HOUSE OF LORDS

Financial Services Regulation Committee

Uncorrected oral evidence: The FCA and PRA's secondary competitiveness and growth objective

Wednesday 20 November 2024

11.45 am

Watch the meeting

Members present: Lord Forsyth of Drumlean (The Chair); Baroness Donaghy; Lord Eatwell; Lord Grabiner; Lord Hill of Oareford; Lord Lilley; Baroness Noakes; Lord Sharkey; Lord Smith of Kelvin; Lord Vaux of Harrowden.

Evidence Session No. 18 Heard in Public Questions 227 - 231

Witnesses

I: Anthony Coombs, Chair, S&U plc; Stephen Haddrill, Director General, Finance & Leasing Association (FLA).

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Examination of witnesses

Anthony Coombs and Stephen Haddrill.

Q227 **The Chair:** Welcome, Anthony Coombs and Stephen Haddrill. Does either of you wish to make an opening statement of some kind?

Stephen Haddrill: Probably we both do. Do you mind if I start? I am the director-general of the Finance & Leasing Association.

Perhaps I could just start with a few facts about our membership. New lending last year was £153 billion to the consumer and business finance markets. Of that, £40 billion was in business finance, principally asset finance, and that brought the total outstanding lending up to £90 billion, while £113 billion was in the shape of consumer finance, of which £40 billion was in the car finance market.

That lending comes from three broad sources. First, we have a number of banks in membership and obviously the deposit base is a support for that lending. Secondly, we have a significant number of the captive finance arms of car manufacturing companies, but also other major manufacturing companies, such as Siemens. A lot of their funding ultimately comes from their home country, particularly in the car industry. Thirdly, we have a number of members that are now designated as non-bank lenders. They are funded by a range of sources. Some of it is from deposits that come down from the banks; some of it is from private equity, a lot of which comes from abroad, particularly from the United States.

We feel that the regulatory regime at the moment is not conducive to lending in a number of respects, and that that is damaging to investment. Investment requires a number of things. It requires there to be as much certainty as possible, and as little complexity as possible, in the regulatory regime. I do not think that we have that. We have a surfeit of complexity. If you look at consumer lending, we have a consumer duty that has just been brought in on top of a rulebook that is voluminous in the extreme. That is in addition to a Consumer Credit Act that has been around since the early 1970s. We also have the courts interpreting all that.

The lack of certainty is exemplified by what we have seen around motor finance in the last few weeks, in particular the inconsistency between the law and regulation. We have had a regulator look at how commissions should be handled in the car finance market. It looked at that over a considerable period. It took the view that commissions did not need to be disclosed and said that that was its view because it did not see any significant harm in the way the industry was moving about in relation to disclosure.

The Court of Appeal, however, three weeks ago, said that there is harm and that there should be compensation paid. It said that the dealerships, the intermediaries, owe a fiduciary duty to their customers. A fiduciary

duty is what a lawyer owes to their client. No car dealer really thinks that that is quite how the relationship works. That is a major change in the law and an example of how certainty has not come about. The regulatory regime has not recognised what the Court of Appeals says the law is, so we are operating in an uncertain environment.

On top of all that, we have the claims management companies, which have emerged in this country to exploit these differences, these nuances, in regulation and in the law. It is really a huge business for them. We have tens of thousands of cases being brought to our members in great wadges. There is a huge cost in terms of handling them, a huge potential cost in terms of compensation, and all this creates great anxiety for potential funders of our industries. Some 50% of the litigation funding in Europe flows into the UK, and it is because of some of the problems in our regulatory and legal system that we are a magnet for that in particular.

What do we need? We need a reform of the Consumer Credit Act. We need a reform of the relationship between the ombudsman and the FCA. We need the FCA to be more empowered in that regard. We need a sensible statute of limitation so that investors are not concerned about compensation being paid going back 20-plus years. We need this Court of Appeal judgment looked at by the Supreme Court. If those things go in the right direction, we will see more funding coming into the market, and we will see some things that have been really rather bad being reversed.

The one I particularly want to mention is that we have had a 30% reduction in lending to the less well off, the non-prime sector. Those people particularly need credit to manage the course of their lives, and they have been seriously disadvantaged as a result of that. Since 2019, when the responsible lending regulations came in, instead of turning down some 60% of applications from that sector of the population, firms have been turning down about 80%. Some of those definitely should have been turned down—I accept that entirely—but I think it has gone too far and needs to be reversed. That is a good example of the impact of this.

