



House of Commons
Treasury Committee

**Consumers' Access
to Financial Services:
Financial Conduct
Authority response
to the Committee's
Twenty-Ninth Report**

**Twelfth Special Report of
Session 2017–19**

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The Treasury Committee

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Contacts

All correspondence should be addressed to the Clerk of the Treasury Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 5769; the Committee's email address is treascom@parliament.uk.

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Twelfth Special Report

On 13 May 2019, the Treasury Committee published its Twenty-Ninth Report of Session 2017–19, *Consumers' access to financial services* (HC 1642). The government response was received on 18 June 2019.

Appendix: Government Response

I wanted to respond to the Committee's report on consumers' access to financial services of 8 May, which I read with great interest. The report makes a number of recommendations touching on the FCA's work and remit and I wanted to set out our thoughts on some of those recommendations below.

Compliance with the Equality Act

TSC recommendation: The EHRC told the Committee it does not have the relevant resources to investigate whether individual insurance firms' treatment of customers with disabilities is compliant with the Equality Act or not. Responsibility for insurance companies' compliance with the Act, both in individual cases, and for firm wide issues, should therefore be transferred to the FCA. (Conclusion 15)

TSC recommendation: Given the FCA told the Committee it does have the expertise and resources, the Government should give the FCA the power to take on the enforcement of individual cases relating to financial firms' compliance with the Equality Act, in addition to the EHRC. (Conclusion 35)

As the UK's financial regulator, we apply our specialist knowledge of financial services markets to determine whether those markets are working in the interests of all consumers and to formulate interventions where we see harm and enforce them. We have the resource and the expertise to pursue our statutory objective, through supervising firms, conducting market studies and holding consultations to propose evidence-based interventions to address the harms we see.

Ensuring compliance with the Equality Act is generally beyond our expertise as a financial services regulator. However, protecting consumers - particularly vulnerable consumers - is deeply in the DNA of the FCA. As the EHRC have told the Committee that they have limited resources, we are keen to work with the EHRC so that, together, we can ensure that consumers in financial services are protected. This could be by devising a system for utilising their expertise as the statutory enforcers of the Act and as ours of financial services markets, in the interests of all consumers.

We engage with the EHRC on policy-related and thematic issues, for example, as part of our representation on the EHRC's Regulators, Inspectorates and Ombudsman Forum (RIO).

We do not, however, have a statutory gateway to enable us to share confidential information¹ with the EHRC. Discussions on how to put such gateways in place may be a useful starting

1 i.e. s348, FSMA information.

point for considering how best to collaborate on cases involving financial services firms. Creating gateways and allowing the FCA to coordinate with and support the EHRC in their enforcement of the Act may require HM Government to amend legislation.

Insurance Pricing

TSC recommendation: The FCA told the Committee that it has the resources to look at individual firms' algorithms to assess compliance with the Act, but—for reasons unknown to the Committee—chose not to ask for individual firms' data when it held an initial call for input regarding the issue. This was a missed opportunity. The Committee is concerned that, despite the FCA telling the Committee that a number of firms could not give it assurance straight away that their pricing data is compliant with the Equality Act, the FCA did not choose to ask for more information. (Conclusion 16)

When designing the scope of our thematic work on Pricing Practices we considered the most efficient and effective way to understand how insurance firms were setting prices for household insurance, and the impact this has on customers and the outcomes they receive. We chose not to interrogate the algorithms firms used, as given the complexity of these models and the large number of firms carrying out pricing activities we found that this would be a hugely involved and technical exercise, requiring very significant amounts of specialist resource.

We chose instead to look at the datasets used by the pricing models, as this allowed us to establish far more efficiently the impact of insurance firms' pricing models on different groups of consumers. The findings of this work, including in relation to the Equality Act, were set out in our thematic report, published on 31 October 2018. We also sent a 'Dear CEO letter' on the same date emphasising the need for firms to address the issues raised by our thematic work immediately, particularly the governance and controls over their pricing practices, including in relation to differential pricing and the Equality Act.

Meanwhile, our General Insurance Pricing Practices Market Study is seeking to complete the process of investigating firms' business models; what drives differences in prices paid by new and longstanding customers for home and motor insurance; the extent of any harm from this and which groups of consumers are affected, and to identify potential remedies which will serve to address these issues.

