

Billion Pound Savings Scandal: How to Put Things Right

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Mark Bishop

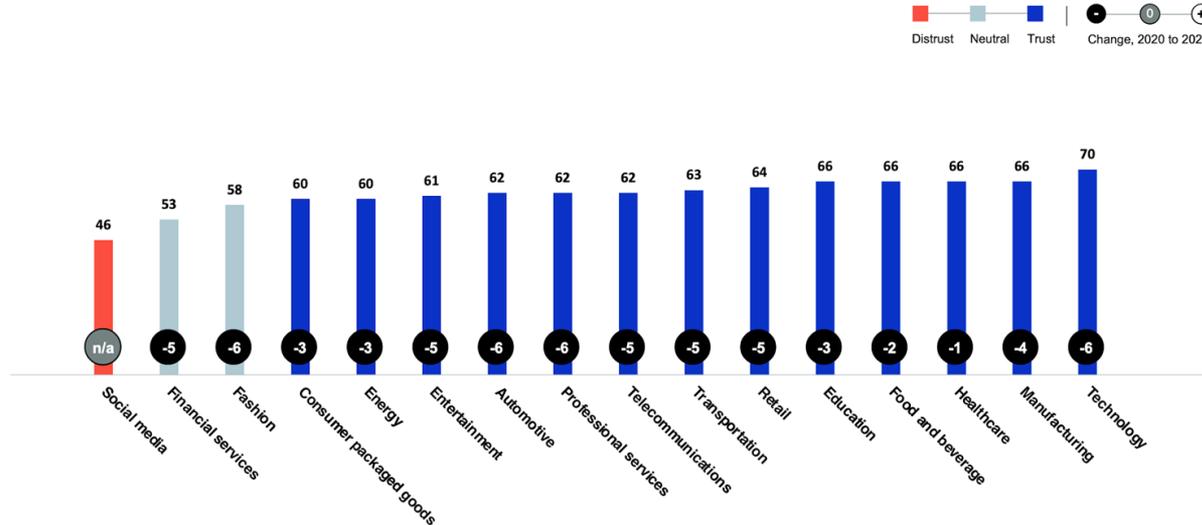
Nature of the problem

- Scale (by the FCA's own admission):
 - £569m a year (2020/1) lost to financial scams
 - Growing at 23% a year pre-Covid, faster since; so probably ~£1bn/yr run-rate now
 - Examples: LCF, Connaught, Basset & Gold, Asset Life, Lendy, Collateral, Funding Secure, many more
 - Not including other 'non-scam' regulatory failure cases: bank mistreatment of SMEs, mortgage prisoners, Woodford, PremierFX, building societies/Philips Trust Corporation, many more
- Underlying causes:
 - Wrongdoers almost guaranteed to get away with it - (wilful?) regulatory 'underlap'
 - Many rules not enforced; FCA not lead prosecutor of fraud; MoUs with police, Action Fraud
 - Easily exploited, allegedly unclear, regulatory perimeter
 - 'Catflaps': appointed representatives; authorised firms approving promotions for unauthorised or selling unregulated products; sophistication tests gamed
 - Almost total absence of transparency, accountability, liability

Consumers distrust the UK's financial services sector

TRUST DECLINES ACROSS SECTORS

Percent trust in each sector



2021 Edelman Trust Barometer. TRU_IND. Please indicate how much you trust businesses in each of the following industries to do what is right. 9-point scale; top 4 box, trust. Industries shown to half of the sample. General population, 27-mkt avg.