My other example would be that, when we surveyed our business finance lending members recently, 40% of them said they would not lend to SMEs because they were in the regulated sector. That is a real damage to investment and the economy.

Anthony Coombs: First, let me say that I am here in a personal rather than representative capacity, but I have been 50 years in the financial services industry, mainly in the non-prime industry. These are people who have previously had less than perfect credit records but still want to have access to credit and want responsible credit as well. We have been in the business now since 1938.

It is my contention, being in the motor finance business as well, that the FCA is not fit for purpose, at least as far as our sector is concerned. It is

oppressive; it is deterring investment in the industry; it is inconsistent; and gradually it is smothering our section of the financial services market. There is no doubt whatever. As a result, it is reducing access to credit for 17 million to 20 million people, as we have just heard, without any great discernible customer benefit.

What the Chancellor described as the crown jewel of the British economy, the financial services sector, is being very badly damaged by regulation at the moment. Therefore, the FCA and, to a lesser extent, FOS, having created this claims culture and the compliance culture that has so stifled the industry, need very substantial reform.

The people who are involved in the FCA do not appear to have any faith whatever in the free market, in other words the ability of people to make decisions about their own affairs with a lender or a financial provider, to their mutual benefit. They do not understand that. They think that this is a zero-sum game and, if one side benefits, the other side automatically loses. This is a paranoid view of trade, which has permeated the FCA and which you see in action all the time.

As a result, the FCA operates in a way that is overweening, with detailed management, as we have just heard, in terms of "Dear CEO" letters, CONC, the consumer duty and the Consumer Credit Act. All these things flood out of the FCA almost weekly, and the industry has to try to follow guidance. Of course, the guidance is not consistent between all those areas. For instance, CONC is different from the Consumer Credit Act.

The Chair: Can you tell me what CONC is?

Stephen Haddrill: It is the FCA's handbook for consumer credit.

Anthony Coombs: For instance, that consumer credit handbook would say that it is a present to accept a payment from somebody, while the Consumer Credit Act says you have to accept a payment from a customer who willingly offers it up. We have micromanagement. We have inconsistency between the FCA and FOS. We also have inconsistency within the FCA in how it interprets these various rules. We have a principle-based regime covering things such as affordability and vulnerability. Although these are meant to be interpreted in a reasonable and proportionate way, they are not in practice.

When you add to that the prospect of retrospectivity going back 15 years, that brings in a climate of fear in industry, and I mean fear. Do not forget that there is the senior managers regime backing this up. I have had this from various executives. If you fall out with the FCA and it takes against you, it is going to impose penalties, as for instance in my own company recently. On the basis of only 10 cases, which we argued were perfectly fair and affordable, it actually imposed a VREQ, which stopped our lending for a period. That is not proportionate; that is not good communication; that is not good regulation; that is not talking to people.

When you ask the FCA for guidance, it does not give positive guidance. What it does is to tell you what is wrong and say, "Act on that". Of course, it creates a climate of fear, which is completely antipathetic to innovation. People do not want to invest in a business where not only can you not anticipate whether the investment is going to be properly put into the industry but the retrospective penalties for doing it wrong are enormous, as we are presently seeing as a result of this rather curious Court of Appeal decision on commission disclosure.

What is the result? It is that money is not going into the industry. In fact, money is coming out. An Ernst & Young report earlier this year found that £2 billion, which should have gone into this particular sector of the industry, is not there. It is imposing huge costs. You get what the *FT* called the other day a yawning investability gap between Britain and other countries, because of our regulatory regime, at least in part, in fact in major part.

You get a huge difference in valuation between companies. For instance, in the United States, the value of the S&P 500 companies in the financial services sector is about 40% more on a book value basis than the value of the FTSE 350 financial services companies in this country. Why is that? It is because of the very unreliable, inconsistent, uninvestable regulatory regime we have in this country.

Then we ask, "Why is the growth rate in the British economy so feeble?" The reason is that if you do not have investment, you do not have access to credit. If you do not have access to credit, particularly for this particular part of the population, you are not going to get economic growth, because 65% of aggregate demand is consumption. We all scratch our heads and say, "I wonder why the economy is so feeble in this country". That is the reason, because we are strangling ourselves and we do not have any faith in free enterprise.

