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Smarter Consumer Communications: responding to the FCA's questions

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There is clear recognition by Government of the need to ensure that technology based innovation can thrive and yet in a soundly regulated way.

In July, HM Treasury issued its paper entitled "Fixing the Foundations: Creating a More Prosperous Nation". One section indicates that the Government will champion the development of new and innovative technologies and ideas, and will set the FCA an objective of having regard to encouraging business and particular new business models develop to go with the EU's flagship initiative of building a Capital Markets Union (CMU) which includes recognition of the role of technology and digitalisation, whether on computer based electronic trading systems or crowdfunding or other use of technology in financial services.

Digitalisation

Digitalisation is clearly an area of interest to the FCA. Their June 2015 Call for Input on Regulatory Barriers to Innovation and Digital and Mobile Solutions requests comments by 7 September 2015. The input is intended to assist the FCA to decide how to identify regulatory barriers and work to resolve these without compromising consumer protection.

The UK FCA in its response to the European Commission's Green Paper on "Building the Capital Markets Union" (published on 27 May 2015) emphasises that one of the priorities for action should be the need to harness the benefits of digitalisation. As ever though, the FCA is already seeking to embed digitalisation issues in its own regulatory approach, recognising that there is a movement away from the predominant model of paper based disclosure regimes which have underpinned the development of European disclosure requirements, such as provision of KIDs in PRIIPs and KIIDs in UCITS. so far. One of their themes is that communication and disclosure models should accommodate a range of channels and formats to match consumer preferences.

The FCA's approach is to try and proceed on a constructive basis so as to secure an appropriate degree of protection for consumers and promote effective competition in the interests of consumers.

FCA Discussion Paper 15/5

The FCA's June Discussion Paper 15/5 on Smarter Consumer Communications is intended to kick start a debate around how the FCA industry, consumer groups and other stakeholders can work together to deliver information to consumers in smarter and more effective ways, including adopting innovative techniques, as there is a move away from the paper based mind set.

- The original concern was that, for those not able to access the online options, there should be availability of payment based communications. The likelihood that this needs to remain is of course reducing.
- The next stage is how technology improvements could assist in making customer communications better for those who are working online. It is in this area that the Discussion Paper focuses.

The FCA is not changing its expectations – indeed they reiterate their expectations that firms ought:

- to understand and recognise the importance of communicating effectively with consumers;
- to create product and service information for consumers with at least as much "behaviourally informed creativity" as is applied to business development, marketing and financial promotions; and
- to create communications as an integral part of the product or service design process.

The question is how these goals are best achieved.

The FCA appear to be supporting moving away from a box ticking approach to communication design. Instead they encourage prioritising efforts to ensure that information is effective for the intended audience and testing communications among real consumers, looking to build a wider understanding of a customer's information needs and considering what the consumer needs to know, how much they need to know and when; and adopting innovative techniques to improving how key information about products is conveyed and delivered to consumers.

There is a role for education. Some of the Discussion Paper looks at examples of developments, which range from videos to help customers understand key concepts to the Australian regulator developing a series of comics to educate consumers.

The overall import though is that firms should give greater priority to developing *effective* consumer communications – in other words, the FCA realise that the *method* of communication is as important as some of the product design issues themselves.

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The FCA's questions

The helpful point about this June Discussion Paper is that the FCA is volunteering to work together with the industry to ensure that consumer communications better engage and empower consumers. Firms, consumer groups and other stakeholders are asked to respond on the following by giving views on the following questions:

- Q1: Examples of proven and effective approaches to consumer communications in other financial and non-financial markets (UK and international).
- Q2: Evidence of effective approaches to customer communications that you have already developed and tested.
- Q3: Evidence that any information provision requirements contained in the FCA Handbook prevent or inhibit firms from effectively communicating important information to consumers. If so, which rules and how?
- Q4: Suggestions for making information more effective and engaging specifically for consumers of the asset management industry.
- Q5: Examples of any other approaches to customer communications that you are currently developing and/or testing.

