HOUSE OF LORDS

Financial Services Regulation Committee

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

Wednesday 15 January 2025

10 am

Watch the meeting

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

Evidence Session No. 26 Heard in Public Questions 311 - 321

Witnesses

I: Chris Pond, Chair of the Financial Inclusion Commission; Rocio Concha, Director of Policy and Advocacy and Chief Economist at Which?; Peter Tutton, Head of Policy, Research and Public Affairs at StepChange Debt Charity.

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Examination of witnesses

Chris Pond, Rocio Concha, and Peter Tutton.

Q311 **The Chair:** Welcome to today's meeting, which is the 15th oral session as part of the committee's inquiry into the FCA and PRA's secondary competitiveness and growth objective. Thank you to Ms Concha, Mr Pond and Mr Tutton for attending. A list of the interests of Members relevant to the inquiry is available online. The session is open to the public, broadcast live and subsequently accessible via the parliamentary website. A verbatim transcript will be taken of the evidence and will be put on the parliamentary website. A few days after this session, you will be sent a copy of the transcript to check it for accuracy, and it would be helpful if you could advise us of any corrections as quickly as possible. If, after this evidence session, you wish to clarify or amplify any points made during your evidence, or have any additional points to make, you are welcome to submit supplementary written evidence to us. I gather you all want to make an opening statement, so shall we start with you, Miss Concha?

Rocio Concha: Thank you for the invitation to be here. It is a very important subject for consumers, so I am glad that we are also gathering evidence from consumer groups. As a consumer organisation, we fully support the Government's focus on growth. Increasing long-term growth in the UK is for the benefit of everyone and, obviously, consumers. We do not see a trade-off between the level of consumer protection and growth. To the contrary, we feel that when you have the right protections in place, consumers have the choice to try new services and innovations. For us, it is a complementary enabler for growth.

We are worried that, given the pressure that the Government are putting on growth, some parts of the industry are using this as an argument to reduce the level of protection for consumers. The key questions for us are: what regulation exactly is preventing them from innovating, and what innovations for the benefit of consumers are we talking about?

Because of the political pressure on the regulators and the whole narrative out there, if we do not have an evidence-based discussion we may be pushing the regulators to make decisions and remove important regulations. We need to remember financial services are core to our lives; everything is impacted by our financial well-being, so we need to be very careful if we remove regulations. That would have important consequences for people.

Lastly, I remind us all that consumers have been having a tough time because of the cost of living crisis. Inflation seems to be going down, but there are still price increases—energy costs are still very high. There is not much of a buffer for consumers to stand a big financial loss. As a consumer organisation, we are ready to have an evidence-based discussion about what exactly in the regulation is preventing the companies from innovating. It is useful to differentiate between the level of protection and the cost of compliance. I hope that the objective is to make sure that the regulatory framework creates the conditions for

markets to reward companies in good consumer outcomes. I welcome the discussion of all these points. Thank you.

Chris Pond: I agree with much of that and I will not repeat those elements. I chair the Financial Inclusion Commission, which is an independent financial services-funded body made up of consumer and business representatives, parliamentarians from the main political parties across the spectrum, and policy experts from different fields but particularly within financial services.

We are facing a situation where, although the UK is still pre-eminent as a financial services economy, nevertheless 1 million people in the UK have no bank account, one in four has no insurance protection and one in three has virtually no savings. We are very supportive also of the Government's drive to growth because, as we have heard, without that growth we are not going to get an improvement in living standards across the board, or an improvement in financial resilience. We recognise that there is going to be the necessity for some increase in risk taken by regulators, businesses and consumers in order to move towards a higher growth target.

We want that growth to be inclusive, as the Chancellor said in her Mansion House speech, not only in terms of its benefits being fairly shared across the four nations of the UK, and across income and socio-economic groups, but also inclusive in the sense that everybody has an opportunity to contribute to that growth and economic activity. For that reason, we believe financial inclusion is an essential ingredient to growth.

Peter Tutton: I come from an organisation called StepChange Debt Charity. As the name implies, we support people facing financial difficulties. We touch on a number of areas of FCO regulation, such as consumer credit—which we touch on quite strongly—and the treatment of people in financial difficulty.

Our clients are people who face economic insecurity every day. They have been less likely to share in growth over the last decade or so. Many key markets do not work for them, so they are struggling with energy bills, the cost of renting, insecure employment and, sometimes, with financial services and support not being good enough when things go wrong.

Like my colleagues, I am here because I worry that the secondary competitiveness and growth objective might weaken the consumer protection objective. Yes, it is vital that financially struggling households see their incomes and financial security increase, and financial services can play a big role in that. However, in the past, financial services had a mixed record for this group of more financially vulnerable consumers. Growth and innovation have often meant very bad outcomes for consumers, and have not been focused properly on consumer needs.

When we talk about growth in financial services, it is vital that it starts from a very strong consumer protection framework. As Rocio said, the

two things should not be in tension and should build on each other. For financial services growth to benefit the considerable portion of the UK society who are more financially—and otherwise—vulnerable, it will need support from public policy which is focused on improving households' financial health and security. So, we are not here to say, "No change—everything is working fine", or that financial services should not grow. We are behind a pro-growth agenda, but it is ensuring that the growth works for all consumers and does not weaken consumer protection, and that there is not a trade-off.

