

Faces of Financial Crime - and how the Financial Services and Markets Bill could help



Mark Bishop, 25 October 2022

Overview

The big issues:

- Misconduct is widespread in the financial services sector
- Because perpetrators and enablers get away with it - and make loads of money
- The FCA typically does too little, too late
- It is largely unaccountable and opaque, and too close to HMT/industry
- You can't sue it, or get compensation from the Complaints Scheme

How to make things right - for yourself, and society

- Compelling proof there's a need to upweight consumer rights:
 - [Panorama](#)
 - [New PM](#)
 - [Call for Evidence about the FCA](#)
- [Financial Services and Markets Bill](#): once in a generation opportunity to reset UK financial services regulation
- Should pass into law by late Spring 2023
- Key purpose: onshoring of EU powers
- Opportunities to amend
 - New rights and protections
 - Focus on righting acknowledged historical wrongs/anomalies

Amendment 1: 'If you (regulators) screw up, you pay up'

- The FCA has enjoyed immunity from civil liability* since FSMA 2000
- Complaints Scheme doesn't work - regulators set the rules, appoint the Complaints Commissioner, set her budget, and ignore her findings
- She says: "*Ex gratia compensation payments due to... regulatory failures on the part of the FCA will, in practice, never be available to complainants*"
- Proposed amendment:
 - Mandate that Complaints Scheme covers regulatory failure losses
 - Make Complaints Commissioner findings binding on regulators
 - End immunity, disapply Limitation Act for first six years
 - Backstop where FCA unable/unwilling to secure redress from firms

Amendment 2: 'What's source for the goose...'

- Consumers have campaigned for a duty of care since FSMA 2000
- Would be owed by 'authorised persons' (firms/managers) to 'consumers'
- Parliament obliged FCA to consult, implement rules, last year
- FCA instead introduced inferior Consumer Duty
 - Exemptions (handover to unauthorised firms, no contractual link, historic injustices, exit fees etc.)
 - No private right of action
- Proposed amendment:
 - Statutory duty of care owed by authorised persons to consumers

Amendment 3: 'Sunlight is the best disinfectant'

- FCA is currently answerable to three industry panels, one consumer one
- FSMB as drafted would change this to five, or even six, to one
- Consumer Panel is FCA-appointed, mustn't criticise without forewarning
- The FCA's operational objectives (consumer protection, competition, market integrity) impact hugely on consumers, yet voices are seldom heard
- Consumer-led oversight body, as in Australia, much needed
- Proposed amendment:
 - Introduce statutory Financial Regulator's Supervision Council ('FRSC')

Role of the FRSC

- Hiring and firing:
 - Jointly with the Treasury: FCA Chair and Chief Executive (now HMT)
 - Solely: two FCA NEDs (formerly NCC, now BEIS); directors of Financial Ombudsman Service; Members/Chair of Consumer Panel (FCA); the Complaints Commissioner ('the regulators' [FCA])
- Reviews:
 - Annually of the FCA and the regulatory regime (currently, not done)
 - Periodically of FCA treatment of whistleblowers/their evidence (same)
 - Commission/oversee independent ones after regulatory failures (FCA)
- Oversee Complaints Scheme rules, budgets, payments (FCA/nobody)

How to make things right - what you should do NOW!

- Join TTF, if you haven't already - and subscribe
- Know more people who've been affected? Get them to join too!
- Write to your MP
- Three versions:
 - (Blackmore investors)
 - (Other campaigners and stakeholders)
 - Victims of other regulatory failure cases
- TTF has produced template letters, instructions
- Key messages:
 - Support our amendments to the FSMB
 - Drafts available on the link above
 - Let us know what response you get

**Faces of Financial Crime -
and how the Financial Services
and Markets Bill could help**

...