Root cause: the FCA is unfit for purpose

- The FCA is, at best, complacent, risk-averse and naive
- At worst, it's captured by the Treasury, banks and other big firms
- 'Three monkey' problem
- It's opaque, and unaccountable to consumer interests
- The revolving door spins fast and frequently - 'the club'
- No civil liability when things go wrong
- It's culturally defective - cf. responses to APPG's [Call for Evidence](#)
 - 'Bias against action'
 - 'The FCA line'
 - 'Diversity: people who look different, but think the same'
 - 'Useful idiots led by high-functioning sociopaths'
- Taken together, it's spectacularly unfit for purpose
- Financial fraud will spiral until we deal with the elephant in the room

How politicians can fix it

- Financial Services and Markets Bill due for second reading 7 September
- Once in a generation opportunity to reset UK financial services regulation
- Key purpose: onshoring of EU powers
- Should pass into law by late Spring 2023
- Opportunities to amend
 - Challenge negative changes
 - Far more important, make the case for inclusion of new rights and protections
- Panorama, Call for Evidence about the FCA give us the leverage we need
- Get onto Parliamentary Bill Committee - then invite Andy and me to give evidence!

The absolute minimum steps needed to fix the FCA

1. Redress for regulatory failure

- FCA should compensate losses caused by regulatory failure (complaints scheme, civil liability)
- Will incentivise regulator to perform statutory functions
- Limitation Act waiver, payouts for legacy cases
- Retroactive?
 - Will of Parliament
 - Equity
 - Obstacle to reform

2. Transparency, accountability

- APPG Call for Evidence laying bare defective culture
- [Swift, Sigismund](#) confirmed long-held suspicions that FCA dances to HMT's tune
- Consumer interests downplayed (getting worse)
- [Australian](#)-style oversight body representing consumer interests would remedy this
- TTF proposes creation of [Financial Regulator's Supervisory Council](#)

3. Duty of Care (firms)

- Consumers should be compensated when harmed
- Must be enforceable by consumers in civil courts, and not just by the FCA
- FCA desperate to prevent this; gaming [legal obligations](#)
- Proposed Consumer Duty doesn't count, unless revised, PROA added
- Parliament must insist!

Why this will work

- Payouts for legacy victims essential:
 - Natural justice
 - Impossible to fix the FCA while it's still trying to deny historical failings
- Firms' economic interests will be aligned with consumers' call for effective FCA (payouts would drive up levy)
- Consumer oversight body would replace *sotto voce* Treasury influence with statutory consumer one ('Consumer Panel' doesn't count)
- Duty of Care would recharge negative externalities of misconduct to firms
- Firms won't be able to dodge misconduct costs by hiding them in regulatory failure

What can individuals do?

- Write to your MP
- Three versions:
 - Blackmore investors
 - Victims of other regulatory failure cases
 - Other campaigners and stakeholders
- TTF, liquidators will provide template letters
- Key messages:
 - Support our amendments to the FSMB
 - We will provide suggested drafts in due course
 - Let us know if you're on side

What's the alternative?

- For Blackmore investors:
 - Ask for independent review (a whitewash – in 2027?). Counterproductive at this stage
 - Complain to/about the FCA (no compensation)
 - Sue (they'll lose)
 - Argue for bespoke compensatory Act (cf LCF - 'unique circumstances')
- For society as a whole:
 - Hope the FCA's Transformation Project succeeds. It won't:
 - Every incoming FCA CEO says they'll fix it; they never do!
 - Megan Butler got the gig - a decision criticised (pars 41-43) by the Treasury Committee
 - When she left, the programme was added to the duties of already-embattled (esp. Pars 231-4) Executive Director for Authorisations Emily Sheppard - it isn't a priority
 - The FCA continues to 'delay, deny, deflect, defend' with campaigners - see FoI, DSAR conduct
 - If the FCA's competent, why is it scared of civil liability - or transparency?

Conclusion

- Three simple amendments to the Financial Services and Markets Bill
- Would create paths to compensation for Blackmore victims and others
- Governance, transparency, accountability would be transformed
- Industry would owe consumers a Duty of Care
- The honest majority in the industry would gain from improving consumer confidence in financial services and finally fixing the FCA
- If the FCA means what it says, it will welcome change. If it objects, well, at least there will no remaining doubt about what we're dealing with
- If change doesn't happen, and lives continue to be ruined, it'll be politicians fault for siding with the FCA instead of its victims - or ours for not telling them!
- Panorama, and forthcoming Call for Evidence report, prove there's a problem!
- SO WRITE TO YOUR MP!