Finally, reading some of the evidence that you have heard from other witnesses, there are lots of interesting specific things, and I guess the call is for this debate not to get overgeneralised. There are specific changes that may help growth and align with consumer protection, but there is also some evidence which has been more generalised, about the whole thing needing to be changed. There is talk of caveat emptor and phrases like that. My main takeaway is that it needs to stay specific, and not overgeneralise from things that could usefully change to things which are a rowback in consumer protection.

The Chair: To take up that last point, you have done the same thing—all three of you have made generalised points, and not talked about specific examples of things that could change to help not only with growth, but also with financial inclusion. Have you got some specific examples?

Chris Pond: Shall I begin? You are quite right: in the opening statements we have not focused on specific examples, but we quite understand the committee needs that. If I could take two examples, one would be the need to encourage more people to invest in the sort of diversified equity products which would perhaps generate for them a better return on their savings, while at the same time contributing more to economic activity. That is a worthwhile objective and we believe that more can be done, in terms of some of the simpler products in that field. If people have sufficient guidance and advice, and if we can find measures to improve financial literacy and capability, all that is valuable. However, let us not forget, as I said in my opening statement, a very large proportion of the population have very few savings at all to invest and certainly have too little to be able to accommodate the sort of life-changing losses which might accrue if those investments go wrong.

The other example is in the pensions field, particularly in DC pensions, where we see a number of people who have their pension pots disproportionately focused on cash products as they approach the years closer to retirement, and those products are not generating for them the returns which they could otherwise receive. The risk is relatively low, and if they were to get guidance from organisations such as Pension Wise, the Money and Pensions Service and some of the organisations which are sitting at this end of the room, it would be possible for them to improve their returns on that kind of investment.

When my colleagues are talking about the need to be specific and targeted in the changes that are needed, and the increasing risk that would be appropriate to generate additional growth, we have to recognise that people are in different circumstance and the risk that they take will differ as a result.

Q312 **The Chair:** What is your response to the arguments that have been put to the committee—and I am delighted that you have been reading the evidence—that say that, for the group you are talking about, they are unable to get advice and, increasingly, products that might be suited to them are being withdrawn because the compliance costs of providing that advice make it uneconomic, and therefore those products disappear? What is your response to that charge?

Chris Pond: If I may respond on that, there are other offences to be taken into consideration. At one stage, I was director of financial capability at the Financial Services Authority when we were going through the process of the retail distribution review, to improve the quality of advice available to a lot of people. There was a suggestion that that meant that the cost increased as a result. I do not think that the cost increased; the quality did. But it did not resolve the issue that we had large sections of the population who could not afford that sort of advice.

I was also responsible for the establishment of what was at that time the Money Advice Service, which became the Money and Pensions Service, which was intended to fill part of that gap, to make sure that people did get some additional guidance and support in determining those investments. It is very clear that there is still a wide gap in that area, which is why we support the debate about the advice and guidance boundary, to make sure that organisations, such as voluntary sector organisations, that are well equipped to help people make decisions nevertheless do not feel that they are at risk of overstepping that boundary and therefore facing some penalties.

One final thing on this: we must not just focus on the role of consumers or the regulator. Very often the firms themselves are too risk averse. That is the case in making available products in the credit area—there is a huge gap in lack of affordable credit—insurance, and investment and savings. Somehow, we have to overcome that very low-risk appetite in the operations of some of those firms in reaching out to groups that are currently excluded because they are perceived to be too high risk.

Rocio Concha: Just to build on what Chris said about boundaries between guidance versus advice: we talk to companies directly—we do not only talk to consumers—that want to deliver good outcomes for consumers. Sometimes they feel constrained because they worry about the regulatory risks of crossing the line. We are very supportive of more guidance from the regulator; there is an opportunity there to be clearer and to give reassurance to the companies on how far they can go in providing additional advice.

The only thing I would say in this discussion is that the way to make products accessible to all consumers is surely not to reduce the regulatory protections that consumers have. That would be the wrong way around. We need to make sure that we have the right protections for the right products. Companies will say, "It is still too expensive to provide this", when we have made a case for adding the right regulation. Then the Government need to think about what they can do to finance it, if there is something out there that needs to be provided to consumers.

The Chair: Are you saying that the Government should direct the regulator on this?

Rocio Concha: The Government have a role. If a well-designed market with the right regulation cannot provide a service to a small part of the population because actually it is not economical for the private sector to provide it, the Government certainly have a role there.

Peter Tutton: I have a couple of observations, from the people that we are seeing. Financial advice has always been out of reach for low-income households, who may not have savings let alone more complex investments. We are very pleased that we should see a financial inclusion strategy soon, hopefully.

We do debt advice. We have a concern here. The FCA regulates debt advice, and the broader debt solutions market at the moment is fragmented in the way it is regulated. There is a lot of bad practice. Consumers who go online looking for help do not really know what firm they are going to end up with. This has been a problem for a while, and it is one of those areas where there can be regulatory improvement. It needs the FCA and other regulators in the insolvency area, but it also needs the Treasury, which owns some of the policies.

Here is an example of a problem that is affecting people now, who really need good help and cannot get it because the regulatory environment is fractured and different policy owners are not properly joined up. You may say, "What's that got to do with growth?", but we know the consequences when people suffer financial difficulty. It affects their health, their relationships and their work life. We did some estimates a few years ago: the then 3 million people in debt cost the public purse about £8 billion. There is a direct connection: people who are financially vulnerable and worrying about their debts and stress are not going to be productive. Better help is needed there.

