



House of Commons
Treasury Committee

**Responses to the
Committee's Fourth
Report of Session
2021–22: The Financial
Conduct Authority's
Regulation of London
Capital & Finance plc**

**Second Special Report of Session
2021–22**

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The Treasury Committee

The Treasury Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of HM Treasury, HM Revenue and Customs and associated public bodies.

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The current staff of the Committee are Rachel Edwards (on secondment from the Bank of England), Kenneth Fox (Clerk), Dan Lee (Senior Economist), Adam McGee (Senior Media and Communications Officer), Aruni Muthumala (Senior Economist), Moyo Oyelade (on secondment from the Bank of England), Tony Verran (on secondment from HM Revenue & Customs), Adam Wales (Chief Policy Adviser), Maciej Wenerski (Committee Operations Manager), Jesse Williams (Committee Operations Officer), and Marcus Wilton (Senior Economist).

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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Report

1. The Committee published its Fourth Report of Session 2021–22, *The Financial Conduct Authority’s Regulation of London Capital & Finance plc*, on 24 June 2021. The Committee has received responses from:
 - HM Treasury, which replied on 19 August 2021; and
 - The Financial Conduct Authority, which replied on 25 August 2021.
2. The responses are appended to this Report.

Appendix 1: Response from HM Treasury

Letter from the Economic Secretary to the Treasury to the Chair of the Committee

I am writing in response to the Committee's report of 24 June 2021 on the Financial Conduct Authority's (FCA) regulation of London Capital & Finance Plc (LCF). I would like to thank the Committee for the report and note that the Government has fully considered the points and recommendations made throughout.

I would like to take this opportunity to restate, as I did during my evidence session with the Committee, my sympathy for LCF bondholders, and my gratitude to Dame Elizabeth Gloster for her thorough and comprehensive report. The Government welcomes the FCA's apology to bondholders and its commitment to implement all of Dame Elizabeth's recommendations. I would also like to reiterate the Government's commitment to act on Dame Elizabeth's recommendations, to ensure our regulatory system maintains the trust of the consumers it is there to protect.

I attach an annex which sets out the Government's response to each of the Committee's recommendations for the Government. The Committee's text is in bold, and the Government's response is in plain text. Paragraph numbers refer to those in the Committee's report.

John Glen

Economic Secretary to the Treasury

19 August 2021

ANNEX: The Government’s response to the Committee’s recommendations

97. We therefore reiterate a recommendation made by a previous Treasury Committee, that the FCA be given the formal power and remit to be able to recommend formally to the Treasury changes to the perimeter of regulation, where that would enhance its ability to meet its objectives, in particular to prevent consumer harm. The FCA should set out any costs, both to firms and consumers. It would then be for the Treasury to consider such a recommendation promptly. All such recommendations and Treasury responses should be publicly disclosed.

The Government considers that the existing arrangements for examining and, where relevant, amending the regulatory perimeter are effective. These arrangements have led to a number of important changes to the scope of FCA regulation in recent years, which have served to improve consumer protection in the financial services sector.

In response to the recommendation by the previous Treasury Committee, we have established an annual meeting between the FCA Chief Executive and the Economic Secretary to the Treasury to discuss the contents of the FCA’s annual Perimeter Report. A summary of that meeting is published to promote transparency. The Treasury also engages with the regulators on perimeter issues outside of this annual process where needed.

The Government also notes the FCA Chief Executive’s oral evidence to the Committee in which he stated that he is “not sure that a formal power, as such, would add very much”.

Ultimately, decisions on which activities should sit within the perimeter of regulation should be for ministers, with the approval of Parliament.

For the reasons set out above, the Government does not consider it necessary to provide the FCA with a formal power to recommend changes to the regulatory perimeter.

105. Any changes to the perimeter must be matched with appropriate changes in the FCA’s resources, and the FCA should republish its priorities. The Treasury should publish a policy statement on how it will analyse changes to the FCA’s perimeter and what factors it will take into account.

There is often a fine balance between the potential costs and benefits of bringing an activity within the perimeter of regulation. When considering changes to the perimeter, the Government carefully analyses a range of factors, with its decisions guided by the specifics of each case.

In general, the factors considered may include the scale and nature of the consumer detriment that regulation is seeking to address, the cost of regulation for the firms conducting the activity in question (including how these costs may be passed onto the consumer), the extent to which extending the perimeter would be a proportionate course of action, the alternative approaches that could be taken to address the harm or potential harm that is occurring (e.g. tools such as codes of conduct), and the nature of the protections that currently exist for consumers, amongst other things.

The Government consults on any proposed changes to the perimeter, including with the FCA, and any proposed changes are then subject to parliamentary approval. Those consultations seek stakeholders’ views on the case for extending the perimeter, to inform the Government’s decision making.

125. There may be scope for the Government to consider whether the FCA should be given more powers to enable it to investigate fraud and financial crime.

The Government takes fraud very seriously. The Treasury continues to work closely across Government, and with industry, regulators and law enforcement, to close down the vulnerabilities that fraudsters exploit and ensure members of the public have the information they need to spot a scam and stand up to fraudsters. As part of the Government's ongoing work to tackle fraud the Home Office is developing an ambitious Fraud Action Plan, which will be published after the 2021 Spending Review. The plan will consider any potential legislative or regulatory change required to ensure we can effectively tackle fraudulent activity in the round.

