HOUSE OF LORDS

Financial Services Regulation Committee

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

Wednesday 18 December 2024

11.55 am

Watch the meeting

Members present: Lord Forsyth of Drumlean (The Chair); Baroness Bowles of Berkhamsted; Baroness Donaghy; Lord Grabiner; Lord Hill of Oareford; Lord Hollick; Lord Kestenbaum; Lord Lilley; Baroness Noakes; Lord Sharkey; Lord Vaux of Harrowden.

Evidence Session No. 24 Heard in Public Questions 287 - 291

Witnesses

I: Helen Charlton, Chair, FCA Financial Services Consumer Panel; Jonathan Hewitt, Working Group Chair, FCA Financial Services Consumer Panel; Julie Hunter, Member, FCA Financial Services Consumer Panel.

Examination of witnesses

Helen Charlton, Jonathan Hewitt and Julie Hunter.

Q287 **The Chair:** Welcome to the third part of today's meeting, which is the 13th oral evidence session as part of the committee's inquiry into the FCA and PRA's secondary competitiveness and growth objective. Thank you, Ms Charlton, Mr Hewitt and Ms Hunter, for attending. Would any of you like to make an opening statement?

Helen Charlton: Yes, if I may. I am the chair of the Financial Services Consumer Panel. Thank you very much indeed for inviting us today to have the opportunity to talk about the work of the panel, especially in relation to the secondary international competitiveness and growth objective.

I wanted to give a brief introduction, if I may, to the panel. We are an independent statutory panel. We are established under the Financial Services and Markets Act 2000 and our role relates to the FCA's general duty to consult on the financial services markets. Our remit is to represent the interests of consumers, including small businesses.

I am chair of the panel, as I say. My appointment is approved by the Treasury and I have been chair of the panel now for two and a half years. There are 12 of us. Jonathan and Julie are members of the panel. We are drawn from three of the four nations. We have a range of expertise in consumer advocacy, economics, law, regulation, vulnerability, financial inclusion and financial services, because we have a very broad range of matters to deal with.

We bring, I hope, breadth and depth of experience to the role, which is to challenge and advise the FCA in relation to its consumer protection objective. It is a critical friend role and I hope we bring constructive challenge. That is certainly what I try to do as chair. We do not represent individual consumers themselves or groups, because, of course, that would encroach upon other functions and roles within the sector. It is very much about the FCA and what it does on consumer protection. Similarly, we do not have a scrutiny and accountability role. It is very much in relation to how the FCA goes about fulfilling that consumer protection objective.

I would emphasise that we are an independent statutory panel. We are all appointed by the FCA, but we are independent and, as chair, I guard that independence jealously. The FCA respects that well. That is, I hope, enough of an introduction to what we do.

The Chair: Would either of you want to add to that?

Julie Hunter: No, thank you.

The Chair: Perhaps I could start with the first question. How do you think the consumer duty is working out?

Helen Charlton: We are pleased with what we see. No one thought it was going to be easy. We were pleased that the FCA kept to the deadline of its implementation. The FCA issued its guidance back in 2022, giving firms a year to get ready for the duty in July 2023. It did a lot of podcasts, helping to bring the industry on board. On the day the duty came out, it took action in relation to savings accounts. It has recently issued a report on the first year of the annual board reports that firms have to produce. There, it has brought out good and bad practice guidance. It is doing a good job on the consumer duty.

I noted in a recent Treasury Select Committee hearing that the chair of the FCA said that the consumer duty is iterative and developing. That is probably a fair evaluation, because it is, as we were hearing just now, principles-based regulation. We are not in a position yet to say, "It is done. It is completed". The expression within the industry and the FCA is that it is not "once and done". That would be my assessment of the duty. We are seeing a focus on the duty within teams that come to us to discuss—

The Chair: In reaching that view, what engagement have you had with firms that are trying to implement it?

Helen Charlton: We have visited four firms and they have talked to us about the duty, what they have done and how they have gone about it, which has been a really useful way of having a different perspective on the duty.