I will just finally say this. This is a personal thing to a certain extent in terms of the kind of people who are running the FCA. Mr Rathi said the FCA wants to play its part "in supporting a thriving, attractive and competitive financial sector here in the UK". Then when you look at the kind of evidence that we have been giving recently, particularly from our part of the financial services sector, you wonder really whether Mr Rathi is inhabiting the same universe as we are, because it is certainly not the same as we are dealing with on a daily basis. It is very damaging to their interests; it is very damaging to the access to credit; and it is very damaging to the British economy.

I have a few ideas as to how this can be improved, some of which are parallel to what Stephen has just said, but I do think urgent action is needed.

Q228 **Lord Sharkey:** It is quite hard to know where to begin with the list of adjectives that you have applied to the FCA, not all of them generous.

Anthony Coombs: That is quite intentional.

Lord Sharkey: It would be helpful to try to disentangle, at least briefly, the intervention of the Court of Appeal from the underlying problems there might be in the industry, especially when it comes to the FCA's responsibility. The FCA cannot be held directly responsible for the judgment of the Court of Appeal. We know that, for example, the consumer duty has been expensive. It is now in place. The question I wanted to ask was what net benefit you think the application of the new consumer duty has actually had. We have some idea of costs in a general sense, but it would be helpful to know, in your cases, what those were and what benefits you might have seen.

There are two specific things that seem to me to be worth asking about. One is the difficulty in defining good outcomes, in the absence of any kind of guidance. Perhaps you would care to comment on that in more detail. It sounds odd, but the definition of consumer is not pinned down in the consumer duty. I wondered whether you had any comments to make on that as well.

Stephen Haddrill: Our members generally struggled with the consumer duty when it was first put forward and the consultation started. The FCA, after a bit of a pause, provided quite a lot of support and guidance before it came in. It has become more of a regulated field since that period. It created quite a lot of confusion, in particular because we had the handbook, as Anthony just referred to. This came in on top of that, in addition to the fact that there were already principles of treating customers fairly and so on, and the consumer duty is generally intended to be something of a principles-based approach.

The FCA is now consulting on whether there is duplication between the duty and the handbook. Frankly, that question should have been addressed before it was introduced rather than after. If it had been, the adoption of it in firms would have been quite a bit better.

Where did firms struggle in particular? Yes, you are right: with how to look at outcomes. All I would say about that is that it was difficult. The guidance helped, but the boards got their heads around it eventually. It provoked some difficult thinking by boards, but they did it. To one of the questions in the last session about how the FCA should go about assessing or putting metrics around outcomes, it needs to take its own medicine, in a way, and go through exactly that process of looking at its headline objectives and thinking about what the outcomes are. I am not sure that we can prescribe what that should be. It should do what it asked firms to do.

The other thing was the assessment of fair value. What does that really mean? The industry has now managed to think its way through that.

Lord Sharkey: Transparency is of course a remaining issue. The definition of transparency is one of the things that lie at the heart of the problem between the Court of Appeal judgment and the FCA rulebook. Transparency is not there defined.

Stephen Haddrill: As I said earlier, that judgment just shows that there is not and has not been clarity in the regulation about what should be made transparent. The FCA stepped back from saying it wanted commission disclosure after a three-year study in 2019. It reached the conclusion that there was no harm, so it would not ask for that to be done. There have been many in the industry who felt that it should have been done earlier, possibly going back to when it originally took over responsibility for consumer credit in 2014, as a result of which we have ended up with this judgment.

We need to be careful what you say about members of the Court of Appeal, but we are bemused by the judgment; that is all I would say. It seems to be at odds with not just the regulatory framework but the interpretation that there has been in the law before then.

Lord Grabiner: Your observations are fascinating, to me as a lawyer anyway. Can you explain about the mismatch? You say there is a mismatch between the FCA position and the Court of Appeal decision. The mismatch simply consists, as I understand it, of the fact that the Court of Appeal has decided that the commission payable to the broker was secret; it was not sufficiently disclosed. There is nothing unusual about that as a matter of legal analysis. What I do not quite understand is on what basis it would be justifiable to allow a secret commission without disclosing it to the consumer, so that the consumer loses out. To my mind, there is nothing particularly surprising about the Court of Appeal decision, but you obviously think otherwise.