The Committee has heard that the FCA recommends consumers facing discriminatory pricing use more specialist companies that understand their individual circumstances better. This is not an adequate response to discrimination in breach of the Equality Act. While it may be the case that customers can seek a quicker solution by using a specialist insurer, illegal discrimination must be addressed by regulators. (Conclusion 17)

Our [Call for Input \(CfI\)](#), in June 2017, identified that the key issue for consumers with pre-existing medical conditions (PEMCs) when purchasing travel insurance, was one of accessing providers that had the appetite and capability to provide cover for more serious medical conditions. Due to these providers having more detailed medical screening processes and/or more experience in covering consumers with similar circumstances, they are therefore better able to accurately assess the risk that a consumer with a PEMC presents and may offer lower premiums.

Not all PEMCs would fall within the definition of “disability” in the Equality Act. As a result, our signposting proposals are broader than a remedy that hinged upon the Equality Act. While the focus was not on compliance with the Equality Act, the responses to the Call for Input (CfI) also showed that firms were aware of their obligations under the Equality Act.

There is an exception to the Equality Act that allows insurers, in some circumstances, to differentiate prices based on the risk that different consumers present. The price can therefore vary due to many factors, such as destination, duration of travel, medical conditions, age, and activities planned. Responses to our CfI suggest that consumers are not always clear about how these factors affect their pricing, and often do not have access to the full market, making it difficult to compare products and premiums quoted, and therefore difficult to find the provider most appropriate for their needs.

Our signposting proposals, on which we are due to consult in summer 2019, will help ensure that consumers are able to access different types of providers to effectively compare prices and determine the most appropriate products for their travel insurance needs. In addition to our signposting proposals, we will be working with our stakeholders to improve consumer understanding of travel insurance, enabling consumers to have a better insight into what factors affect their premiums. Our proposals will help consumers navigate the market to effectively find providers that have the experience and capability and as a result, may be able to offer a more affordable premium.

We decided, based on the feedback received and the harm we were seeking to address, to focus this work on access, rather than pricing, as we believe it most effectively addresses the harm caused to consumers.

Loyalty Penalty

TSC recommendations: The Committee notes that the FCA is in the process of investigating the existence of loyalty penalties within the mortgage, insurance and cash savings markets, and expects the FCA to act upon those investigations swiftly once concluded. (Conclusion 19)

Based on the evidence given to the Committee, the FCA thinks that, due to the complexity of switching, simply providing customers with information about the loyalty penalty they are paying will be insufficient to motivate them to switch to a better provider. If this is the FCA's view it must redouble its efforts to make switching a simpler process. (Conclusion 20)

In line with the CMA's recommendation, the Committee recommends that the FCA makes it mandatory for firms to publish the size of their loyalty penalties on an annual basis to consumers so that consumers are fully informed. Even if many consumers choose to ignore such information, others will not, and the inclusion of such information may motivate firms to make efforts to reduce their loyalty penalty. (Conclusion 21)

The loyalty penalty is a significant issue and the fair treatment of longstanding customers has been and remains a priority for the FCA. Before the CMA super-complaint was made last year, we had already begun work in the general insurance, cash savings and mortgages

sectors to actively determine whether there were issues such as loyalty penalties that we needed to address. We are working closely with the CMA and other regulators, and we will consider the Committee's recommendations. However, we are considering a broader range of possible interventions in our work, as stronger tools may be required to remove the loyalty penalty in markets.

We have completed our mortgages market study and we identified specific issues that lead to harm for some consumers who pay more than they need to for their mortgage. We are proposing a package of remedies to address this.

In the cash savings market, we are concerned that competition is not working well, particularly for longstanding customers, who generally receive lower interest rates than those who opened accounts more recently. We are considering the options to address this harm, including the introduction of a basic savings rate. We intend to publish a Consultation Paper or Feedback Statement in the second half of this year.

Our market study into general insurance pricing practices follows our supervisory work on home insurance pricing practices, which suggested that people that stay with their insurance provider for a long time pay significantly more than newer customers. Our market study is exploring consumer outcomes from pricing practices and what drives this, the fairness of pricing practices, and the impact of pricing practices on competition. We will consider all potential remedies that may be required to make the market work well for consumers, and we intend to publish our interim findings in the summer.

Duty of Care

TSC recommendation: The FCA stated the feedback for its duty of care discussion paper would be published in early 2019 but it was only published in April. The Committee recommends that the FCA completes its consultation swiftly by Autumn 2019, with a clearly set out timetable of when changes to its rule book, principles, or legislation (if needed) will occur. (Conclusion 58)

Following our discussion paper and April feedback statement, it is clear there is a strong desire to see us strengthen our principles and use them to much more real effect. I have sympathy with this and think there is a good case for enhancing the standing and practical impact of our principles, rather than just writing more rules.