The Chair: We have had evidence that people are not sure what is, for example, a good outcome for consumers. Firms have to employ very expensive outside consultants whose job it is to work out what their competitors are doing. The regulators are not clear in giving advice as to what is required for a good outcome, which results in quite intrusive involvement in what would otherwise be a principles-based regulatory system.

Helen Charlton: The FCA has given guidance. It gave a lot of help in the lead-up to the implementation of the duty. As I say, it has just given some more good and bad practice examples. Outcomes-based regulation is different and is difficult.

For example, one piece of advice/challenge I gave to the FCA recently, stepping away from financial services for a moment, was that, in the charity sector, charities have to demonstrate their fulfilment of their charitable objectives, which is often a much more outcomes-based approach. There could be some learning to be done there about how you, as a firm, approach it.

Ultimately, the consumer duty is about treating your customers fairly, in good faith, and delivering good value. That is really what the duty is about. That is the test firms should apply to themselves.

Q288 **Lord Sharkey:** I would like to ask about the use of the words "trade-off" and "balance". Many witnesses have used those phrases in their evidence to us, but the Government have clearly signalled that they want to see more sensible risk-taking in financial services.

In your foreword to the latest annual report, you say, "The FCA's primary consumer protection objective must not be diluted or weakened in pursuit of SICGO and we will continue to challenge where there is risk of or misleading reference to 'trade-off' or 'balance' between the primary consumer protection objective and SICGO". That is perfectly clear. Given that, in your view, how should the FCA advance the secondary objectives?

Helen Charlton: By the way, that position has not changed. We do that and continue to do that. The starting point is that the FCA's position has not changed in relation to its consumer protection objective, which is still there as a primary objective. As it goes about what it does, it should be very clear as to when it is bringing the secondary objective into play, demonstrating that it has fulfilled the primary objective first.

That is the principle. In practice, it is difficult, but that is the principle that we feel the FCA should be applying as it pursues the secondary objective.

Lord Sharkey: How do you inform yourselves about whether the FCA is doing what you have just suggested?

Helen Charlton: We challenge it when it comes to us and we say, "If this is what you are proposing to do, where is consumer protection? This is what we think you should be doing in relation to consumers. This is where the risk of harm to consumers lies and that is what you should be protecting".

Maybe now is a good moment to explain how our engagement with the FCA works. We have three meetings a month with it. One is our full, plenary panel session and we have two separate work groups. One is led by Jonathan and another by another panel member. Those two work groups deal with, on the one hand, investments, insurance, later life and pensions, and, on the other, lending, banking, consumer credit and debt.

Those two work groups do a lot of the heavy lifting, I suppose, on the proposals that the FCA is pursuing. At a panel level, we will deal with cross-cutting issues, such as the consumer duty. When teams come to us with an issue or with a policy proposal that they are beginning to formulate, that is where we will be testing and pushing the consumer protection objective. They will evolve their policy. It will eventually come into the public arena through a discussion paper or a consultation proposal. Then we will formally respond. Sometimes, we are delighted that they have taken stuff on board. Other times, we continue to push the consumer protection objective. That is how we go about it.

Lord Sharkey: We ask almost all our witnesses to provide us with concrete examples of answers to our questions. I wonder whether you can provide an example or several examples of what and where the available headroom is to promote the secondary objective, without either trade-offs or balance being brought into the question.

Helen Charlton: I would have to come back and think about some specific examples. I noticed that the chief executive, in the evidence that he gave to the Treasury Select Committee recently, talked about the primary and secondary objectives. He confirmed that the primary objective was a primary objective and he talked about there being a distance between them, which was an interesting way of putting it.

A lot of this will play out in practice and that is where the consumer protection role and the role of the panel is extremely important, because of the imbalance between the consumer stakeholder input and the industry input, simply because of the relative strengths of the consumer versus the industry, in terms of stakeholder engagement and input.