Stephen Haddrill: The most surprising thing is what it said about fiduciary duty.

Lord Grabiner: Forget that, because it said that was the wrong approach. It said, "You don't have to find a fiduciary duty first in order to decide whether or not there has been a secret commission paid", so forget that. The real question, surely, is whether a secret commission was paid, in the sense that the consumer was not sufficiently aware of what was going on. That is a very basic point.

Stephen Haddrill: You cannot totally forget the fiduciary duty point, because it has a broad application across.

Lord Grabiner: We will see what the Supreme Court says.

Stephen Haddrill: We hope it addresses that point. To the secrecy point, if it is so obviously right, why did the FCA allow it to continue?

Lord Grabiner: That is my question. You have asked, if I may say so, exactly the right question. What I do not understand is how the FCA could not have concluded that this was detrimental to the position of the consumer if the broker or the dealer was entitled, in effect, to conceal the fact that there was a separate and second commission being earned here.

Stephen Haddrill: Part of the problem has been that the FCA has rather focused on one part of the industry and not looked at the totality. It has not really looked in any depth over time at what goes on in dealerships, in motor or in brokerages in other areas. Clearly, I can understand why dealers and brokers do not want to reveal their commission.

Lord Grabiner: Of course, because they are making a secret commission. What you are saying is that the FCA has failed in its proper dealing with the consumer interest in this kind of transaction.

Stephen Haddrill: It has failed. It would have been a lot better if that disclosure had been not just updated, but it was almost protecting not doing it.

Lord Grabiner: I do not want to bang on too long. If you are a consumer and, unknown to you, there is somebody making some extra commission, that is not very impressive, is it?

Anthony Coombs: To be fair, what they said was that they did not know exactly what the commission was. They were perfectly able to ask for it. In our experience, nobody ever did. It did not change their attitude as to whether the bargain was a fair one for them. They were able to, but they never did.

Interestingly, we have now changed it so that we can tell them exactly what the commission is. It has made no difference in our rates of application and acceptance. The owner of Cargiant, which is the biggest firm of its kind in Europe, has said that the acid test will be whether people now start moving away from this kind of bargain because they know exactly what the commission is, where they did not before. It is a little bit premature to say, just because they did not know the exact amount, this was an example of egregious practice in the industry.

Lord Grabiner: It is a lot more complicated than that. Surely, the short point is this: that the consumer ought to be able to see on the face of the document what commissions are being earned. That is a consumer protection point, is it not?

Anthony Coombs: Yes, if it is significant and it is going to influence their decision. For instance, in the insurance industry, brokers get income from the insurers. I know that my broker does. I have never in 20 years asked him exactly what it is because it does not make any difference to my decision on insurance. I think that goes for the vast majority of people who do car finance.

Lord Grabiner: You are a smart consumer, but you have to realise there are a lot of people out there who are not very smart and need protection, which is why this legislation is in place.

Anthony Coombs: Yes, exactly, but at the same time you come back to the proportionality point. Do not forget that we are talking about this in terms of the FCA and general regulation, the one bearing on top of the

other. We are trying to make a more proportionate set of regulation, which is more commonsensical. If we basically say, "This is one set of consumers who really can't take decisions on their own behalf unless they are very clearly controlled", in my view, that is going to freeze up the market.

Lord Grabiner: If it does, it is inconsistent with a much more obvious and basic proposition, in my view, which is that there should not be any secret commissions in these transactions.

The Chair: Is not the problem here that the court has reached a view on what the common law is and that that is in conflict with the rulebook?

Anthony Coombs: Yes, exactly, that is the point.

Stephen Haddrill: Absolutely, that is a fundamental point.

The Chair: Sorry, you were in the middle of a question.

Lord Sharkey: I have finished. I am sure that some of my colleagues will raise your relationship with the FOS later on.

Lord Eatwell: I was just going to keep this one going for a minute, if I may. As the Chairman has said, the real issue here is that you have been regulated by a rulebook. The nature of a rulebook in a principles-based system is that it should be reasonably flexible and even contestable, in the sense that one can argue with the regulator; one can get rules changed; there are consultations and all this sort of thing.