139. The Treasury should proceed with its analysis as soon as the consultation on the regulation of non-transferable debt securities closes, and it should aim to publish the outcome by the end of September 2021. In publishing its response, it should also publish a way forward that can be implemented rapidly.

The Treasury's consultation on the regulation of non-transferable debt securities (NTDS) closed on 21 July 2021. As the Committee's report alludes to, this consultation is the culmination of a review into the regulation of mini-bonds that the Government announced in May 2019 and delivers on one of the recommendations made in Dame Elizabeth Gloster's report. The Treasury is aiming to publish its response to the consultation and bring forward plans for legislation in the autumn.

159. We note that there are other ongoing discussions and channels by which LCF bondholders can seek compensation, such as through the FCA complaints scheme and through LCF administrators. The Treasury and the FCA should ensure that these discussions and channels are coordinated to the best extent possible, in order to prevent any detriment to customers.

The Treasury is progressing work on the LCF compensation scheme rules, in close collaboration with the Financial Services Compensation Scheme (FSCS) who will administer the scheme. The FSCS is committed to ensuring that payments are made to all eligible LCF bondholders within 6 months of securing Royal Assent of the Bill currently before Parliament. The Treasury is ensuring the Government scheme is coordinated with the administration process and the FCA complaints scheme, to the best extent possible.

159. The Government should ensure that it is satisfied that the FCA's complaint scheme is working appropriately.

The design and operation of the complaints scheme is a matter for the independent regulators, who are required by law to maintain that scheme. The Government acknowledges the challenges the FCA has faced in its handling of complaints in recent times, which the FCA itself recognises have seen its complaints handling performance fall short of expectations for some complainants.

The Government notes the FCA's improvement plans in this area, and the substantial investment it has made to deliver those plans. Further details are provided in the FCA's response to the Complaints Commissioner's Annual Report and Accounts 2020/21. The Government will continue to monitor the delivery of those improvements.

180. The Treasury should—as a matter of priority—re-evaluate the Financial Promotion Order exemptions to determine their appropriateness and consider what changes need to be made to protect consumers.

The Government continues to keep the legislative framework underpinning the regulation of financial promotions under review. This includes arrangements for financial promotions communicated by authorised firms, as well as the effectiveness of the exemptions that form part of the regime.

As part of this the Treasury has already commenced work with the FCA to review exemptions to the financial promotions regime for high net worth individuals, self-certified and certified sophisticated investors.

The Committee’s report also noted the Treasury’s ongoing work to create a regulatory gateway for the approval of financial promotions. The Government published the response to its consultation on 22 June 2021. The response sets out the Government’s intention to bring forward legislation to establish the gateway through the imposition of requirements on firms when parliamentary time allows. This change, once in place, is designed to strengthen the regime by ensuring that the firms able to approve financial promotions are limited to those with the relevant expertise to do so, and that the FCA will be able to better identify when a financial promotion has breached the restriction and take action accordingly.

192. We recommend that the Government should include measures to address fraud via online advertising in the Online Safety Bill, in the interests of preventing further harm to customers being offered fraudulent financial products.

The inclusion of fraud in scope of the Online Safety Bill will have a real impact on protecting people from the devastating impact of scams posted on social media and dating sites. Furthermore, the Government is considering tougher regulation of online advertising, including regulations designed to tackle fraud online. DCMS has set out that it will consult by the end of this year on proposals related to its Online Advertising Programme.

As part of our departure from the EU the UK Government removed an exemption to the financial promotions regime available to online platforms for incoming electronic communications from the EU. As a result of that change, the FCA is looking at the operations of the major online platforms to determine whether their communication of financial promotions is subject to the financial promotion restriction and, if so, whether they are compliant. Where they are not, the FCA will take action to ensure consumers are protected. The Treasury will support the FCA in these conversations going forward, as part of the Government’s ongoing efforts to protect consumers from fraud online.

The Government is continuing to explore additional legislative and non-legislative solutions to tackle fraud in the round. This work is led across Government by the Home Office, in collaboration with industry, regulators and consumer groups. The Home Office is developing an ambitious Fraud Action Plan, which will be published after the 2021 Spending Review.

Appendix 2: Response from the Financial Conduct Authority

Letter from the Chief Executive, Financial Conduct Authority to the Chair of the Committee

I am writing to you in response to the publication of the Committee's report *The Financial Conduct Authority's Regulation of London Capital & Finance plc* on 24 June 2021 (the Report). We welcome the Report and appreciate the Committee's scrutiny.

I would like to repeat the apology made by our Chair for the errors the FCA made in our handling of this case. We know that London Capital & Finance's (LCF's) collapse has had a significant impact on the lives of many individuals who invested money they could not afford to lose. My colleagues and I will learn from the mistakes that have been made.

As you are aware, we accepted and have committed to implementing the recommendations which Dame Elizabeth Gloster made for the FCA. On 15 July we published and shared with the Committee an update on our implementation. This sets out progress to date, including on staff training, strengthening processes and policies, and improving how we share and use information.

Alongside these targeted steps, we are also taking forward wider changes in our structure, culture and strategic investment programme to ensure that we are able to identify and assertively tackle misconduct in the financial services sector. On 15 July we published our Business Plan about which I have written to you separately. In the Business Plan, and the accompanying speech I made, we set out the next steps in our Transformation programme to make us a more innovative, adaptive and assertive regulator, better placed to protect consumers and markets.