Q289 **Lord Vaux of Harrowden:** You have mentioned consumer protection and the consumer protection objective several times. I would just like to understand what you mean by that. Consumer protection can be protecting them from any form of loss. By doing that, you can actually reduce or remove opportunities to invest and to make returns and gains. How does that work?

Helen Charlton: I might hand over to Jonathan in a second on consumer responsibility, but the Financial Services and Markets Act does recognise that consumers have to take responsibility for their own decisions. They are not protected completely, and we are not suggesting they should be protected against all risk, because there is a responsibility on them. I think I will hand over to Jonathan now.

Jonathan Hewitt: Your question seems to lean towards investments as one area here, and the FCA has a primary objective in terms of consumer protection around ensuring that the sales and marketing process for financial products and services is clear, fair and not misleading, so the products perform in the way described. Firms have an obligation to ensure that consumers understand the products that they are buying, investing in or using, and the risks associated with those products. If a consumer invests in a product, the FCA’s responsibility is to make sure that that understanding is right, that the processes were right, and that, if they were given advice, the advice was appropriate based on the individual circumstances.

Whether the investment performs or not, that is not where that protection extends to. The consumer is taking a risk, I would hope a well-informed, understood and considered risk, and they should understand that risk, but there is still a risk within that product. Where the protection lies is around the way into that product and the way in which that product is managed and communicated on an ongoing basis.

Lord Vaux of Harrowden: My question is more about whether, when you are fulfilling your role in advising the FCA, you take account of the fact that removing too much risk actually removes opportunities, because the market stops providing those opportunities to the investors, and that is a consumer risk in itself.

Julie Hunter: I agree that you cannot prevent all harm. We recognise that totally. What we are trying to do is to reduce and mitigate foreseeable risks of harm. If something is obviously going to cause harm, we and other consumer stakeholders are there to flag that this is a potential risk and needs to be mitigated. We are talking about foreseeable risks of harm here and not trying to prevent all harm. I see that as our role in advocating for consumer interests.

Consumer protection is sometimes referred to a little bit in the abstract. We have to remember that "consumer" is just the economic term for "people", really. By protecting and empowering consumers, you increase confidence and trust. Consumers then participate in markets. They feel able to spend, invest and save. They feel able to take more risks, then, that are informed, calculated risks. For me, it is about having those very strong foundations there of consumer protection, so that consumers feel empowered and enabled to participate in markets, because they are the ones who actually drive growth.

Lord Vaux of Harrowden: The opposite is actually happening. People are not investing. We have incredibly low investment and saving rates in this country. People are leaving money in bank accounts, which is a consumer harm.

Helen Charlton: Jonathan may want to come in with some research. Every two to three years, the FCA conducts a very large, nationally representative research study called the Financial Lives Survey. The most recent one was back in 2022. The levels of trust in the system are low. Based on the last survey, in 2022, only 41% of UK adults have confidence in the UK financial services sector, and only 36% agreed that financial firms are honest and transparent. If consumers have low trust in financial services, they may be less willing to take risk. I think Jonathan has some research he wanted to mention.

Jonathan Hewitt: In a previous life, I performed research in exactly this area of why people save and why they do not invest, and there are a couple of points that may be helpful. As you clearly know, different consumers have different attitudes to risk, different appetite for risk and different tolerance to absorb losses, should they occur. A lot of consumers do not have just one attitude to risk. It depends on what they are saving for. If it is for their daughter's wedding, for example, they do not want to take any risks with that money. If it is for a present or a cruise when they hit 60, they may be willing to take a little more risk so they can have a better cruise.

But when talking to and, more importantly, listening to consumers who save and do not invest, they largely fall into three groups. There is the group who do not trust financial services, especially investments, and generally they know someone, a family member or friend, who has been impacted by some of the issues that have been well publicised over the last five, 10 or 20 years.