In relation to the specific industry issues discussed in the 'Areas for industry to drive change' section:

- Q6: Do you agree there is a role for industry and other stakeholders (collectively as a market or at an individual firm level) in addressing the issues identified?
- Q7: Do you have any views on the ideas we set out in this discussion paper and can you suggest other approaches that would achieve similar outcomes or objectives?
- Q8: Do you have any evidence that other areas in the financial services market require specific improvements in consumer communications?

Responses are requested by 25 September using the online response form or by email to dp15-05@fca.org.uk.

There is a request for firms to volunteer to involve the FCA in testing proposals and to share results where they are looking at finding smarter ways to communicate. Again, there is a short online form if firms wish to signal their interest.

Finally, there is a link for feedback about alternative approaches that might have been effective in other sectors whether here or abroad. Clearly the FCA is open to hearing of all manner of suggestions.

Possible rule changes

The FCA intend to publish feedback on responses received later in 2015 and use responses, where relevant, to inform their ongoing interactions with the EU and domestic regulators on disclosure issues.

- **Disclosure provisions**

A Consultation is expected later in 2015 on proposed changes to some of the Handbook disclosure provisions.

The FCA offers to work with firms to test new ideas, as mentioned above, and also plan to consult later in the year on proposed changes to some of the Handbook disclosure provisions. The sections of the Handbook in view are the Consumer Friendly Principles and Practices of Financial Management (CFPPFM), the Initial Disclosure Document (IDD) or Combined Initial Disclosure Document (CIDD) and short reports for retail authorised funds.

The FCA also plan to consult later this year to remove the rules and guidance relating to such documents and also plan to take steps to prevent new obligations under COBS 14.4.1-14.4.3 re the delivery of a short report to intermediated investors from coming into effect until after the conclusion of this Consultation. We can certainly sympathise with the view that reports are simply unlikely to be read and that thought needs to be given, given the range of intermediation now present in the market place for which groups need to be given which information, so as to maintain a level playing field of whatever information is communicated.

- **Terms and conditions**

One particular area concerns terms and conditions. This is an important one on which to focus because this links into contract law terms which are binding with investors. It is not simply a financial promotion or communication issue: it concerns a fundamental issue of the terms for the binding contracts with investors. In the past, even when perhaps the FCA Rules might have allowed something, firms have, for evidential reasons, been hesitant to look at new methods. They have also been cautious about how terms and conditions might have been agreed.

In their Discussion Paper, the FCA indicate that they have found that almost no one claimed to read T&Cs and the few that did felt ill informed, and so there is a concern that consumers are not trying to engage with the content. This though has two consequences:

- how one makes the content of T&Cs more approachable

There is clearly a mixed experience of those forms which have tried really hard to make terms and

conditions readable and those which are much more technically based. Certainly some could be shortened and there could be a removal of some of the boilerplate approach so that the terms are clearer.

- how one provides T&Cs

Where an investor clicks to open T&Cs, the firm's obligations have been met but the FCA are concerned that the box might be ticked without the person having in fact read the document, and indeed the consumer is given less time to enter into a binding agreement than is required to read the T&Cs.

Therefore there are both design and delivery aspects to the FCA's interest in this area. One suspects that some terms and conditions are more focused than others – one of their examples is the improvement on some of the personal current account terms.

- **Fees and charges**

There is a focus also on fees and charges and whether total costs to be incurred are clear and whether additional charges that might apply are ignored. In the asset management field, there has already been considerable focus on fees and charges but, in the wider areas, perhaps it is fair to say that firms could do more to volunteer more specific information about the costs of their services. The two examples they give concern general insurance and the mortgage market.