On the credit markets, people need access to credit for various things. You have heard evidence from colleagues in the credit market of the problems they have faced. Regulation has had to improve in credit markets; for a long time, they did not work well for consumers. In order for more financially vulnerable consumers to access credit, we again need public policy. There is something here about the way that the regulator and the Government align in a broader strategy to make sure that those

markets work and can grow responsible lending for lower-income consumers.

Q313 **Lord Sharkey:** I do not think any of you mentioned financial literacy in your remarks. Is it not the case that financial literacy or the lack of it is a heavily contributing factor to the situation people find themselves in?

Chris Pond: You are right to focus on that. We know that the level of financial literacy and financial capability in the UK is, according to OECD estimates, well below that in other advanced industrialised countries. In fact, I think that we are only just above Thailand and Albania in our levels. There have been measures in recent years to try to improve that. Financial education is now in the secondary school curriculum in England, but most schools do not have much room in the curriculum to teach it, the teachers do not have much confidence or the skills to teach it and it falls to organisations such as MyBnk or the Money Charity to provide that support.

We would also like to see that sort of financial education in primary schools, because we know that people's behaviour is established by the age of seven. We are not talking about investment in derivatives, but we are talking about basic money management skills, which could be very valuable throughout life. We also need to provide people with that sort of support throughout their careers. As we learned when I was running the financial capability division of the FSA, employers—the workplace—can be a really valuable source of that support.

Having said all that, and being very supportive of extra investment in that sort of education, nevertheless I do not think it solves the problems. We undertook a major piece of research in the summer around the United Kingdom, talking to people who had lived experience of exclusion. As one of them said, you cannot educate yourself out of debt; there are so many other factors that push people into a situation where they face financial detriment. It is important that all of us, in terms of growth and overall economic prosperity, have those money management skills, but they are not a silver bullet.

Peter Tutton: Following on from that, I agree with Chris: the financial literacy debate is also moving on in different directions. First, there is more focus on tools than on education—people using fintech, providing people with budgeting tools and different ways to help manage their money. There are other areas as well where the focus on financial literacy is important in terms of what MaPS called teachable moments—how people get the information they need at the point that they have to do or are going to do something. A few bits on that are really important, concerning the information that firms provide. This takes us back to regulation. There is lots of evidence now that the way that you produce your information and set it out—behavioural science, and so on—makes a big difference with engagement. We did some work recently on creditors' collection letters and found that the way those communications work, including the statutory protections that they are required to put in, scare people and they disengage. If you change the format, people engage

more. Similarly, on things such as understanding the cost of loans, different formats can make a difference.

There is a regulatory change approach there—from giving consumers information designed by policy people or lawyers to engaging with consumers and testing and learning. This is something that the consumer duty should help do: changing the focus to actually talking to your consumers and understanding how they use materials, and how you make information intelligible and actable on. The problem is that it is just being pumped out at the moment. I think about the pension statements I have got for years. They are unintelligible, but my pension provider has changed its statements and now I can understand it. It did not take a lot to do that; it is quite important.

Finally, with things like financial literacy, we can talk to people about the importance of savings. We survey our clients on this and they all know the importance of savings, but they do not necessarily have the money to save. So, on the one hand there are things like Help to Save, which is a very good Government scheme to encourage people to save, but also other ways to change the default, such as the work that Nest Insight has done on workplace opt-out savings, and ways of thinking about how people get into products, such as enrolment. We have had really good results from employers saying, "We are going to put a proportion of your wages into a savings scheme"—some 50% engagement. We were involved in a pilot in which people had to opt-in 1% of their wages. It is not just about education; it is about making it easier for people to engage.

Q314 **Lord Smith of Kelvin:** We have heard a lot of evidence from practitioners, financial firms and regulators. I am particularly interested in the consumer voice. We have heard examples where regulators have placed too much responsibility for presenting consumer harm on to the financial firms and have not paid sufficient regard to the general principle that consumers should take responsibility for their own decisions, even to the extent that consumers are absolved from taking responsibility. What is your take on that?

Rocio Concha: I do not agree with that statement. The purpose of all the regulation of the FCA is making sure that consumers have the right information to make informed decisions. You cannot take responsibility if you do not have access to the right information, and you cannot trust someone who is telling you that this product is going to give you X. These are the risks; you cannot take responsibility for that. The whole purpose of the regulation is making sure that you can have access to the information that you need to make decisions.

We have heard this argument in the context of scams, for example. As you probably know, as an organisation we have been driving quite a lot of the regulation in this area. Now payment providers have an obligation that, if you are a victim of scam, and you have not been negligent, you will get money back up to £85,000. TSB is the bank that, before that regulation was in place, voluntarily said they would return the money if

you were a victim of a scam, unless you have been negligent. A lot of the industry said, "Be careful—this is going to create a moral hassle", because now people will be less worried about scams. Actually, the CEO of the TSB, after putting this in place, said it was the opposite; they did not see an increase in scams because people were far more relaxed. We sometimes talk about people as if they were these rational individuals. Think about yourself: you do not want to be a victim of a scam, even if you know that your bank will give the money back, unless they conclude that you have been negligent, because there is a period of time when you will still have uncertainty, and there is an emotional cost. I do not really buy that consumers are not taking responsibility.