We welcome the Committee's call for measures to address fraud via online advertising to be included in the Online Safety Bill, and also your call for a re-evaluation of the current range of exemptions from the Financial Promotions Order. We stand ready to provide Government and HM Treasury with any advice and support they need as they consider these recommendations and assess the responses to their consultation on the regulation of non-transferable debt securities.

I have set out below the recommendations relevant to the FCA as well as our response. I have also set out our views where recommendations to the Government directly affect the FCA's ongoing work and priorities. I have numbered the recommendations for ease of cross referencing.

Individual responsibility of FCA management

1. *We recommend that the default position should be that the FCA take a holistic approach when recruiting for critical roles, rather than engaging in a restricted recruitment process. For time-critical appointments, the FCA should consider appointing on an interim basis until a wider search, considering where appropriate both internal and external candidates, has been completed. (Paragraph 43)*

The FCA takes a holistic approach when recruiting for all roles, but particularly for our critical roles. Once a position becomes vacant, we look at internal succession plans for all our Senior Leadership roles. Using these plans, we then assess who is immediately available with the appropriate skill set to cover for an interim period, as well as the strength and depth of our talent as we plan for a longer-term replacement.

Where we are unable to fill a role from within the FCA on a temporary basis, we engage with the external market to bridge the gap while we undertake a full recruitment exercise. The duration of our interim arrangements is typically between six and 12 months to ensure a full search can be completed and the successful candidate brought onboard. For example, I have shared with you details of our recent interim General Counsel appointment and the full competition now underway for that role. All of our permanent appointments go through a robust recruitment process.

In line with most other organisations, we conduct a mixture of internal-only recruitment, and exercises where we look both internally and externally.

As I explained in my evidence to the Committee, transformation of the FCA is and has been a priority. I wanted to get things moving quickly and in order to do that, we chose to recruit an executive director for transformation from within the current executive team. This ensured stability and continuity during a period of considerable challenge (with successive lockdowns, end of the Brexit transition period and wider leadership change at the FCA) and allowed us to proceed with the wider restructuring of the FCA and launch campaigns for a range of other roles in parallel. This included the role of Chief Operating Officer, Chief Data, Information and Intelligence Officer and a number of other senior executive positions, which were run through global searches, internally and externally. The FCA Executive Committee now has ten members, six of whom have come from outside the FCA. Since October at Director level (the level immediately below the Executive Committee) in addition to promoting a number of our strongest internal leaders, we have also brought in significant new hires from outside the FCA, including a new Director, Digital and Intelligence, Chief Information Officer, Chief People Officer, Director of Environmental, Social and Governance and shortly a new Director of Communications. These new appointments bring a wealth of external operational, technological and commercial experience and this is balanced with the internal capability and institutional memory of longstanding FCA colleagues. I hope to continue to build an increasingly diverse team in the coming months and years.

2. We accept that a degree of shared responsibility is desirable and necessary in an organisation such as the Financial Conduct Authority. However, it is not readily justifiable for the FCA to require the firms that it regulates to adhere to the principles of the Senior Managers Regime but seemingly not to apply similar principles internally when there are failings of practice and culture in the organisation. The FCA Board should reflect on whether it has, in this case, met the standards which it seeks to impose upon others. We believe that there are doubts as to whether it has. (Paragraph 48)

3. We recognise that the demands of some of these senior executive positions at the Financial Conduct Authority are heavy, and that individual accountability for organisational failings may deter strong candidates from applying for them. But an over-reliance on collective responsibility may deny visible accountability and could lessen confidence in the

organisation as a result. We are not wholly persuaded that the balance struck by the FCA on this occasion has strengthened its standing in the eyes of those it regulates or the wider public. (Paragraph 49)

The Senior Managers Regime, which focuses on the most senior individuals who perform key roles, aims to reduce harm to consumers and strengthen market integrity by making individuals more accountable for their conduct. By driving greater clarity about who is accountable for what, the regime minimises the potential for overlaps and underlaps in accountability. Furthermore, the regime has been designed so that individual accountability does not cut across or undermine the collective decision-making of an organisation's governing body.

Although the FCA is not within the scope of the Senior Managers Regime, we have adopted and applied the principles of the Regime to our senior managers, as we expect those individuals to meet standards of professional conduct as exacting as those required in regulated firms, and for those individuals to be held accountable for functions they personally direct. Since 2016 we have set out what our Senior Managers are responsible and accountable for in published Statements of Responsibility,¹ and our Management Responsibilities Map sets out our management and governance arrangements, providing a collective view of the allocation of responsibilities across the FCA.

As our public Management Responsibilities Map makes clear, the CEO is accountable for the organisation overall, and the Executive Directors are accountable for the performance of their divisions. Under the Senior Managers Regime, establishing who is accountable is a first step in considering their conduct.

The next step is to consider whether there is evidence of personal culpability on the part of that individual. Personal culpability arises if the individual's behaviour was deliberate or below the standard which would be reasonable in all the circumstances at the time of the conduct concerned. It is important to note that there is no assumption of guilt or reverse burden of proof in this process. So in the context of Dame Elizabeth's Report, the next step for the Board was to assess the reasonableness of the actions that named individuals took in light of all the circumstances, taking into account the steps they took to make improvements, as well as the overall scope of their responsibilities, the challenges they faced in those other responsibilities and the priorities set by the Board. In its consideration of these factors, the Board concluded that the named individuals did identify problems in the approach of supervising small firms; that they put in place an extensive programme to address these problems; that their responsibilities were very wide in scope; and that their priorities within those wider responsibilities were endorsed by the Board. There were no findings of personal culpability or misconduct in this case.