On the other side, you have the common law. The common law is expressing a very straightforward economic principle that, for an efficient market, you must have the same information on both sides of the market. If you do not have the same information, in other words if you have an inexpert consumer with an expert provider, that market will be inefficient. It is a very standard economics proposition. The common law is saying, "No, the information must be the same on both sides". Clearly, you are very unhappy with the FCA, but would you prefer regulation by the FCA or the common law?

Anthony Coombs: It is not one or the other, to be honest with you. You can have regulation by the FCA that is much more proportionate, less detailed, less hands-on and more consistent than we are getting at the moment.

Stephen Haddrill: There is a third factor, because there is statute law in there as well. We have a triangle and it pulls itself in different directions.

Lord Eatwell: Given that the rulebook is contestable, you can argue about it and you can have political representatives trying to change it or whatever—all sorts of things can happen—how do you feel that consumer credit should be regulated? Is there a specific element in FCA regulation, not in general but a specific regulation, that you feel, if changed, would improve the operation of the industry on behalf of the consumer?

Stephen Haddrill: We have asked the Government over many years to address the Consumer Credit Act, because it is out of date in a number of respects, and as part of that to redefine the relationship between statute law in that case and the role of regulation, in order to give the regulator a broader scope of responsibility, so that there is not this potential misalignment between other aspects of the law and the regulatory regime.

The other element in this, which I have referred to, is the Financial Ombudsman Service. I would like the FCA to have more authority in relation to the work of the Financial Ombudsman Service. There is a governance connection, but where the ombudsman takes a decision through an interpretation of the law, in effect, because it looks at the law more broadly than the regulation, and that calls into question the proper interpretation of the regulatory regime, there should be a process by which that can be resolved and worked through.

At the moment, what we have is an ombudsman decision that then is applied generally to all businesses affected by that. It is not a case-by-case basis; it gets generally applied. The regulation, in effect, changes from the way that the FCA has been thinking about it without any consultation, without any of the cost-benefit analysis and so on that you would get if the regulator was changing the regulation. That relationship in particular needs to be addressed.

Anthony Coombs: I would agree with that. The FCA and the FOS have to co-ordinate far better than they do at the moment. On Section 166 investigations by the FCA into companies, the costs ought to be shared by the FCA and companies, because at the moment you are given a bill of, in our case, £2 million to carry out an investigation on somebody else's behalf and there is no inhibition for the regulator, so far as that is concerned. There ought to be limitations on retrospectivity. You ought not to be able to go back. In some cases, it is a cockshy for customers: "I will see if I can get this, this and this—either get this debt wiped off or get a bit of compensation for this debt, which I took up 10 years ago". That does not seem to be either fair or proportionate and is likely to increase uncertainty within the industry.

There was a very good point made about the metrics under which the FCA looks at its role. I do not see much evidence that the FCA looks at the health of the industry generally, as opposed to its consumer protection obligations. In other words, it does not ask, "How much money is flowing into it?" Is that a measure of performance for the FCA? "Financial conduct" implies the way that the industry is managed and how successful that management is.

Lord Eatwell: I am intrigued by your notion of limitation. I wonder what the justification really is. For example, in the Post Office scandal, people went to prison for things that they did over 10 years ago. Are you saying that there is now no responsibility to those people?

Anthony Coombs: It would be proportionate to say to somebody, "If you have a genuine grievance and you feel that harm has been done to you"—by what is often a small financial transaction—"you ought to bring that grievance within a certain period". At the moment, they do not have to. I can read you what people say, just to back up my point about the cockshy. People say, "Oh, I thought I would try and get these debts wiped off or get a bit of compensation, even though I haven't had any harm. The car that I bought with this finance has actually long been sold on. It is about two or three cars ago". This becomes a way of living. Obviously, that affects people's ability to invest in the industry.

Lord Grabiner: In unfair dismissal claims, you have to make a claim within a fairly short time; otherwise, you lose your right to complain.

Anthony Coombs: Good point, yes.

Lord Grabiner: It is a civil issue, not a criminal issue.

Stephen Haddrill: Also, the compensation that the FOS awards includes within it an amount of 8% per year. If the claim goes back over a considerable period, that boosts it quite significantly.

Q229 **Lord Lilley:** I may just be following on from the previous question, because I was going to take up the offer you made at the beginning to make concrete proposals for improvement. You have perhaps begun that process. Would you like to continue it now and/or in writing later?