Chris Pond: I wonder if I could just add a little extra flavour to that particular example, which shows how firms themselves can establish a voluntary self-regulation, if you like. They can establish standards which mean that they go over and above the statutory requirements. That is true particularly in the equity release sector, where the Equity Release Council sets those standards. I used to chair an organisation called the Lending Standards Board, and all the major lenders—the high-street banks and the card companies—were signed up to a set of lending standards which meant that they could be more flexible and establish the standards according to their own business models, but provide greater protection for consumers.

The particular example we have just heard included something called the CRM code—the contingency reimbursement model code—which was developed on a voluntary basis by some of the major banks to say that where there are circumstances in which a consumer has not been careless or wilful, where there is an allegation that it was deliberate, they would get reimbursement, and it would actually be at a higher level than £85,000. Built into that code were a number of measures to ensure that that risk was mitigated in advance, to make sure that the scams did not take place. It has now moved to statutory regulation, which I also support, but that element of avoidance of scams has fallen away and the focus is on reimbursement. That is the wrong balance. It is an example of the industry taking responsibility, and they have done it in access to cash, another good example in which industry itself comes together as a collection of firms in order to make provision for consumers, one where it can be more flexible and work alongside the statutory regulation and also make sure that consumers get a better deal.

Rocio Concha: I want to pick up on something Chris said, which I may not agree with unless we are talking at cross-purposes. The focus is on reimbursement because this is where the industry is having the conversation, but because they need to pay, they now have the right incentives to work on prevention because they do not want their customers to be victims of scams. There is a lot that the banks can do on that. There are others in this ecosystem that are also responsible for scam prevention who should take more responsibility.

Q315 **Lord Vaux of Harrowden:** I fully agree that there are other parties that

should be involved in this—the tech companies, the telecom companies, et cetera. The question on this issue is whether the balance is right, in terms of the responsibility of the consumer and the bank, and the argument is that it has gone too far towards the full reimbursement with no responsibility. There are examples of banks having said, "This is a scam, you shouldn't go ahead with the payment", and then they are told, "No, we want to make a payment—we think it is right", so the bank has to do what it is told, and then has to reimburse. That seems to me to have gone too far.

There is also another risk, and we have seen the example that affects all of us—the politically exposed parties question—where the banks are starting to look at how risky potential customers are, those who are at higher risk of being scammed, and not providing them with banking facilities. There is an argument that it has gone too far in this case and the balance is not in the right place.

Rocio Concha: Where is the evidence?

Lord Vaux of Harrowden: It is early days, because it has only just come in.

Rocio Concha: Exactly, but I am giving you the evidence of the TSB, which went ahead before the regulation. They did not see that; we will see if there is new evidence on that.

The Chair: I do not know if you have been following the committee's inquiry?

Rocio Concha: We have.

The Chair: Then you will have seen that we have had evidence from two banks of the kind Lord Vaux has described.

Lord Vaux of Harrowden: It is also interesting, with TSB's example, that despite the fact that they were more aggressive in terms of reimbursing under the CRM regime, they were actually one of the worst in terms of their customers suffering scams. It is interesting that that link does not seem to be as strong as you suggest.

Chris Pond: I will follow up on that, in terms of the risk appetite of firms. I think Lord Vaux mentioned that there are circumstances in which firms feel that it is too risky to engage with certain groups of customers. From the Financial Inclusion Commission's point of view, that is a major issue because very often you have groups of customers who are well able to afford a particular product over time, but it is not offered to them because the risk appetite by firms is too low. I mentioned also that I think that is true in insurance. A particular problem we found from our research in Northern Ireland is the very considerable numbers of young people who cannot engage in economic activity because they cannot access car insurance to be able to get to a job in a rural area.

We have to think about where the risk appetite needs to be adjusted; it is not only consumers or regulators but also firms. To go back to Lord Sharkey's point about financial inclusion, I do not wish to set up your next witness but certainly Phoenix Group has done a lot of important work on financial inclusion. When Sir Nicholas Lyons was lord mayor the year before last, he focused on financial inclusion as one aspect of the agenda for his mayoral year, and Andy Briggs himself has done a lot of good work in that area. That is another example of where firms themselves can take responsibility, reach out to groups of consumers who are vulnerable or excluded and give them the support they need to engage in financial services.

Q316 **Baroness Donaghy:** One of the areas that we have been looking at for the FCA is whether it has too many things to do, some of them conflicting. It is on the defensive because it is so easily attacked by politicians and consumer groups. Do you have a comment on whether or not it has an impossible job, rather than it not doing the job very well, which is what a recent all-party group indicated? In my view that is slightly over the top, but it is what is washing around the ether. Do you have a view on that? Do you have a view on the suggestion that, if the retail side was separated from, say, the wholesale—because we seem to have two different sets of problems raised by witnesses—that might solve the problem? Is that within your bailiwick?

Rocio Concha: I feel that separating the regulator is a distraction that would create a more complex regulatory ecosystem, so I do not feel that separation is the right way to address this issue. It is true that there is a lot of pressure on the FCA, as you say, from politicians, the industry and consumers. That is what regulators face, by the way, not only the FCA; many regulators are in that space, but, because of the focus at the moment on financial services as a big sector to get long-term growth into the UK economy, there is a lot of pressure on it.

We as a consumer organisation hear that the FCA has gone too far on the side of the consumer, but I can tell you that I have not seen evidence of that. Quite the opposite: sometimes we feel that we are not seeing the FCA fully enforcing the regulations that it has at the moment. We would welcome more transparency on whether there is a lot happening behind the scenes that is not in the public domain, but the FCA has to do a much better job at explaining to all the stakeholders what it is doing and how it is delivering its objectives.