In taking account of all the circumstances of this case, which include the responsibilities of other senior managers for areas which contributed to the overall outcomes, which the Board was able to consider more broadly than the Independent Review, the Board took the view that it was appropriate to remove bonuses from the individuals named and also from others and that this was consistent with our guidance on the Senior Managers Regime.

We note that it is a matter of public record there have been a number of very significant control failings in major financial services firms. These have resulted, in accordance

1 [Senior Managers Regime, Financial Conduct Authority, published July 2021](#)

with the Senior Managers Regime, in adjustments to variable remuneration of the senior managers with the relevant responsibilities. However, on the basis that there was no personal culpability or misconduct, these have often not resulted in either the cancellation of all variable remuneration for the periods in question or the termination of employment of the individuals concerned.

Culture at the FCA

4. We welcome the FCA's ongoing transformation programme which has cultural change as one of its priorities. We however note that the FCA has undergone numerous structural and operational changes since its inception, with more changes expected as part of the ongoing transformation. We recognise that culture change takes time but recommend that the FCA Board sets itself an end date for the transformation programme and that it creates milestones at which improvements and evidence of changes in culture can be reviewed. These milestones and reviews should be put into the public domain. At the completion of the transformation programme, the FCA should ensure it has in place measures that will ensure that its improved culture is maintained and embedded. (Paragraph 64)

Charles Randell and I are committed to ensuring the FCA implements all nine of the recommendations from Dame Elizabeth's report,² and the FCA Board and the Chairs of its Audit and Risk Committees provide independent oversight of this work.

As Charles' letter³ to the Economic Secretary to the Treasury set out, we aim to have completed the measures required to meet Dame Elizabeth's recommendations by the end of the year, and we remain on course to do so. On 15 July, we published a detailed update⁴ on progress in implementing the recommendations to date.

Beyond this update, Charles also explained that implementing the recommendations would deliver only some of the transformation that the FCA's Board and I view as necessary to ensure the FCA regulates firms in a more agile, more targeted and more effective way. Our Business Plan for 2021/22⁵ lays out the need for, and extent of, our ambition to become a regulator which:

- Sets the bar high to support market integrity and sustainable innovation
- Guards entry to markets by having a more robust gateway for new firms, so firms have high standards at the start and maintain them as they grow
- Finds issues and harm faster through use of all available intelligence, supported by investment in new technology and approaches
- Tackles misconduct to maintain trust and integrity
- Enables consumers to make informed financial decisions
- Is more proactive at the boundaries of the perimeter
- Works with other organisations so we achieve more

² [Letter from the FCA Chief Executive to the Chair of the Treasury Committee, 11 May 2021](#)

³ [Letter from the FCA Chair to the Economic Secretary to the Treasury, 16 April 2021](#)

⁴ [Implementing the recommendations from the Independent Reviews - update, Financial Conduct Authority, published 15 July 2021](#)

⁵ [Business Plan 2021/22, Financial Conduct Authority, published 14 July 2021](#)

Alongside changes to processes and systems, our Transformation programme is also about investing in our people and reshaping our culture. To achieve our best, we need to create an environment where we are ready to respond rapidly to challenges and are empowered to act.

I welcome the Committee’s recognition that a transformation of such scale will take time. I expect that comprehensively and sustainably delivering the cultural change necessary to realise the goals I set out above will take up to three years. Throughout this period, as our work in response to Dame Elizabeth’s recommendations illustrates, we are prioritising the implementation of key initiatives at pace. What I will set out here is how we will translate those initiatives into lasting improvements in our culture.

The FCA Board has set six cultural objectives for our organisation, and we will define the measures by which we will assess ourselves against them. These objectives are central to becoming the regulator we need to be, and each delivered or planned milestone of our Transformation programme marks progress in service of them. For example:

- **Being more outcome-driven:** We have introduced a new process for assessing and managing the performance of our people, focusing on developing talent and raising standards across the FCA. The performance goals I have set my leadership team, and which cascade throughout the organisation, place greater emphasis on measurable outcomes.
- **A more diverse, flexible and inclusive workforce:** We will continue to publish our progress against our D&I targets⁶ and—in seeking to represent the society we serve more fully—will establish presence in Belfast and Cardiff by the end of the year, double our headcount in Edinburgh over the next two years, and are also exploring opening an office in Leeds. We expect to make substantive progress on the latter by the end of 2022. We have previously set targets for gender and ethnicity for our senior leadership; we are now also setting targets for our manager, technical specialist and senior associate grades. Additionally, we announced our intention to operate a ‘hybrid’ of home- and office-working, with trials underway to test how this can be most effectively implemented.
- **Joint working and collaboration:** I have previously set out to the Committee the bringing together of our supervisory and policy-making teams, and with new members of the leadership team now in place,⁷ these new divisions are now fully operational. But beyond sharing inputs and opinions, collaboration also entails re-deploying resources and spreading workload effectively with mobility between teams. Later this year, we will carry out a formal employee consultation on measures to simplify our employee pay and grading structure in order to support this mobility within a high-performance culture. Our Business Plan for 2021/22 also highlights the importance of working with partner organisations, and that very few of the issues we face can be dealt with by one agency alone. The most harmful behaviour, like fraud, often occurs across jurisdictions and sectors beyond financial services. We will continue to work with partners so we have a greater impact in disrupting misconduct.