- **Complaints**

The FCA considers that some firms could do more to help consumers identify where they should be directed, irrespective indeed of whether the issue the customer wants to raise constitutes a complaint. The FCA quite reasonably ask firms to consider how they could comment/ask questions in a "less daunting and less adversarial" way for consumers. A Policy Statement is expected imminently following up on CP 14/30 which limits the costs of post contractual calls to financial services firms.

Certainly the focus, because they have to disclose complaints procedures to "How do you complain", might well be amended to "How does one find further information/ask questions" without reaching the complaint stage.

- **Compensation scheme arrangements**

A similar issue regards disclosure of the financial services compensation scheme arrangements where the FSCS considers that further work is needed to extend awareness and understanding of key information on availability or otherwise of the scheme. This applies to banking, given banking financial failures in 2008/9, but also to

investments, long term insurance or general insurance products and services. The import from the FCA seems to be that regulated firms should, before they enter into a binding contract, do more to help consumers identify those circumstances in which the FSCS can provide compensation. Given that this depends on the nature of the client in many instances, this might involve expanding the references to whether or not the complaints regime will be available in greater detail than sometimes currently appears. They seem to be looking for a short visual summary of FSCS protection.

- **Explanation of general insurance contracts**

General insurance has been the subject of a gradual creep of regulation over recent years so as to catch up with long term insurance insofar as is relevant. The FCA mention that they are concerned now to ensure that the current emphasis more on price of general insurance should widen out to see improved explanations of key features, benefits and exclusions which are accessible to consumers when they are making decisions. Again this point emphasises the need to provide more information at an early stage before a binding contract comes into force.

- **Pension options**

For retirement planning and saving, the FCA acknowledge consumer inertia and lack of engagement but is concerned that the important choices made at retirement, and particularly after the pensions reforms of this year are implemented, should be assisted by better communication on pension issues.

There is a work in progress (the subject of a Call for Evidence in March 2015) jointly with the DWP on Disclosure of Transaction Costs in Workplace Pensions. More widely the FCA is looking at better consistency and terminology so as to ease the position for consumers in understanding and comparing products and features, in other words a reduction of jargon, and communicating in a language which consumers can understand. They hold up the National Employees Savings Trust (NEST) golden rules for communication as a starting point. <https://www.nestpensions.org.uk/schemeweb/NestWeb/includes/public/docs/golden-rules-of-communication.PDF.pdf>

- **Investment advice**

Investment advice is again mentioned as a separate topic. Clearly RDR has been implemented, which was a major change for retail investment markets. The FCA's focus now is on explaining the scope and cost of investment advice provided. The FCA seem keen to consider whether or not some labels might help and give two possible suggestions.

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Wider initiatives

Of course the FCA does not operate in isolation. There are Government initiatives affecting product. Note one example is the proposed third ISA type: the Innovative Finance ISA which will be subject to different rules on withdrawal, transfer and ownership due to the nature of the investments so that ISA savers can invest in peer to peer loans in addition to cash and stocks and shares ISAs. HM Treasury's response to the Consultation was published in July and we will update you when the final provisions are available.

Also, as the FCA readily acknowledge, the rules the FCA introduce will need to dovetail with progress at a European level. The list at the end of this briefing paper sets out disclosure in respect of which European development may affect the UK approach on disclosure issues mentioned above.

Disclosure related issues arising from European legislation are widespread

The table below summarises the main disclosure related European Legislation but is not an exhaustive list. The list includes directives that are in force and those in which we are actively engaged in the (re)negotiation process.