We will never be supportive of the secondary growth objective. Why? Because the primary objective is consistent with the secondary objective. As I said, if you have the right protections for consumers, not just any protections, that gives confidence to the demand side of these markets to engage. If you do not have that then you will not get all this innovation. One of the issues we have in this country is that innovation in open banking has happened but the take-up has not been as expected. Part of that is because consumers do not feel confident about whether they have the right protections. So protecting consumers enables growth.

The other objective is competition, and competition is the main driver of growth. So I am worried about having a lot of objectives and asks from the regulator, when actually, if it focuses on the core, that will be consistent with what we are trying to achieve on growth. As I said, the discussion that needs to be happening, rather than making the regulatory ecosystem more complex by dividing the FCA, is about the cost of compliance. There are some sectors that are regulated by many regulators. For example, the payment sector is regulated by the PSR, the FCA, the Bank of England and, in some circumstances, the PRA. Are the regulators making an effort to see how the cost of compliance can be reduced by sharing information? There may be something there for you to explore with the regulators.

The Chair: I am conscious of the time. Can we try to be more condensed in the answers? Perhaps not all of you need to answer every question.

Peter Tutton: I will be lightning fast. The scope of FCA is two things in the range of responsibilities. Over years of watching the FCA, I have seen it take on more markets. It took on credit, mortgages and general insurance over a decade or so. Mortgage was self-regulated and credit was regulated by different statutory regimes. Both those markets were delivering some bad outcomes for consumers, particularly vulnerable consumers. Once the FCA took them on, those outcomes massively improved in terms of consumer protection and getting out some of the more horrific, egregious practices and bear traps that consumers were falling into. If the FCA is too big and unwieldy, if you start cutting it up or taking things out of it, then the danger is that we go back to poorly financed regulators with not good enough powers and not good enough experience across the market.

There is another thing that the FCA has changed in taking on those markets. Back in the days at the beginning of the FCA, when it was the FSA, it dealt with pensions and investments, then it took on credit, mortgages and GI. Those are mass-market, ordinary-people kind of products, and the FCA has come a long way in understanding ordinary consumers, which has made it a more effective regulator in connecting what it does to how people can suffer harm. For instance, when we talked to the FCA about payment protection insurance in about 2000, when it had just got GI, we were told that it was a financial planning issue for consumers—it was in "caveat emptor" mode—but then of course it went on to give £30 billion in compensation. That better understanding from consumers should lead to better regulation, which ultimately means less widespread redress on firms, which is difficult to deal with.

Q317 **Lord Grabiner:** Can I put the point slightly differently? You have made some quite strong criticisms of the FCA's regulatory function in relation to the consumer duty. The point that Baroness Donaghy was driving at, which I shall put slightly differently, is: do you think there is an argument for the consumer duty being overseen by a different regulator, so that this responsibility should not be in the bailiwick of the FCA because it already has too broad a portfolio? It may be much better, from the

consumer protection position, to be examined by a regulator that was expert in that particularly narrow area—namely, the consumer duty.

Peter Tutton: In practice, that would be hard to do if the consumer duty is going to be effective. The reason why many of us called for the consumer duty, supported it and worked with the FCA on it is that it fills in the gaps between the rules, as it were. It came in because there had been a succession of financial widespread consumer detriment cases. The question was: rather than dealing with the mess once it is made, how do we stop it happening in the first place? That is what the consumer duty is there to do.

The power of the consumer duty is the FCA saying to firms, "You really need to understand your customers. You really need to understand how your products work for them, gather data, test and try to foresee harm"—which is in the consumer duty rules—"before it happens". For example, when people start getting into financial difficulty, do firms' responses work? We think that is something to which the FCA should apply the consumer duty because it cuts across different parts of the rule book and picks up lots of different issues, but if it is going to work then it needs the FCA to curate it.

Lord Grabiner: I do not think you should deal with this now, but it would be helpful to us if you provided us in writing with criticisms you have of the way in which the FCA as the regulator deals with the consumer duty. You were quite critical of them when you made some remarks earlier. I just wonder if you could let us have something in writing that gave particular examples of the criticisms you have of the way in which the FCA regulates the consumer duty.

Peter Tutton: The criticism before related to a prior FCA approach, which was much more based on consumer information, whereas the consumer duty is a different thing. We are actually supportive of the consumer duty. If there was a criticism, it is that the FCA needs to be involved and support firms. The idea that the consumer duty is not clear I do not completely agree with. There is a lot of guidance, but it needs a process and firms and industry will need support on how to move.

Lord Grabiner: If there is anything you can give us in writing, we would be grateful.

Chris Pond: I would like to respond to both Baroness Donaghy and Lord Grabiner briefly on that point. The consumer duty helps with some of the issues that we have been talking about of the FCA being overloaded, in the sense that it does allow the regulator—and the industry and consumer organisations—to look carefully at the rulebook and handbook to see the extent to which some of those rules and regulations which have existed for many years are no longer relevant in a world of consumer duty. If it places extra responsibility on firms to take an outcomes-focused approach rather than a rules-based approach—and it does, of course—it may be possible therefore to say, "Look, certain rules have been sitting around for a long time. They use quite a lot of

compliance resources from firms but they don't add anything to consumer protection". We have to be careful not to throw too many babies out with the bathwater. Nevertheless, there may be an opportunity there to rationalise the extent of regulation in the handbook.