6 [Diversity: Annual report 2019/20, Financial Conduct Authority](#)

7 [The Financial Conduct Authority makes senior appointments to drive its transformation, published 25 February 2021](#)

- **Being more information- and data-led:** One of the first decisions I took was to put more resources into our data and technological capabilities—£120 million over the next 3 years, with further investments anticipated. At our hearing, Charles and I explained the technology investment we are making to migrate from our current data centre to a more scalable cloud-based platform by the end of this year—becoming one of the first regulators in the world to move to the cloud. Alongside this, we have recently completed the migration of all firms to our new digital reporting platform, RegData,⁸ which represents a key milestone in enabling more efficient and effective data collection. Over the next five years, we will become a data regulator as much as a financial one. This should enable us to scale our operations and share intelligence more easily within the FCA and with our partners across responsibilities and jurisdictions.
- **Consistent, end-to-end decision making:** We have opened a consultation⁹ on introducing changes to our formal decision-making processes, which would allow us to more quickly cancel or vary the permissions of firms who appear to no longer be carrying out regulated activities. This forms part of part of a wider review of our governance arrangements, which is looking at whether the ways we intervene can be streamlined, allowing us to take more decisive action, particularly to prevent entry or allow removal of those unable or unwilling to meet our standards. We are also consulting¹⁰ on proposals to streamline decisions about authorisation and specific supervisory and enforcement actions. We propose to change the balance of decisions taken by the FCA Executive and our Regulatory Decisions Committee. We expect to intervene in real-time more often to prevent harm to consumers and market integrity, including, if necessary, turning down more applications for authorisation. This will strengthen our regulatory system and, over time, reduce the overall regulatory costs of dealing with firms and individuals that fail to meet our standards.
- **Accountability and empowerment at all levels of our organisation:** Clearer accountability sits at the heart of the structure of the new leadership team I have assembled, and the performance goals I set them. The review of our governance arrangements will also look at how their accountabilities are discharged, and the capabilities of the teams under them, in such a way as the right decisions are made at the right levels of the organisation.

Save for those changes set out previously in writing or at our hearing, these examples have each been announced or delivered since my last update to the Committee in May. During the course of its delivery, the Transformation programme will continue to receive appropriate assurance, testing and oversight. My team and I report on its progress to the FCA Board on at least a monthly basis. I will provide the Committee with a further update on our progress in preparation for our next regular accountability hearing.

5. The FCA should ensure that it keeps its contact centre policies and training up to date to ensure clarity and consistency, not just in relation to firms such as LCF but to the wider organisation. (Paragraph 76)

8 [All reporting firms moved to FCA's new data collection platform RegData, Financial Conduct Authority, published 19 May 2021](#)

9 [Quarterly Consultation, No 32, Financial Conduct Authority, published June 2021](#)

10 [Issuing statutory notices—a new approach to decision makers, Financial Conduct Authority, published July 2021](#)

We have reviewed our processes and systems for our Supervision Hub to ensure that our policies and training programmes are up-to-date. The training review and sign-off processes in the Supervision Hub have been reviewed and strengthened to ensure the training materials are aligned with the wider organisation. We will continue to regularly review these policies and training.

All of our supervisors have attended a briefing session to reiterate our position regarding regulated firms that carry out unregulated or unauthorised activity. This is to ensure that we do not reassure consumers inappropriately. Our policies and induction training programmes have also been reviewed to ensure that they clearly articulate our position.

The regulatory perimeter and the scope of the FCA's remit

6. The “halo effect” appears to be inevitable as long as authorised firms also carry out unregulated activities. We reiterate the recommendation made by our predecessors that the FCA should ensure that it requires authorised firms to make clear explicitly the risks to customers associated with their unregulated activities. (Paragraph 93)

We agree with the Committee that it is important to do as much as we can to ensure consumers are aware of the risks associated with unregulated activities and are able to make informed judgements.

Our rules and expectations

Firms must consider the information needs of customers and communicate with them in a way which is clear, fair and not misleading. This includes ensuring that the information they give retail customers about investments is accurate and does not emphasise potential benefits without also giving a fair and prominent indication of the risks.

Under existing FCA rules, the use of our logo by firms is generally prohibited. Firms also have a duty not to imply that they are authorised, regulated or supervised for something for which they are not. In addition, a firm needs to ensure that any financial promotion which names the FCA (or PRA) as its regulator makes clear that any unregulated matters are clearly identified as such. We will continue to consider whether further rule changes are required in order to prevent consumers from getting a misleading impression about the regulatory protections from which they benefit. This will be informed by the responses we receive to the questions about risk warnings in our Discussion Paper¹¹ ‘*Strengthening our financial promotion rules for high-risk investments and for firms approving financial promotions*’. We set out more detail on our interventions in relation to financial promotions in our response to recommendation 16 below.

Consumer engagement and understanding

We are also enhancing our approach to consumer engagement. This includes working with our regulatory partners (FSCS, the Ombudsman Service, MaPS and TPR) to help clarify and define our respective roles with consumers; collaborating more effectively to make it easier to engage with us; and in particular, looking at how best to help consumers understand protections. We are undertaking research and consumer journey mapping to inform our communications. To date, the FSCS has launched a protection checker tool¹²

11 [DP 21/1: Strengthening our financial promotion rules for high-risk investments and firms approving financial promotions, Financial Conduct Authority, published 29 April 2021](#)

12 [Check if you can claim, Financial Services Compensation Scheme](#)

on its website, and we link to the FSCS from our website. Firms have a clear responsibility too—we have a warning banner on the Financial Services Register about unregulated activities, which appears at the top of every firm’s record, putting the onus on firms to clarify in writing whether protections will apply.