This would help us to ensure that the scope of regulation can adapt to the changing environment in which we operate. We intend, as part of considering the future of regulation, to undertake further work to examine the role of principles, and we will consider the most efficient and proportionate options for achieving the substance of a duty of care. However, if our analysis shows that there are substantive reasons for supporting a statutory duty, we will review this.

Accordingly, this Autumn we plan to set out our proposals for addressing this issue and our initial view on private enforcement of our Principles, alongside our proposed timetable for next steps.

Vulnerability guidance

TSC recommendations: within its vulnerable customer guidance, the FCA must outline the level of training that all frontline financial services staff are required to take. This training should be set at a high standard, and instruct staff in how to be empathetic and understanding when supporting vulnerable customers. In addition, staff must be aware of all of the disability adjustments and services that are available to their customers without fail. (Conclusion 56)

The Committee recommends that the FCA issues guidance to all financial services providers instructing them to ensure that all their communications with their customers—especially terms and conditions—are written in language that an average consumer can read and understand in full. The FCA should consider reviewing progress made by firms on simplifying their terms and conditions on a regular basis. The Committee will monitor FCA progress on this matter in future evidence sessions. (Conclusion 49)

The FCA has rules in place to require that firms communicate with their customers clearly and appropriately and their staff have the right training to perform their role.

Our Principles for Businesses apply to most firms for their regulated activities and are high level statements of the core obligations of firms, and act as an overarching framework to govern the actions of firms. Specifically, Principle 6 requires firms to treat customers fairly, including vulnerable customers and Principle 7 requires firms to have regard to the information needs of their customers and communicate with them in a way that is clear, fair and not misleading.

When specifically considering terms and conditions, the unfair terms legislation² requires contract terms to be written in plain and intelligible language. Where we receive complaints or where we proactively identify concerns about the clarity (and indeed fairness) of contract terms, we can use our powers under the unfair terms legislation to secure an undertaking from a firm that it amends or removes the term. This also raises awareness of our views for other firms. We have accepted and published a number of undertakings under the unfair terms legislation on both the fairness and transparency of contract terms. We will continue to use these powers where appropriate.

We recognise that consumers can find large amounts of information and details about product features, risks, benefits, costs and terms, overwhelming and more than they can mentally process and we are taking steps to encourage firms to simplify their communications. One example of our commitment to this is our work on Smarter Communications. In October 2016, we published our Smarter Consumer Communications feedback statement, where we announced several initiatives to help improve the regulatory framework for consumer communications.³

Our Training and Competence regime⁴ supports consumers by making sure the financial services workforce is appropriately qualified and well regulated. We require firms to

2 The Consumer Rights Act 2015 and the Unfair Terms in Consumer Contracts Regulations 1999

3 <https://www.fca.org.uk/publications/discussion-papers/smarter-consumer-communications-further-step-journey>

4 <https://www.fca.org.uk/firms/training-competence>

review employee competence and training needs regularly, consider changes in the marketplace and products, regulation and legislation. We also require them to look at the skills, expertise, technical knowledge and behaviour of their employees in practice.

We recognise that vulnerable consumers may have additional or different needs when engaging with financial services. We have published Occasional Papers on consumer vulnerability,⁵ access to financial services⁶ and our approach to consumers,⁷ and we will soon be consulting on whether all firms should have policies to deal with vulnerable, or potentially vulnerable, consumers who may be at risk of greater harm.

To provide clarity on our expectations of firms and reduce the risk of consumers being treated unfairly, particularly vulnerable consumers, we are planning to consult on guidance for firms on the treatment of vulnerable consumers in Summer 2019.

Our guidance will provide firms with clarity about what we expect of them and ways in which they can comply with the Principles (predominantly 6 and 7) more effectively. It will also remind them of their obligations to consumers under wider legislation, such as the Equality Act.

The guidance will support and encourage best practice to prompt and support improvements of processes in firms.

Our guidance will underline the importance of good communications and staff training to achieving the outcomes we want to see for consumers. We will be using the guidance in our engagement with firms. Firms can expect challenge about their practices, particularly where we believe vulnerable consumers aren't being treated fairly.

The guidance is intended to provide all financial services firms, large and small and across a number of sectors, with ways they can meet the different needs of their vulnerable customers and comply with their obligations to treat all customers fairly. It is intended to provide clarity to firms on our expectations of them under our principles for business. The guidance will, for example, make it clear to firms that we expect them to think about communications and staff skills and capabilities. We would expect firms to consider themselves whether they need to have specialist teams to deal with certain customers with certain vulnerabilities and what training they might need, and what level of training they need to give their frontline staff based on the specific needs of their vulnerable customers. The guidance aims to drive improvements, including where necessary taking supervisory and enforcement actions against firms where they are failing to treating their customers fairly.