Rocio Concha: We also need to recognise that the consumer duty is relatively new. Eighteen months is not a lot, and it is a big change for the industry, so we need to allow enough time for the consumer duty to really be embedded into the regulatory system.

Q318 **Lord Vaux of Harrowden:** I want to follow up on that consumer duty point. Generally, we have heard support for the concept of outcomes-based regulation, but perhaps the FCA has not been good enough at defining what good outcomes are, and therefore firms are having difficulty doing it. I would be interested whether you agree with that. I would also like to understand what you think that good outcomes should be in this respect.

Chris Pond: It would be wrong for the regulator to be too prescriptive about what is expected from the consumer duty. We have also heard this anxiety and concern from firms: "What are we expected to do? How do we know that we're on the right side of the consumer duty requirements?" The point about the consumer duty is that it is outcomes focused. It is tailored to the individual consumer. What is a good outcome for one consumer may not be for another consumer; it depends on their circumstances. Therefore, that requirement to avoid foreseeable harm for a consumer is the guiding principle. If we are to move to a more outcomes-focused approach, rather than a rules-based approach, inevitably that means that there would have to be a judgment by firms on where they stand—are they on the right side of the consumer duty requirement or not?

Lord Vaux of Harrowden: I am interested because a number of you mentioned bad outcomes, and I am curious to know what you think good outcomes are. It could be as much as, "There is no risk, no loss, no whatever", but that means therefore that there is no investment and no return. Where do you see that balance? What is a good outcome?

Rocio Concha: If you are talking about new products, with risk, for example, a good outcome is that the firms are very clear to consumers about the risk and the consequences if that risk materialises—to understand whether that consumer has the financial capacity to deal with that risk and understand what it is. The consumer duty created conditions for that conversation between the provider and the consumer to happen. It is about designing products that are, as I said before, not for the rational individual but for real people with particular circumstances. Maybe they have different capacities and appetites for risk and want to make informed decisions, but they need the right information. That is what the consumer duty should be achieving.

Peter Tutton: I shall try to give a specific example from what we deal with every day, which is debt. At the moment, we see people worrying

about their debts for about a year or more before they come to debt advice for help. When we dig into what is going on there, people are very reluctant to talk to their lenders for help—for all sorts of reasons: they do not know that they will be helped, they are worried what will happen, they are worried about their credit scores. If they have had a shock or something has happened to them—the cost of living or they have lost their job—they try to manage by using more credit. They draw down their credit limits and take out more credit, and that sort of borrowing—safety net distressed credit use—has a different harm profile from normal borrowing in terms of effects on mental health, physical health, family relationships and work life. The longer it goes on, the worse those effects get. About half our clients who come to us are suffering from mental health problems because of the pressures of their debts.

Why is that happening? A number of different things lead to that bad outcome. One is that firms are not identifying people in financial difficulty and are not offering help early enough. When people do reach out to firms, sometimes they do not get the help they want. When people get collection letters, they are either frightened so disengage or they pay one collection demand by doing something else, which may be taking out more credit or not paying their rent or their council tax. The debt problem gets bigger and bigger.

There are a series of different things that roll across the FCA rulebook, but it also rolls over to other regulators. There is a public policy aspect. In terms of financial services, if firms do not do the right thing and they have to look across different bits of the rulebook to see what the right thing is, there is a bad outcome. The consumer duty can make the good outcome by the FCA focusing the attention of firms. It has done various reviews on different parts of the problem but, focusing on the problem as a whole, it is about this curated process of working with firms to ensure that, when people are in financial difficulty, there is a path to help where people resolve their difficulties in months rather than after a year of suffering and juggling. That is an example from the debt space.

Lord Vaux of Harrowden: It is early days, but are you seeing a positive impact?

Peter Tutton: There is really good practice out there, and I think the consumer duty is helping with that. We are seeing feedback from firms that are thinking hard about this, particularly on consumer vulnerability—the consumer duty's younger brother or sister is the vulnerability guidance that came out somewhat before. That had a really big impact. When we look at our clients and their outcomes after advice, we find that some clients with what we call additional vulnerabilities get treated quite well. The industry really took that on board. It is an ongoing process of learning. There are more things that we learn all the time about different consumer needs and problems. It is having an impact. The important thing is that the FCA needs to drive it on. If it gets left to firms—"Go and do it, and we'll supervise and see how you're doing some time later"—you

will not get the full benefit from it. Things will slide back into business as usual.

The Chair: You made the point, Mr Pond, that you do not think that the regulator should have a view on what constitutes a good outcome. If it does not have a view on that, how can it carry enforcement procedures against banks and others which have not met the criteria?

Chris Pond: I am not suggesting that it should not have a view; I was suggesting that it should not be too prescriptive in advance about what a particular firm should do in particular circumstances.

The Chair: That is the same point.

Chris Pond: It is a slightly different point, if I may. Yes, it is clear that if the consumer duty requires that consumers should not face foreseeable detriment, but in a particular circumstance they do suffer foreseeable detriment, that is in breach of the consumer duty. But to say in advance, "That therefore means, firm X, that you should behave in relation to customer Y in this way or the other", would move away from the outcomes-based approach.