Our research will help us to better understand consumers’ awareness and expectations of financial regulation and protections, and how these influence their behaviour when using financial services. We will develop better insight into how consumers respond to, and how their behaviour is influenced by, statements that a firm is “authorised and regulated” and references to protections such as those afforded by the FSCS and Ombudsman Service. We will also explore consumers’ views on the information they receive from firms, which have a responsibility to make it clear to consumers whether activities are regulated or not.

This research will inform our approach to consumer engagement and information, and we will apply insights from it into our work on the new Consumer Duty¹³ which we are consulting on.

In our business plan this year, we have said we will:

- Improve the information that we publish for consumers. This will include clearer explanations of what it means for a firm to state that it is ‘authorised and regulated by the FCA’ and where regulatory protections may or may not apply. We will also explain why we are making rule changes and what they mean for consumers as they happen.
- Use proactive communications to improve consumers’ understanding of risk. This year, we will launch a new multi-year Investment Harms campaign. We will target new, less experienced investors tempted into taking higher risks than they realise when investing online.
- Publish more data about firms to help inform consumers and influence firms’ conduct. This will include regulatory data that we have not shared before, and Financial Ombudsman Service complaint and uphold rates.

Our work to tackle consumer harm

We are also taking action to address some of the challenges caused by the ‘halo effect’ that Dame Elizabeth highlighted in her report. Under our “Use it or Lose it” exercise announced in December last year, we will act to remove permissions for regulated activities that appear to us as not being actively used, and where the FCA considers out-of-date permissions may cause harm to consumers.

Our “Use it or Lose it” exercise is identifying and contacting firms that are not conducting regulated activity, asking those firms to verify their position, and, where appropriate, to apply to cancel unused permissions. Firms that do not cooperate will be subject to enforcement action, which may result in their permissions being cancelled by using the FCA’s own-initiative powers. These outcomes will be published.

In addition, we have introduced a new holistic approach to higher-risk firms that are applying for FCA authorisation. This will include a more detailed review of unregulated

activity that is financial in nature (and could lead to consumer confusion as to whether products are regulated or not), a more detailed review of financial information, and a more detailed check for indicators of fraud. Where we identify concerns with any of these areas, we will take a more assertive approach and either encourage the firm to withdraw and improve their application (where we consider the firm is not ready, willing or organised) or look to proceed to a refusal decision where we have more significant concerns. A new framework has been created for assessing these areas, and more training for case officers will be rolled out over the summer.

7. In future, the FCA should set out in its annual perimeter report how its supervisory strategies and policies reflect the activities of authorised firms both within and outside the perimeter. (Paragraph 94)

Our annual perimeter report, that we first published in 2019, seeks to provide greater clarity to stakeholders on the FCA's role, and to set out specific issues that have arisen around our perimeter. We will take this feedback from the Committee into consideration when drafting our next annual perimeter report, which we plan to publish in Autumn 2021. As you know, the Government has also agreed to jointly assess the state of the perimeter each year via a meeting between our Chief Executive and the Economic Secretary to Treasury, to discuss the report's contents. This is in addition to our regular engagement with the Treasury on perimeter issues.

8. We therefore reiterate a recommendation made by a previous Treasury Committee, that the FCA be given the formal power and remit to be able to recommend formally to the Treasury changes to the perimeter of regulation, where that would enhance its ability to meet its objectives, in particular to prevent consumer harm. The FCA should set out any costs, both to firms and consumers. It would then be for the Treasury to consider such a recommendation promptly. All such recommendations and Treasury responses should be publicly disclosed. (Paragraph 97)

Our current approach is to act to mitigate consumer harm by making recommendations to HM Treasury to change or adapt relevant legislation setting the perimeter of regulation. We have also worked with HM Treasury to provide more transparency around the process by which we address harms emerging outside our perimeter. HM Treasury published the minutes¹⁴ of the first of the annual meetings between the CEO of the FCA and the Economic Secretary to the Treasury earlier this year.

Any changes to our formal powers and remit are a matter for Government and Parliament to consider. We note that FSMA requires that we conduct a cost benefit analysis on proposed rules.

9. Any changes to the perimeter must be matched with appropriate changes in the FCA's resources, and the FCA should republish its priorities. The Treasury should publish a policy statement on how it will analyse changes to the FCA's perimeter and what factors it will take into account. (Paragraph 105)

To ensure we deliver on our objectives and in the public interest, we focus our resources on those markets where we see the most potential for harm. Changes in the range of

¹⁴ [HM Treasury and Financial Conduct Authority Regulatory Perimeter Meeting January 2021, published 25 February 2021](#)

financial products available mean the sources of harm are constantly evolving. Where changes are made to the perimeter, we take these into account as part of our ongoing planning of work.

Our annual Business Plan sets out our key priorities and planned activities. It also sets out the cost of the resources we need to carry out our work. We consult annually on regulatory fees and levies to ensure that we are distributing costs appropriately across the sector.

10. The FCA should develop a strategy for how it will approach fraud risks that are outside the perimeter of regulation but involve authorised firms. That strategy should be set out in the next perimeter report. (Paragraph 123)

Tackling more effectively the issue of fraud risks that are outside the perimeter of regulation but involve authorised firms will be a key aspect of the FCA's surveillance, triage and interventions work as it evolves, as well as the work to develop our approach to assessing financial information at the gateway. In pursuit of the same goal, we are also taking steps to improve our partnerships with government and law enforcement. We will publish details of this strategic work in the perimeter report.