The second group actively choose not to invest. Some of them have the view that they have worked hard for their money and prefer to keep it in cash rather than risking it. Others have an ideological issue with it, such as an ethos passed down by parents and grandparents. Others, due to short-term needs, do not want to invest.

The third group generally fall into the category, "I know I should be doing something more, but I wouldn't know where to start". That is where developments around easy gateways into investing, trying to make pensions more attractive and easy to get into, default funds, and widening and making advice and guidance more acceptable, come into play.

I do not think we would recognise a limit. Various organisations say that having more than £10,000 or £15,000 in cash rather than investing may be harmful to a consumer. For consumers, that is a very personal subject as to how much they want to keep in cash and how much they do not.

Q290 **Baroness Bowles of Berkhamsted:** I was going to follow a similar theme to where we have just been. In the last session, we were told that the retail distribution review has resulted in an information gap. This has now been going on for almost a decade. How much has that information gap meant there is less confidence in investment because it has been harder to access information? People who have only £10,000 to invest are probably quite reluctant to pay a financial adviser. For heaven's sake, I have more than that to invest and I am reluctant, although I might do my own digging.

How are we going to address that information gap and give people the confidence that they can choose their investments? It goes back to what we have been talking about, consumers taking responsibility for their own decisions, but how are we going to get that information to them so that they feel capable of taking those decisions, when all they get are warnings and, on the other side, messages about where there is compensation, which steer them away from the curiosity that is necessary in order to invest?

Helen Charlton: I would point out that the Money and Pensions Service and MoneyHelper are a government-funded service that is there to provide independent, free advice to consumers. There could be much more signposting around what MaPS, as it is fondly known, could do. We make that point, for example, in our response to the Government's strategy consultation in relation to financial services.

The other area is the advice guidance boundary review, as it is known, that the FCA is currently doing, which was once described as a once-in-a-lifetime opportunity to fill that gap. I think Jonathan will speak to it, but our concern around that was that it started in the wrong place. It did not start with what support and help consumers needed, but went straight to a solution, which is now known as targeted support. A revised consultation was recently issued on that, which we will be considering. I do not know whether you want to speak to AGBR as well.

Jonathan Hewitt: Just briefly, there is a degree of an information gap, but it is a spectrum. Some of the work that the FCA has been looking at around making easy pathways into investing offers a good solution here. Once a consumer has decided they want to invest, they have to go through the process of deciding what account. A lot of consumers end up thinking about a stocks and shares ISA. Then they need to start thinking about what investments to put in it, and it can be quite a complicated process if they are doing it on their own. Pathways that have default funds, which are well defined, well managed and risk-based, so that consumers can understand whether these funds meet their risk appetite, are key. We have seen those sorts of interventions in the way pension funds are managed, where pension funds have default funds within them, etcetera, as being very useful.

The panel would recognise that there is a guidance and advice gap. Helen talks about the AGBR being a once-in-a-lifetime opportunity. I think there have been five looks at this in my lifetime alone, so it has been looked at a number of times. For us, there are degrees of guidance, and we think the current regulation would allow firms to go further in the way they guide individuals, with guidance telling consumers what they could do as opposed to advice telling them what they should do. To your point, advice absolutely needs to be accessible, affordable and given at the right time, both in terms of the consumer's life and taking out the investment, and on an ongoing basis.

To Helen's point, while we are very supportive of the advice guidance boundary review, it is a pity that it started with a couple of solutions in mind rather than going to consumers and asking them who they trust and what help they are looking for. We do not use the words "advice" or "guidance". We use the word "help", because that is what consumers are after. We recently performed research with consumers and, at the moment, one of the key places they go for help is MoneySavingExpert. Something such as MaPS could take the position of being the official money saving expert in this market.

Baroness Bowles of Berkhamsted: MaPS will not give you what is tantamount to investment advice. It will tell you about what different things are. When my husband had one pension that matured, we went along to MaPS for some advice, some of which I did not understand because, despite actually knowing how things worked, the way the advisers went into it left me completely baffled with what they were trying to say. It may have been a bad experience but, while they will tell you about how you can cash in bits of your pensions or what you might want to do, they will not say what you should be investing in or which funds are good or bad. They might tell you, as you have just told us, that you can find default-type funds and things. I do not even remember receiving that kind of information, although maybe I did not ask the question.