The Chair: On the points that Mr Tutton has made, which I have huge sympathy for—firms should be able to deal with particularly vulnerable customers and others who have problems with debt, and how far you provide support and so on—there is a limit. If the regulator is not indicating what a good outcome is and what should happen, and if the lender is in a position where it can be faced with enforcement action, which is then retrospective, involving lots of clients and with the ambulance-chasing organisations piling in, we have a problem, do we not? Ultimately, that problem could result in people not providing lending facilities at all. Is it not absolutely essential that the regulator makes clear what is required in order to get a good outcome from the consumer duty in those cases?

Chris Pond: The parameters should be explained by the regulator. The FCA has issued considerable guidance on what the consumer duty expects. My point is that it is not appropriate for the regulator to say in advance what should happen in the circumstances of a particular consumer. I take your point. I made the point earlier in this session that the problem is that the risk appetite of many firms is too cautious for them to make available the products and services that consumers need in many circumstances. Of course the threat of retrospective action might make that worse, but that is a different point from whether the parameters should be established and the guidance should be there as to what the consumer duty should generate, as against rules relating to particular circumstances and groups of consumers.

Q319 **Lord Hill of Oareford:** I have a small point first on the point that Mr Pond made just now. You said you thought that, with the introduction of the consumer duty, there might be scope to have a look at areas where you could simplify, stop duplication, clarify and blow out the pipes a bit. If

you were able to write to us after this session and suggest some of those areas, that would be very helpful.

My broader question touches on one that we have already been on, about clarity and boundaries. One of the themes of the inquiry is that the industry finds confusion between the FCA, the FOS and the PRA—duplication, and so on. Do you find as consumer bodies that the boundaries between the different players are sufficiently clearly defined, particularly, from your point of view, the Financial Ombudsman and the FCA? How is that changing, complicating or confusing the landscape from your point of view? For everyone—the consumer, industry, the Government—clarity in a system is hugely helpful, but it does not feel to me as though we have clarity. I would be interested in your responses.

Peter Tutton: There are areas across financial services regulation, in our little corner of it, where there is not sufficient clarity. I mentioned earlier the debt solutions landscape, where there are multiple regulators. Some bits of the necessary policy are held by the FCA, some by other regulators and some by the Treasury. They have not yet coalesced together in a way that produces an entire regulatory and policy solution to the problem. Your point is valid: if we look, we will find areas of overlap and difficulty between regulators that need to be resolved.

On the more specific point about FOS, the argument for the lending industry for FOS as a quasi-regulator is not clear. When I look at FOS decisions, I find them to be quite clear. They flow from the FCA rules, with an overlaying of what is fair and what is not. There is an argument that the FCA's lending rules are not very precise; there are some areas where I think they could be tightened. On the other hand, they have been left deliberately quite permissive, because if you make them too tight then it will be even harder for firms. The problem is that, in our characterisation, we saw credit industry firms exploiting consumer vulnerabilities, constrained choices and behavioural biases and profiting off that. People were being lent to in a way that was not affordable and was harmful, and that ended up with a huge number of cases going to FOS. That is not necessarily about a lack of clarity or anything else. There may have been lack of clarity for the firms in understanding the FCA's intention, but that is more to do with the firms and their business models than the FCA.

That is not to say that there is not a problem. The claims management firms—the ambulance chasers—got mentioned, and I have sympathy for the industry there. FOS consulted on whether professional claims management firms should be charged. It found that 80% or so of claims forwarded by those firms are not upheld because they are not good claims, and that is weaponising the fee structure on behalf of the CMCs that are profiting from it. So there is something in that. I have heard firms say that there are millions of pounds in false fees in relation to credit firms, and you do not want that. There is something that can be done about that, so I have some sympathy. That is probably not working, and another example of regulatory co-operation is that part of the answer

to it is regulating the CMCs properly. Some of them are FCA-regulated, some SRA-regulated.

The other part of it is this. The FOS and the FCA are consulting at the moment on redress. Where we see wider implications or widespread consumer harm in a particular area, should the FCA get involved earlier to do organised redress, rather than it being about claims management firms taking cases to the FOS? That would have two benefits: first, it would reduce the fee liabilities for firms in terms of the FOS, and, secondly, relying on a complaints-based method alone means that consumers will not necessarily be able to complain and get redress by themselves. So one area where the FCA might do better than at the moment is thinking about acting earlier on widespread redress issues. That might do some of what you say, but I do not really buy that it is coming about from a lack of clarity from firms understanding the expectations on lending. It is question of, "Are you lending responsibly?" If you are a lender and you cannot answer that question, why you are in the business?

Rocio Concha: From a consumer perspective, again, we do not see a problem with that. I completely agree with what you just said. From our perspective, the boundaries are clear. Does there need to be more co-operation between the FCA and the FOS? We know that they talk to each other, but there is loads of data that the FOS produces. There is a lot of information. When the FOS has upheld decisions in favour of the consumer, there are a lot of statements. The FCA should be monitoring with the FOS, to see whether anything is coming out of that regarding a particular firm or a particular sector, and intervene before it becomes a big issue. So there is definitely a role there for better communication, but we do not really see a problem or an inconsistency between what the FOS and the FCA are doing.

Q320 **Lord Kestenbaum:** Ms Concha, I want to ask about your view of the secondary objective. If I may summarise your interesting and enlightening point, your argument was basically that if you have the right consumer protection remit then you do not need a secondary objective because the right consumer protection remit will enable growth and competitiveness by definition. I thought that was interesting. It is the first time that we have heard that; as you will have read from the public record, the overwhelming majority of our witnesses have said quite the opposite. They have said that, in order to drive competitiveness and growth—namely, the secondary objective—you will need a very different culture within the regulator from that which enables consumer protection. You will need a different set of skills and, in particular, a different type of leadership and set of incentives. Whereas many of our public witnesses would have said that they are complementary, none of them has said that one by definition enables the other. I wonder if you could comment on that.