The success of this strategic work will depend upon the extent to which, at a national level, tackling fraud is a collective effort. As alluded to in the response to recommendation 11 below, we need law enforcement partners to step in and step up. They have the necessary jurisdiction, and need to be supported with adequate resources if we are to work effectively together.

11. There may be scope for the Government to consider whether the FCA should be given more powers to enable it to investigate fraud and financial crime. We will continue to consider this as part of our Economic Crime inquiry. (Paragraph 125)

We appreciate that these are difficult issues. With police forces now spending less than 1% of its resources on fraud investigations when, according to Action Fraud, fraud accounts for 1 in 3 crimes, we can understand the desire to look to regulators for a greater contribution. There are, of course, no easy answers. For instance, reconfiguring the FCA to prosecute serious and/or volume frauds would involve major up-front investment and significant time to operationalise, and would require an ongoing source of funding. Such reconfiguration may also lead to a wider rebalancing of resources, in the form of causing the FCA to devote additional resource to prosecuting wrongdoing, some of which may have limited direct relevance to our role as regulator of the financial services industry, when those resources could have greater impact through prioritising measures which protect consumers of financial services, and prevent fraud by authorised firms.

We value the work of the Committee through its Economic Crime inquiry, and will respond to the final report. In the meantime, to the extent it may assist, the Committee will be aware that Mark Steward explained the limitations on the FCA's investigation and prosecution powers in respect of fraud offences in his letter to the Chair dated 14 July 2021.

12. In light of the recent failings of several mini-bond issuers and the nature of the existing regulatory arrangements, the Treasury should proceed with its analysis as soon as the consultation on the regulation of non-transferable debt securities closes, and it should aim to publish the outcome by the end of September 2021. In publishing its response, it should also publish a way forward that can be implemented rapidly. (Paragraph 139)

As of 1 January 2020, we brought in a temporary ban on the mass marketing of Speculative Illiquid Securities (SIS), including speculative mini-bonds, to retail investors. In January 2021 we made the temporary ban permanent. Following the ban, the Non-Transferable Debt Securities market has declined significantly, as described in the research paper by London Economics for HM Treasury. We believe that in order for further interventions in this market to be effective, it is important to consider the interaction with wider changes being considered to how securities can be offered and distributed to retail investors, in particular, changes to the Prospectus Regulation that HM Treasury is now consulting on¹⁵ following the UK Listing Review by Lord Hill.

Consumer responsibility and compensation

13. The FCA should consider how it can improve its customer information so as to help equip customers with the ability to deal with the important financial decisions that they will have to take, and the risks that are attached to those decisions. (Paragraph 145)

Through our ongoing work in the consumer investments mass market, we want to improve the support available from firms to consumers, so that they are better equipped to make financial decisions. The ‘Evaluation of the impact of the Retail Distribution Review (RDR) and the Financial Advice Market Review (FAMR)’¹⁶ found that consumers generally do not seek or receive the help that would equip them to make better investment decisions, and many are holding their investible assets in cash rather than investing them.

We want to see a market where there is a greater variety in services that can better meet consumers’ need for support, including more tailored guidance services. We are currently working with stakeholders to understand how we can best address regulatory barriers to help the market develop these services, and guide consumers towards making better investment decisions. This intervention could also help to guide and support consumers towards suitable products and away from inappropriate high-risk investments that do not meet their needs. This work includes ongoing engagement with MaPS, which is responsible for ensuring that consumers have access to the information they need to make effective financial decisions over their lifetime.

14. We note that there are other ongoing discussions and channels by which LCF bondholders can seek compensation, such as through the FCA complaints scheme and through LCF administrators. The Treasury and the FCA should ensure that these discussions and channels are coordinated to the best extent possible, in order to prevent any detriment to customers. The Government should ensure that it is satisfied that the FCA’s complaint scheme is working appropriately. In our work scrutinising the FCA, we will consider the results of the ongoing consultation on the regulators’ complaints scheme. (Paragraph 159)

We will continue to coordinate with the Treasury on our respective communications with bondholders. The administrators also play an important role and will need to work closely with the FSCS given the Government’s plans for FSCS to administer the LCF Compensation Scheme; this will help to ensure a coordinated approach for LCF bondholders. We will continue to ensure that anyone contacting the FCA about the government’s LCF

¹⁵ [UK Prospectus Regime: a consultation, HM Treasury, published 1 July 2021](#)

¹⁶ [Evaluation of the impact of the Retail Distribution Review and the Financial Advice Market Review, Financial Conduct Authority, published December 2020](#)

Compensation Scheme is pointed to the relevant available information and the FSCS where appropriate. We will continue to work with Treasury once the government’s scheme is fully operational to ensure bondholders can contact the relevant organisation.

As set out on 29 June,¹⁷ we, along with the PRA, intend to conclude the Complaints Scheme Consultation by the end of the year, and will take into account the views of the Committee and other interested parties.

15. The FCA should provide us with an update on its resolution of LCF complaints by 30 September 2021. (Paragraph 160)

In accordance with the Complaints Scheme, all LCF complaints are being considered individually. We will provide an update to the Committee by 30 September 2021 on the FCA’s resolution of the LCF complaints. As at 23 August 2021, we had responded to 98% of the 1,106 complainants.