Credit	The Consumer Credit Directive (CCD) prescribes the format and content of point of sale information to consumers in the form of the Standard European Consumer Credit Information (SECCI).
Banking and Payments	The Payments Services Directive (PSD) , which is currently under review, prescribes the information given to consumers regarding payment services on their payment account, including current account and some savings accounts. The forthcoming Payment Accounts Directive (PAD) will require standard form documents and terminology relating to fees as well as standardised annual statements.
Mortgages	The Mortgage Credit Directive (MCD) prescribes detailed information to be given to consumers pre-sale through the European Standardised Information Sheet (ESIS).
Insurance Mediation	The Insurance Mediation Directive (IMD) is currently being revised and is likely to contain new disclosure requirements. The new Directive will bring into scope both intermediaries and direct sellers of investment based insurance products. The Commission's 2012 proposals could, if implemented, require the disclosure of information that is fair, clear and not misleading about services, insurance products and proposed investment strategies as well as costs and associated charges. Where advice is given, this would include information about whether the advice is on an independent basis and whether there will be ongoing assessment of the suitability of the product recommended to the customer. These proposals remain subject to negotiation.
Insurance contracts	Solvency II (2009/138/EC) requires pre-contractual disclosure of information about insurance contracts which varies depending on whether the contract is a life or non-life contract. For example: <ul style="list-style-type: none"> For life insurance products, information about the firm, its solvency and financial condition, details of the commitment, information to provide a proper understanding of the risks underlying the contract For non-life insurance products, details of the law applicable to the contract and the arrangements for handling complaints must be disclosed.
Retail Investment Funds	For Undertakings for Collective Investments in Transferable Securities (UCITS) schemes , firms must provide customers with a Key Investor Information document (KIID) before they make an investment decision. It is a short document, the format and content of which are prescribed by the UCITS Directive, describing the essential characteristics of the fund in non-technical language. EU rules also require a detailed prospectus and annual and half-yearly reports to be provided to investors on request.
Alternative Investment Funds	The Alternative Investment Fund Managers Directive (AIFMD) 2011/61/EU covers the management of alternative investment funds (AIFs) and their marketing to professional investors. It requires the fund manager to make available detailed information before consumers invest in an AIF, including the investment strategy and objectives, the types of assets, the maximum amounts of all fees, charges and expenses, and all associated risks. The fund managers shall also provide, on request, annual reports for each AIF.
Investment and Insurance Products	PRIPs A European Regulation was agreed earlier this year which will introduce a point-of-sale Key Information Document (KID) for all packaged retail and insurance based investment products (PRIIPs). The products in scope include any investment product sold to retail investors where the amount repayable to the investor is subject to fluctuations and where the investor is exposed to one or more assets not directly purchased by the investor. All pension (workplace trust based schemes and personal pensions) are excluded from scope although the Regulation requires the Commission to review this stance in four years' time. The KID will be maximum three A4 pages in length and all KIDs will have a common format and headings. The KID will include sections covering: <ul style="list-style-type: none"> Product name, identity of the firm and its competent authority; A description of the nature and main features of the product including its objectives and means of achieving them; A description of the target market and whether the product targets specific environmental, social or governance criteria; If applicable, what the insurance benefits are and what would trigger them; A description of risk including a risk-reward profile comprising a summary risk indicator supplemented by a narrative; The cost of the product presented by means of a summary indicator, showing total aggregated costs, in monetary and percentage terms as well as showing the cumulative effect of costs on the investment. For certain products, a comprehension alert where products meet a certain criteria that may make the product more complex for a retail investor to understand; A description of the holding period and when the investor can take the money early; Information regarding how the investor can complain; and A section covering 'other relevant information' – this cannot be marketing material.
Investments	The Markets in Financial Instruments Directive (MiFID) MiFID includes a number of disclosure requirements and broad principles which require firms to ensure their communications are fair, clear and not misleading. A recast directive (MiFID II) has been agreed and will take effect from 3 January 2017. This maintains many of the existing disclosure requirements included in MiFID I and introduces a number of new requirements. This includes a requirement for firms to disclose all costs and charges associated with a financial instrument and investment service, including costs that are not typically included in existing disclosures such as transaction costs. Firms will be required to provide this information at the point-of-sale and, where appropriate, on an annual basis.
Sales by distance communications	The Distance Marketing of Financial Services Directive requires firms to provide certain information to the consumer before they are bound by the contract, including specific information about the supplier's identity, product details and contract particulars.

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