Say you are going to start investing on a platform. There has been a lot of focus on value for money, pushing down the cost of investing in funds and so forth. A 0.1% difference between funds is something that gets highlighted, but will consumers not be put off when they then discover that they are paying just as much again on the platform fees? If you are on a general account in Hargreaves Lansdown, you can invest in some things for free, but, as soon as you go into an ISA or a SIPP, you get the full 0.45% charge, whether it is on shares, investment trusts or whatever. All of a sudden being told that nigh on 0.5% is disappearing just for going on to a platform—they are not all that expensive—is rather off-putting. What education is there about these kinds of things and about what is fair and reasonable?

Helen Charlton: That speaks straight to the fair value point and the consumer duty. Are consumers getting fair value for the service that they are receiving?

Jonathan Hewitt: Do consumers understand the product they are buying and the terms and conditions? Is the information readily available? Are the terms transparent?

Baroness Bowles of Berkhamsted: I think things are transparent and the transparency of the cost frightens people away. Does something need to be done?

Helen Charlton: We will suggest that to the FCA when we next have a conversation with it about platforms, but that is precisely the kind of area where the FCA has the ability to challenge on fair value.

Baroness Bowles of Berkhamsted: Is that happening?

Helen Charlton: Look at what it did on savings. I would like to check this, but I think recently there was a statement by the CEO in relation to the consumer duty, what the FCA is expecting and the areas it is going to focus on for the remainder of this financial year. I think fair value was one that was mentioned. I will go back and check that and let you know.

Baroness Bowles of Berkhamsted: Does that go all the way through the chain?

Helen Charlton: Yes.

Baroness Bowles of Berkhamsted: It is very easy at the top end of things when you are in a bank or something like that, but there is a long distribution chain and they all need to have—

Helen Charlton: It was spelled out very clearly in the FCA's original July 2022 guidance that the consumer duty fair value applies throughout the distribution chain.

The Chair: I am still reeling from the idea of Baroness Bowles being baffled.

Baroness Bowles of Berkhamsted: That was because they were telling me things that I did not recognise from what I knew. That was the trouble. Sometimes oversimplification means telling you something that is not really workable and correct. I think that was probably the issue there, but such is life.

The Chair: Did you want to add something, Jonathan?

Jonathan Hewitt: I was just going to give another example, from around the time of the consumer duty. It might actually predate it, but I think it shows the thinking here. It is an insurance example. Gap insurance is insurance you can take out that, if your car is a total write-off, covers the gap between the value of the car, quite often the outstanding finance, and the amount your insurer pays. The FCA stepped in to stop sales of this insurance because, on a review, it found that only a very small percentage—I cannot remember the exact number, but I am sure it was single digit—of the premiums paid was ever paid out in claims. That was clearly a product where the FCA decided it was not offering value for money for consumers and stepped in to prevent the sales, so the market now needs to go away and look at a better-value solution to that product.

Baroness Bowles of Berkhamsted: That was because there were not enough claims against it.

Jonathan Hewitt: It was a mixture of there not being enough claims against it and the way in which the claims were paid out. The consumer duty talks about firms understanding their target market and developing the products for that target market in a way that represents value. Clearly, that product, for a number of reasons, was not doing so.

Q291 **Lord Hollick:** What metrics do you collect and use to measure the performance of the FCA in terms of, first, improving financial understanding in the community and, secondly, responding efficiently to complaints?

Helen Charlton: We do not measure the FCA's performance.

Lord Hollick: You do not.