Rocio Concha: There is a lot to answer in that. Consumers are the demand side of the market. If you want companies to innovate and be

successful, or be a new entrant into a market, you need the consumer to have trust and say, "Okay, I'm going to try this new product. I'm very happy to take that product and use it". Particularly in financial services, that has big consequences. That is for the benefit of the company that is basically challenging the status quo, and that is what will make innovation thrive. Consumer protection enables innovation, and innovation delivers growth. That is what I am saying.

The primary objective of the FCA is to enable competition. Again, that is another of the drivers of growth. There may be a point here about compliance costs, but that is different to the level of regulation. If consumers do not trust that you have the right protections in place, they will not engage. Open banking is a great example of this. We were very innovative in this country about open banking, but it has taken a lot of time to pick up. Other countries are now ahead of us with open finance. When you look at the assessments in relation to that, one of the reasons is that consumers are saying, "Well, what is my protection in this?", so they are not going to engage, whether we like it or not. We can have brilliant innovations but consumers will not engage—that is the point I am trying to make.

Chris Pond: On that point, the Financial Inclusion Commission is slightly different in that it is not a consumer body; it is a consumer and business body, in terms of representation. Our view would be that it is not one or the other; the two sets of objectives are compatible with each other. The point that has been made on trust is essential. When we were talking to people with lived experience of exclusion, they said that not only did they not trust financial services, they did not think that financial service providers trusted them. There is a real breakdown in that trust, and the work that was carried out some years ago by the Financial Inclusion Taskforce, under our current president Sir Brian Pomeroy as chair, found that an important element of that exclusion was coming from the demand side, not only the supply side. People did not feel confident in engaging with financial services. If they do not engage with financial services, they cannot be economically active to the full extent. If they cannot be economically active, we will not get the growth objective delivered. The two sets of objectives are compatible and it is not one or the other.

Q321 **Lord Lilley:** This may be a bit late in the day but I wonder if we can make three distinctions. The first is between the primary objective, which is your primary concern, and the secondary objective, which is our primary concern. The second is a distinction between risk appetite for investing in real investments which have a certain risk, and the risk of being defrauded or ripped off, or offered bad advice. That comes under the primary objective. As far as the secondary objective is concerned, we are only interested in the second kind of risk.

Thirdly, as far as the growth of the real economy is concerned, you are concerned primarily with the protection of small borrowers and savers—I do not know why we call them consumers. As far as growth is concerned, it is the total amount of savings and whether those savings are invested

in real assets, such as new or growing companies and infrastructure rather than, as Lord Eatwell emphasises, in secondary investments.

The answer to this question is probably no, but is there anything that could be done in the way of changing the regulation that would increase the amount of savings by small investors—that is, ordinary individuals—and the amount that is invested in the real economy? If the answer is no, that is not your fault—we will focus elsewhere.

Chris Pond: Your first premise, certainly from the point of view of the Financial Inclusion Commission and, I suspect, my colleagues here, that our first concern is the primary objective and we are not particularly interested in the secondary objective—

Lord Lilley: I am not saying you are not interested, but it is not your day-to-day concern. You want to see the economy grow—we all want to see the economy grow—but that is not what you are about.

Chris Pond: As I have said, I think those two are compatible and I would say that there is an equal interest from our point of view in both of those aspects.

On your specific question about what more can be done in terms of getting savings into the productive economy, certainly in the pensions field we have seen the Mansion House reforms, and the work that has been going on recently to encourage the pension funds to invest more heavily in economic activity in the UK. There is a limit to what can be done because of the independence of trustees and their fiduciary duty, but nevertheless there is a lot that can be achieved there. Is there more that can be done in terms of DC pensions, to get more of those savings invested into the productive economy? Yes, there is.

Lord Lilley: Like what?

Chris Pond: It is about the assessment of risk. The Pensions Regulator has got an important role—they mainly focus on DB—but the FCA also has a role in terms of helping people understand what the risks are. As I said in the early stages of this session, there is a tendency for people to prioritise the nominal value of their savings, rather than to think what it might generate were it invested in another way with slightly more risk. That takes support and guidance which the industry can provide, but also the regulator and organisations such as the Money and Pensions Service.

In terms of individual savings, let us be realistic: a lot of people have no savings to invest, but to the extent that people do have some element of savings, again it is guidance and support which will help them take a realistic view of the risk. It is not a question of whether, as Lord Hill or Lord Vaux said, it is a good outcome that there is no risk at all. No, that is not a good outcome. A good outcome is that somebody gets the best returns for their investment, savings or borrowing. That is why there is a compatibility between the two sets of objectives.

Lord Lilley: I am not suggesting there is incompatibility, but I take it from your answer that there are no specific regulations you want to see changed that will increase the amount of investment or increase the proportion of investment that goes into the real economy. Or if there are such regulations, would you write to us and tell us what they specifically are?

Chris Pond: Certainly. From our point of view, we would be very happy to do that.

The Chair: We have probably run out of time. We are extremely grateful to you for your very stimulating evidence to us. Thank you so much on behalf of the committee for the clarity of your answers and for giving us an alternative view on this subject.