored regarding Senior Manager accountability for diversity and inclusion?

We support the principle that senior managers should be responsible, and held accountable, for what happens in firms. We are concerned about the imposition on them by the regulators of demands that undermine, rather than contribute to, diversity of thought.

Q12: What are your views on linking remuneration to diversity and inclusion metrics as part of non-financial performance assessment? Do you think this could be an effective way of driving progress?

We oppose this idea; the risks of creating perverse incentives are too great.

Q13: What are your views about whether all firms should have and publish a diversity and inclusion policy?

Q14: Which elements of these types of policy, if any, should be mandatory?

There is benefit to society in a firm publishing its diversity and inclusion policies, provided they are evaluated by a competent authority and any weaknesses identified. If the creation of such a document is merely a box-ticking exercise, then it may be of little or no value and could even be harmful if it becomes

a substitute for genuine action. Likewise, a policy that is scrutinised and criticised by an incompetent authority, and consequently either publicly endorsed or even changed for the worse, is inferior to the absence of a written policy. Given our concerns about the regulators' over-emphasis of demographic diversity to the detriment of the cognitive variety, we believe it is for the present wisest for there to be no obligation on firms to create such documents, in case they are seen by the regulators, which then interfere to make the situation worse.

Q15: What are your views about the effectiveness and practicability of targets for employees who are not members of the Board?

Q16: What are your views on regulatory requirements or expectations on targets for the senior management population and other employees? Should these targets focus on a minimum set of diversity characteristics?

We oppose the imposition on the industry by the regulators of demographic targets. We are open to the well-designed, well-implemented imposition of targets relating to cognitive diversity, such as quotas for genuinely independent or consumer-oriented and-aligned non-executive directors.

Q17: What kinds of training do you think would be effective in promoting diverse workforces and inclusive cultures?

Q18: What kinds of training do you think would be effective for helping understanding of the diverse needs of customers?

In our response to question 2, particularly under the headings 'Proximity matters', we identify a number of ways in which training and buddy schemes can be used to improve cognitive diversity within regulators; some of these techniques might also help firms.

Q19: What are your views about developing expectations on product governance that specifically take into account consumers' protected characteristics, or other diversity characteristics?

While we have consistently argued that the regulators overstate the importance of demographics in driving diversity of thinking, we have stressed that such factors do have some relevance, and this question is an example of where they can be very important. People who have certain demographic characteristics, such as mental and physical disability (including dementia, which is linked to age) or who

lack sufficient understanding of financial matters (for which socioeconomic group is an imperfect but not irrelevant proxy) clearly have different needs in terms of financial services products and different capabilities in respect of understanding the products and how they are communicated. While we recognise that some people in these demographics might not be fit for work, that's not true of all; and there may also be the option to acquire an understanding of those groups through employing individuals who have been or are carers for people in these categories.

The introduction of a genuine duty of care (which would intrinsically and by definition be subject to a private right of action) would reset the economic incentives governing the sector so firms would no longer be incentivised to mistreat these vulnerable consumers. The FCA is currently consulting on '[a new Consumer Duty](#)'. As specified, this Duty would not be a duty of care, as there would not be a right of private action, though the consultation does include a section on whether such a right should also be created. However, we believe the FCA is [misdirecting](#) respondents about the legal meaning of the term duty of care and of its benefits and importance, and that the consequence may be a preponderance of responses that do not back a duty of care but instead accept the proposed new Consumer Duty.

We see this episode as further evidence in support of our concern that the FCA may be culturally too closely aligned to the industry and too distant from consumers. We hope it will recognise the need to improve its own cognitive diversity before attempting to interfere with firms', and that it will consequently adopt many of the proposals advanced in our answer to question 2.

Q20: What are your views on whether information disclosures are likely to deliver impact without imposing unnecessary burdens? Which information disclosures would deliver the biggest impact?

Q21: How should our approach for information disclosure be adapted so that we can place a proportionate burden on firms?

Q22: What should we expect firms to disclose and what should we disclose ourselves from the data that we collect?

We oppose these proposals, because we fear that the regulators will focus on demographic factors to the exclusion of cognitive ones, which could create pressure on firms to become less cognitively diverse.

Q23: What are your views on how we should achieve effective auditing of diversity and inclusion?

Q24: How can internal audit best assist firms to measure and monitor diversity and inclusion?

As with previous questions, we are wary of regulators placing requirements on firms unless they have first demonstrated their ability to both understand and comply with similar obligations.

Q25: Do you agree that non-financial misconduct should be embedded into fitness and propriety assessments to support an inclusive culture across the sector?

Q26: What are your views on the regulators further considering how a firm's proposed appointment would contribute to diversity in a way that supports the collective suitability of the Board and senior management?

Clearly, if an individual is proven (as opposed to suspected) to have discriminated against or otherwise mistreated someone *because of* their protected characteristics, that finding might weigh against them in any fit and proper test.

However, there are a great many people on the Register and in senior manager roles for which regulatory approval is required who have significant adverse histories in respect of financial misconduct. In the interests of boosting cognitive diversity in the industry, the regulators should focus on eliminating these as a priority before moving on to non-financial allegations.

Q27: What are your views on providing guidance on how diversity and inclusion relates to the Threshold Conditions?

This is another area in which we fear the regulators may attempt to impose their own, flawed groupthink on the industry.

Q28: Do you have any suggestions on which aspects of our supervisory engagement with firms that you think could be improved to help deliver and support greater diversity and inclusion?

Q29: What impact do you think the options outlined in this chapter, alongside the FCA's proposals for a new Consumer Duty, would have on consumer outcomes?

We have outlined a number of ways in which cognitive diversity could be improved among the regulators, many of which could apply also to firms. Governance issues are important; we have advanced proposals to strengthen current policies applicable to AFMs, ACDs and ITs. We propose that improved analysis of whistleblowing by the regulators and better treatment of whistleblowers by firms would improve inclusion.

Our response to the consultation on a new Consumer Duty can be found [here](#).

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