Helen Charlton: No, that is not part of our remit. Our remit is to challenge and advise the FCA in relation to the consumer protection objective. What we are interested in are the metrics that the FCA applies to itself. I think it is, at the moment, in the course of setting metrics for its next five-year strategy, so how the FCA will measure its success in those areas. I do not know whether now is a good time to bring you in on financial inclusion and financial education. We are interested in that area and we certainly probe and test it, but we do not have metrics ourselves.

Lord Hollick: You have cited the triannual research that the FCA does.

There are annual surveys on the population generally having an understanding of financial institutions, of financial instruments and of what to do, etcetera, which, in my recollection, have shown a steady decline over the last decade or so. I could be corrected on that, but that is what my recollection is. Clearly, since 2008, the confidence that the public has in financial institutions has been shaken. What, from a consumer panel point of view, do you think the FCA should be doing to improve the understanding of the population?

Julie Hunter: I wanted to raise some issues around consumer vulnerability and financial inclusion, because when we talk about growth and investing, to me, there are four essential prerequisites. We have covered trust and confidence. We have covered knowledge, awareness and information. We have covered inclusivity a little bit, but, to me, it is about consumers' ability and capacity to invest and take risks, and how inclusive and accessible services are. We represent the interests of all consumers, so when we engage with the FCA we remind it that there is a very broad spectrum of consumer needs and abilities, and that the pillars of consumer understanding, support and fair value apply to consumers across a very broad spectrum financially in terms of earnings, income and savings.

We were talking about MaPS earlier. It did some research in 2022, which says one in six consumers, so 9 million, have nothing put away in savings, and another one in 10, so 5 million, have £100 or less in savings. When we talk with the FCA, we always try to raise awareness of the different challenges that consumers face across all the different financial products and services, of the support and information they need, and that what they are capable of doing could be very different from one person to the next. One of our key roles is raising awareness of those different needs.

Coming back to the metrics point, we would also ask the FCA to make clear to firms what it is looking for and what it wants firms to provide it in order to show that the consumer duty is working. From my perspective, it has been embedded in the FCA process, but now we need to see it delivered on the ground by firms. That means firms need to have a really good understanding and a different mindset, in a way, when thinking about the impact of what they are doing on consumers, as well as thinking about that very broad spectrum of needs and abilities.

Lord Hollick: It is clearly a busy agenda of responsibilities. To what extent is the FCA tackling it effectively and how will you measure that?

Helen Charlton: Going back to measuring, what we see of the way the FCA is tackling that is the teams who come to us with the proposals, how they evolve over time and what the end result is. I suppose that is probably the best way of referring back to the advice guidance boundary review, looking at where that is going and whether the input we have given has influenced it to take account of the consumer protection objective. These are very small steps, but they are important because they play out long term.

Yesterday, we had a team come to us in relation to a long-term project. They are at the very early stages. We had about three teams come in to talk to us about the projects that they would deliver in the long-term. There were various questions where we were identifying consumer harm to make sure that they had been thinking about these areas. The question came up of how to engage with consumers. "We know there is one demographic in particular who are particularly affected by this product. How do we engage with them? What are your ideas? What should we do?" It was not quite as simple as that, but they said, "We are interested to hear your views."

We gave them very concrete suggestions as to how they might go about engaging with this particular consumer group. We also said, "Don't forget that, while this group are particularly engaged with this type of product, you have to think about the whole spectrum of consumers; therefore, you need to make sure that your research extends beyond that". We also said, "This is a long-term project. You have to build in, at the right stages, the engagement that you are going to have with consumers to test that you are getting the policy right, and that it's going to work, be understood and be acted upon and useful to consumers".

I think it is fair to say that they took that very well and they took away the suggestions that we had given them about the engagement approaches they might take. Although that is not a metric in the way that you might think of one, for us, that is how the constructive, I hope, engagement works.

The Chair: On that note, we have probably run out of time, but if there is anything further that you would like to draw to the attention of the committee, we would be very pleased to have further written evidence from you. We are very grateful to you for coming to the committee and for the work that you are doing, which is obviously very important. Thank you very much indeed.