It is important that we get the balance right between providing sufficient clarity, allowing flexibility and being proportionate. The information we provide firms will encourage them to work to meet the needs of their customers rather than taking a tick box approach to compliance. Setting standards on particular formats or channels of communication or levels of training in order for firms to meet their obligations under the Equality Act are matters that are generally beyond our control and expertise as a financial services regulator and we believe that other bodies, such as the EHRC and EASS are better placed to act if there is a need to.

5 <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8.pdf>

6 <https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-17-access-financial-services-uk>

7 <https://www.fca.org.uk/publications/corporate-documents/approach-consumers>

Power of Attorney and third-party representation

TSC recommendations: the Government and the FCA consult on how the use of power of attorney works in practice with regard to financial services, and whether the current powers that exist are fit for purpose. The wider use of carer cards should be explored and encouraged by the FCA. (Conclusion 13)

The Committee expects UK Finance or the FCA to carry out a review and report back on the effectiveness of the FCA's third-party access principles—committed to by the UK's high street banks in 2017—by the end of 2019. (Conclusion 14)

Power of Attorney and Deputy Court Orders are the responsibility of the Office of the Public Guardian in England and Wales⁸ and we are not able to enforce changes to the process or direct firms how to use them. However, we do recognise that there is scope for improvements in customer and firm awareness of Power of Attorney.

To address this, we have worked with the Office of the Public Guardian and fellow regulators, via UKRN, to produce a guide to help staff in financial services and utility companies act more consistently when they see powers of attorney and deputy court orders.⁹ We will be signposting firms to this guide in our forthcoming vulnerability guidance.

We recognise that Power of Attorney and Deputy Court Orders may not meet the needs of all consumers who require some support to manage their finances, so we welcome further work and innovations in this area from firms and consumer groups:

- In our Ageing Population Occasional Paper¹⁰ we welcomed UK Finance's third-party access principles and their plans to consider an industry wide framework for third-party mandates. We also encouraged UK Finance to assess the effectiveness of these principles 12–24 months after publication.
- We have provided initial feedback on the design and scope of projects run by DEMOS and the Money and Mental Health Policy Institute that all explore how to support vulnerable consumers to make decisions about their finances and will review the findings and recommendations with interest.
- A number of Fintech firms are keen to investigate how Open Banking can be used to develop products to help third parties support vulnerable consumers. Our Regulatory Sandbox and Direct Support Team can offer help to firms considering innovations in this area to test the commercial and regulatory viability of innovative concepts before they invest heavily in them.

We are aware that some retail banks offer debit cards with limited spending powers for carers to use to purchase household essentials for people in their care without the need to take out formal power of attorney. The FCA does not have any rules or guidance about such products, but we have worked with the largest firms to encourage their agreement to publish standard tables highlighting the particular forms of support they offer vulnerable current account customers (which might include carers cards). This is to help people choose a current account which meets their needs, and to shine a light on good practices by firms.

8 There are separate processes in Scotland and Northern Ireland

9 <https://www.gov.uk/government/news/new-guide-to-help-consumer-markets-better-support-adults-at-risk>

10 <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-31.pdf>

More generally we indicated in our ageing population work that we would consider a further review between 2020–2022 on how the financial services industry is adapting to meet the needs of older consumers.

Access to cash and bank branches

TSC recommendation: The final report of the independent Access to Cash Review contains a number of recommendations to Government, the regulators, and industry which, taken together, are designed to ensure that widespread free access to cash is upheld. The Committee supports these and recommends that the Government, the regulators and industry implement the recommendations that are aimed at them respectively. All the stakeholders involved should provide a timeline for the implementation of the recommendations in their response to this report. (Conclusion 33)

The Ceeney review highlighted important issues and potential solutions in relation to access to cash. While its use is declining, cash remains a crucial means of payment for many, especially for the most vulnerable and for SMEs. The report made a number of recommendations aimed at the relevant authorities in this space (FCA, BoE and HMT). We are using the Ceeney report to inform our work and are aiming to address some of the issues identified, particularly recommendations around consumer vulnerability and the impact of the decline in use of cash on SMEs. The FCA will be also looking at the cost of cash handling insofar that it affects SMES' willingness to accept cash.

Access to cash and bank branch issues overlap with the responsibilities of the FCA, PSR and the Lending Standards Board. The Access to Banking Standard sets out how banking firms should communicate with customers when they close branches, and the Lending Standards Board supervises this industry agreement. The PSR regulates the LINK network, which includes most of the UK's free-to-use ATMs.