Anthony Coombs: I would like to do it in writing later. It ought to be the principal obligation of the FCA as to the health and competitiveness of the industry, not a secondary one. That is my start-off. That does not mean, of course, that it would not take the consumer protection one seriously. It would have to, but that ought to be a secondary one. It ought to make a statement as to its faith in the free market and that, in general and in the vast majority of cases, people are able to make a decision as to what is in their best interests, particularly in relatively simple financial transactions.

There ought to be a limit on the kind of multiple class actions that we are seeing from solicitors and from claims management companies. In our business, we get maybe 100 claims from claims management companies, only six of which, on average, are found to have any substance by the FOS, but each of those has to be fought. The onus is not on the person who is making the complaint, so the claims management company—that is looking to change, although they are doing it very slowly, because they are going to impose a fee on those claims management companies—but on the person who is being complained against: "£650, please, straightaway". That cannot be proportionate.

Stephen Haddrill: I have been a regulator for a decade and still have a non-executive regulatory role, so I have some sympathy with the FCA's challenge. The point we have been making about the potential misalignment between law and regulation is as much a problem for the regulator as it is for the industry. A regulator is bound by the role that

the Government and Parliament have given it. That is why we are having a discussion in this room about the legal framework, what the remit letters say and all that.

All that is very important, but, as was mentioned earlier, there is also the culture of the regulator. That applies particularly at a supervisory level, because most firms, particularly the smaller ones, see the regulator only through the supervisor's activity. That activity, if it is risk averse, bears on them quite seriously. The way in which the culture of the regulator is driving supervision, and whether it is sufficiently open to risk and innovation itself, needs to be looked at.

Anthony Coombs: It is incumbent on the regulator, knowing precisely what we have been talking about, the cost of compliance and the potential effects on access to credit, to be backward before going forward, if you see what I mean. In other words, we were talking about the consumer duty. Why did the consumer duty get imposed over and above all the other regulations, which it knew were not consistent with each other?

Lord Grabiner: I have just one point, because I have talked too much anyway. To pick up on a point that Mr Coombs made a few minutes ago, it is not fair at all to criticise the FCA for class action litigation, because that is a matter for the legal system, not for the FCA. It has no control over the ability of collective claimants to get together and make some claim against, for example, motor manufacturers. It is exclusively a matter of the legal system. I completely agree with your point, because this is ambulance-chasing litigation, which is extremely unattractive, except for the lawyers making money out of it. I accept that. It is an unattractive part of what is currently going on in our legal system, in my view, but it is not a matter for the FCA.

Stephen Haddrill: It is in one respect, with respect, because the FCA is responsible for regulating claims management companies that are not law firms. Law firms are regulated by the Solicitors Regulation Authority. It does have some authority in that area. I have to say, over the last two or three years, it has risen to the challenge of trying to make sure that that non-law firm part of the claims management industry has been brought to a better account than before.

Lord Grabiner: You are assuming, in saying that, that these claims are being made improperly as a matter of law, and they are not, because there is always the ability to apply to the court to have the claim struck out for various reasons, but all these claims go on. There is a multibillion claim going on at the moment from Brazil, in relation to hundreds and hundreds, if not thousands, of claimants, being conducted in the court in London. That is entirely down to the fact that our legal system permits that kind of claim to be proceeded with.

Stephen Haddrill: Yes, and over the last couple of years our industry has seen rafts of claims coming forward, sometimes 10,000 in a week or

that sort of number. On the latest estimate we saw, something like a fifth of those came forward without any proper basis at all. The customer had not been consulted by the claims management company. It had just run off a list of PPI claimants in the past and submitted it. That sort of thing should not happen.

Lord Grabiner: I am completely sympathetic. I just do not think it is the fault of the FCA.

Q230 **Baroness Noakes:** Some of the things that you cited as being difficult in your industry will require legislative change and require Parliament to intervene; for example, the Consumer Credit Act. Indeed, if there is a significant change in the relationship between the FCA and the FOS, that would require legislation. We are concentrating on the regulators themselves and the extent to which their actions can contribute to competitive growth of the UK and compliance with their secondary objective.

To what extent have you seen any changes within the FCA in relation to your industry since the competitiveness and growth objective has been introduced? What would you cite as the areas on which it would need to concentrate and the changes it could make to assist your industry to grow and to support growth in the economy?