Financial promotions

16. We welcome the steps taken by the FCA to change its approach to financial promotions, as well as introducing the “use it or lose it” programme. In future, the FCA should be more interventionist and should make more frequent use of its powers rather than maintaining a culture of risk aversion. (Paragraph 173)

In September 2019, we established our Joint Supervision and Enforcement Team to develop and deliver the supervisory strategy for non-standard investments. From 2020, the team has taken forward or referred for further assessment over 800 non-standard investment financial promotions cases.

Since October 2019 we have used the full suite of our powers more assertively to intervene to stop non-compliant financial promotions and marketing. We have used formal powers to impose 10 own initiative requirements and agreed 16 additional voluntary requirements to restrict marketing and financial promotions activity as well as using the section 137 banning power three times. Section 137 gives us the power under FSMA to get a financial promotion or advert withdrawn if it is misleading or prevent it from being used in the first place. In addition, since introducing our Repeat Breacher protocol in January 2021 we have intervened in 14 Repeat Breacher cases. In order to achieve swift outcomes, we also engage with firms to ensure they withdraw and amend non-compliant financial promotions. In the first two quarters of 2021, 185 promotions were withdrawn or amended in this way.

Our temporary product intervention for Speculative Illiquid Securities prohibited this category of investment, including speculative mini-bonds, from being mass-marketed to retail investors. It also improved disclosure of key risks and costs to the limited number of retail investors who were still eligible to receive promotions for Speculative Illiquid Securities under the temporary product intervention. When we made those rules permanent, we extended the restriction to certain listed bonds which are not regularly traded.

We know there is even more that we can do, both in terms of our culture and our supervisory approach. That is why we have developed a new strategy for financial promotions that has

17 [CP 20/11: Complaints against the Regulators \(The Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England\), published 20 July 2020](#)

a more data-led and proactive approach to surveillance, triage and intervention in relation to financial promotions and scams. In addition, the change in our internal processes to speed up decision-making in intervention cases, as highlighted in the Business Plan, will enable even greater efficiencies in disrupting harm caused by non-compliant promotions.

In 2020 we issued around 1,200 warnings to consumers, a 100% increase on 2019. We are now issuing those warnings within 24–48 hours of identifying them so the information available to consumers and firms is up-to-date. Our target is that 90–95% of warnings will now be issued within 24–48 hours.

17. The Treasury should—as a matter of priority—re-evaluate the Financial Promotion Order exemptions to determine their appropriateness and consider what changes need to be made to protect consumers. (Paragraph 180)

We share the Committee’s concern about the appropriateness of the Financial Promotion Order exemptions for high-net-worth and sophisticated investors. As discussed during our evidence session, we believe the exemptions are a significant vulnerability in the financial promotion regime. Indeed, we have seen evidence that strengthening our rules has resulted in more firms using the exemptions to market high-risk investments to consumers who have limited funds to meet their retirement and care costs, but qualify as high-net-worth under the existing exemptions, or can be persuaded to certify themselves as sophisticated. For example, following our ban on the mass marketing of Speculative Illiquid Securities, the number of websites we proactively monitor that had an authorised firm approve the financial promotion fell from 20% to ~0%. The vast majority of this change was due to increased use of the exemptions. We have also seen the exemptions being exploited by bad actors to target ordinary consumers with inappropriate high-risk investments or scams.

Leaving this aspect of the legislation unchanged will continue to result in significant consumer harm that the FCA is unable to mitigate. We believe both the ability to self-certify qualification for the exemptions, as well as the relevant thresholds that apply, need to be addressed. As the exemptions are set in legislation, any changes are a matter for Government and Parliament.

18. We recommend that the Government should include measures to address fraud via online advertising in the Online Safety Bill, in the interests of preventing further harm to customers being offered fraudulent financial products. (Paragraph 192)

19. Pending any legislative changes, the FCA should continue to work with online platforms such as Google to remove misleading and fraudulent adverts as quickly as possible, to protect customers from scams. (Paragraph 193)

We have consistently worked to notify Google and other online search and social media platforms of unauthorised and misleading or scam adverts we identify in order that they can be taken down, as well as including details of firms or individuals placing those adverts on the FCA warning list. We have also engaged with those platforms to encourage them to put in place adequate systems and controls to prevent such paid-for adverts appearing at all, and to identify and remove any adverts that appear organically.

Following our engagement, Google recently announced that from 6 September, firms advertising financial services on its platforms will be required to show that they are

authorised by the FCA. We welcome all steps which protect consumers from scams and recognise that this is a positive move from Google. We will review the detail and will assess the outcome of Google's decision once these changes take effect.

It is important that all social media firms ensure that financial promotions using their services comply with UK law, and we expect all social media firms to ensure they are in compliance. We are looking at the operations of the major online platforms to determine whether they are compliant. Where they are not, we will take action to ensure that financial promotions on these platforms are lawfully communicated.

While this is an important step from Google, we think a permanent and consistent solution requires legislation. We continue to believe the best way to protect consumers from illegal online scams is for financial harm to be included as an online harm in the government's proposed Online Safety Bill. We believe these provisions should include online advertising (responsible for the majority of fraudulent activity) as well as user-generated content. We welcome the Committee's recommendation on this issue.

I trust the Committee finds this response helpful, and I thank you again for your scrutiny of our work.

Nikhil Rathi

Chief Executive

24 August 2021