The FCA is part of the Joint Authorities Cash Strategy Group (JACS), set-up by HMT and composed of representatives from the PSR, the BoE and HMT. The group will coordinate the activities of government and regulators related to cash access. Members of the group will announce in due course their proposed workplans and how they plan to co-ordinate their work in this area.

Creditworthiness Assessment Bill

TSC recommendation: the Committee has heard compelling evidence that including rental payments in credit checks would help individuals with "thin credit files". The Committee recommends that the Government supports the Creditworthiness Assessment Bill through Parliament and expects the Government to confirm it will do so in response to this report. (Conclusion 63)

We are supportive of the broad aims of the Bill – particularly in relation to improving 'thin' credit files. However, as drafted we think the Bill would have negative unintended consequences and potentially harm those it is intended to help.

There is nothing in our rules that prevents rental payments from being taken into account where relevant and appropriate. Our creditworthiness rules in consumer

credit already require firms to take income and non-discretionary expenditure into account, unless affordability is obvious. This would include mortgage or rental payments and council tax. Similarly, our mortgage responsible lending rules require firms to ensure the mortgage is affordable based on a customer's income and expenditure. Our rules are not exhaustive on what types of expenditure can be taken into account.

However, we are not convinced that requiring firms to take rental data into account is the right way to improve access to credit. These data may not be a true reflection of creditworthiness or affordability for a variety of reasons and such a process could significantly increase costs without any guarantee of better consumer outcomes. It could even lead to unaffordable credit if firms are required to take account of unreliable data. Firms are best placed to decide whether this information is relevant in light of a customer's circumstances and the firm's risk appetite.

We think a better approach is to work on enhancing underlying data sets; if the data are shown to be useful and predictive firms will be incentivised to incorporate it into their lending decisions.

We will be looking closely at credit information in a market study, which we will be launching shortly. This will include the role credit information plays in consumer behaviour and access to credit. Among other things, the credit information market study will consider issues relating to thin credit files, which may particularly impact vulnerable consumers.

Basic Bank Accounts

TSC recommendations: Basic bank accounts should be accessible to all consumers regardless of whether they are eligible for another bank account or not. To that end, the Committee recommends that all basic bank account providers should relax their opening restrictions on these accounts immediately, and recommend the FCA mandate banks to do so. (Conclusion 5)

All financial services providers who provide current accounts should act immediately to ensure that staff are trained to direct consumers who are rejected for a traditional current account towards a basic bank account, even if this would be with another provider. (Conclusion 6)

The Committee recommends that the FCA requires financial services providers to report how many basic current account openings they have rejected and the reason why. This information should be published bi-annually to increase transparency and oversight. (Conclusion 7)

We recognise that the criteria for opening a basic bank account vary slightly between providers. It is our understanding that individuals are already well served by the market for basic bank accounts, making the need to change account eligibility requirements unnecessary. Instead, we believe that individuals could be helped by improved signposting to help them identify where they might find a basic bank account that meets their needs. Our Financial Lives Survey found that most unbanked customers are unaware of basic bank accounts.

Designated UK banks must provide accessible information and assistance about the features and conditions of basic bank accounts under the Payment Accounts Regulations (PARs). The FCA is engaging with firms who are obliged to provide basic bank accounts to improve signposting on the availability of basic bank accounts. We are planning a publication later this year once we've completed this work. We will use this publication to encourage designated UK banks to better signpost the availability of basic bank accounts.

We currently collect data on the number of basic bank accounts opened and the number of applications that are refused under PARs. This information is collected and reported to HMT every two years. HMT also collect data on basic bank accounts and publish them annually. The data provide us with information about the rate of account rejection and a picture of demand in the market.

The changes being recommended would require a common system of refusal reporting and the development of reason codes. This would need to be incorporated into payment service providers' systems. It is likely that bi-annual reporting would be costly for firms and the FCA, and the benefits of doing so are not clear. It will also duplicate reporting currently being performed by HMT. Therefore, doing so would provide little benefit and create a large administrative burden.

We recognise that it can be challenging for many individuals to access financial services where they don't have standard identity documents, such as a passport or utility bill.

Most banks publish a list of acceptable documents for identification, typically including a wide range of alternative documentation. However, it is important that firms ensure their approach is embedded, so that frontline staff can work consistently with potential customers to identify suitable documentation. While we do not prescribe which identification banks must accept, we require that firms treat their customers fairly during this process.

I hope that this is helpful.

Andrew Bailey

Chief Executive