Stephen Haddrill: That is a good question. Probably over the last year, it has put more resource and focus on its authorisations regime and speeding that up. We have, in the fintech area and so on, a need to address that, and that comes into consumer credit. It could do a bit more there—aiming at 12 months, sometimes that could be somewhat shorter—but nevertheless there has been action there.

In terms of what more it can do, I am going to sound a bit like a broken record, but it is doing some of the things that will take time to get done through legislation. The relationship between the ombudsman and the regulator can be addressed on a non-statutory footing. It is not as solid as it would be if it was on a statutory footing, but the FCA has a wider implications review process at the moment, which I do not think has a statutory basis. That needs to be turbocharged somewhat. Both the FOS and the FCA need culturally to accept that they should allow time to discuss and debate the implications of potential FOS decisions. That sort of thing, they can do.

As I said, some of the FCA's approach to supervision should be more open to giving help and guidance rather than just finger wagging, frankly. It can do that without legislation; that is a cultural change. Those are some of the areas, I would say.

Anthony Coombs: Can I just make a point? I am not a lawyer, so obviously it is not a legal point, but it is about people. The FCA is a very big tanker—5,500 people and growing. I mentioned Nikhil Rathi making a statement as to what its overall objective is, but having that percolate down to how supervisory and sometimes enforcement activity happens

with a large number of companies, which is what matters in terms of their well-being and access to credit, is very difficult. You would forgive me for being slightly sceptical as to how quickly that change of attitude is percolating down to the people doing the work on the ground.

That having been said, if the senior management in the FCA, backed up by what politicians have been saying recently, made it unequivocally clear that they wanted to be helpful—to guide; not to say what was wrong but to say what was right; to assist and promote the health of the industry, because access to credit in a responsible way is important—that would be a sea change and would be very helpful.

Lord Vaux of Harrowden: I think you were present for the previous sessions. The thing that jumped out to me is that the previous two sessions told us how wonderful the FCA was and how it was best in class. You are saying it is not fit for purpose. Why the difference, do you think, between the two different views?

Stephen Haddrill: Perhaps I should say that, around the world, the FCA is highly regarded as a regulator. In many parts of the financial services sector, I would say that was true here. However, as Anthony just said, it is a supertanker. The whole legal framework within which it operates is much more complicated than we often see with regulators overseas, and that creates difficulties and uncertainties for those it regulates.

The political environment can be more fluid over time. I was running the Financial Reporting Council through the last decade. We had a lot of political pressure to be as deregulatory as possible, until Brexit came along, then Carillion, and all of a sudden, we had to go off in the other direction. That is perhaps something that regulators are wary of in the UK. It creates a safety-first mentality. I have been critical, perhaps not quite as critical as Anthony, of the FCA, but the environment in which it operates has to be addressed as well as exactly what it is doing or not doing.

Anthony Coombs: We do not want to fight the FCA. It would be against our interests, particularly the way that things are at the moment. We want to work with it in a proportionate, consistent and predictable way. We are finding it very difficult to do that at the moment. We are at the end of a Section 166 process. We are gradually making accommodations and we are talking to them, but the value of the share has halved over the last six months. This is not a victimless problem.

Q231 **Lord Hill of Oareford:** This question follows on, really, from what Lord Vaux said. Do you have any examples of where you think the FCA is exceeding the role required of it by legislation? Clearly, a lot of our discussion is framed by politicians—what risk appetite they set, what legislative framework they put in place. Do you have any sense—and if not now then subsequently, if it is easier to write—of where the perimeter has been extended, perhaps for cultural reasons, or where the FCA has exceeded what it is required to do by statute?

Stephen Haddrill: I will think about it, but I doubt I would find somewhere where it had actually exceeded the law. It might be a little cautious sometimes about its interpretation of the law, but if it had exceeded the law, it would have been judicially reviewed at some point or another, and that has not happened.

Lord Hill of Oareford: So is it more of a cultural issue?

Stephen Haddrill: The culture and environment, as I was saying, is a big part of this.

Anthony Coombs: Faith in the market is a cultural matter.

The Chair: At several sessions, I have complained that people have not criticised the regulators. Mr Coombs, you have certainly set the balance back. Thank you very much. It has been very interesting.