



Liaison Committee

Corrected oral evidence: Financial exclusion—follow-up

Tuesday 16 March 2021

3 pm

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Liaison Committee—members present: Lord McFall of Alcluith (The Chair); Lord Bradley; Baroness Campbell of Surbiton; Lord Davies of Oldham; Lord Judge; Lord Lang of Monkton; Lord Smith of Hindhead; Lord Tyler; Baroness Walmsley.

Financial Exclusion Committee—members present: Baroness Tyler of Enfield (former Chair); Viscount Brookeborough; Lord Empey; Baroness Primarolo.

Evidence Session No. 2

Virtual Proceeding

Questions 7 - 11

Witnesses

I: Nisha Arora, Director of Consumer and Retail Policy, Financial Conduct Authority; Sheldon Mills, Executive Director for Consumers and Competition, Financial Conduct Authority.

Examination of witnesses

Nisha Arora and Sheldon Mills.

The Chair: Welcome to the second evidence session. I am Lord McFall of Alcluith, Chair of the Liaison Committee. I am delighted to be assisted today by the former Chair of the Financial Exclusion Committee, Baroness Tyler of Enfield. I will hand over to Baroness Tyler for evidence session two. Welcome to the witnesses.

Q7 Baroness Tyler of Enfield: Thank you very much indeed, Lord Chair. I am very pleased to have our witnesses from the Financial Conduct Authority. Before I invite them to introduce themselves, I declare my interests as a member of the Financial Inclusion Commission and as president of the Money Advice Trust.

An extremely warm welcome to Nisha Arora and Sheldon Mills. Could you introduce yourselves very briefly when I ask my first question? As I think you know, time is very short this afternoon, so I ask both questioners and responders to be as short and succinct as possible.

To kick off, could you say what your priorities are in the field of financial inclusion in the next one to three years, particularly taking account of the pandemic? Nisha, could I invite you to go first?

Nisha Arora: I think Sheldon might want to start, if that is all right, Baroness Tyler.

Baroness Tyler of Enfield: Absolutely, yes.

Sheldon Mills: Thank you, Baroness Tyler. I am the executive director for consumers and competition at the FCA.

I will start by setting out the context of our approach to consumers, which I think touches on this question and many of those you have for us today. Firstly, we are committed to ensuring that there is an appropriate level of consumer protection across financial services. We work closely with industry and government to do so.

As a reflection on the past, because it links to the future and what we will do in the next one to three years. In the past, we have sought to respond to calls for a duty of care, we have sought to respond to a focus on vulnerable consumers, and we have sought to respond to calls in relation to high-cost credit, which of course impacts the most vulnerable in society. That moves us into the other area we sought to respond on, which is access to cash.

That moves us quite neatly into what we will focus on in the next one to three years. We will focus on implementing our vulnerability guidance, which obliges firms to take account of vulnerable consumers as they think about their products and services, and to put vulnerable people at their heart. Nisha may touch on that later.

In the next couple of months, we will think about how we will respond to calls for a duty of care and how we put forward new principles in relation to updating our treating customers fairly approach. We will continue to look at consumer credit and think about how we can work with industry to ensure that there are affordable options for credit that support consumers, especially at a time of moving out of the COVID-19 crisis, which I think is very important.

In addition, we have been working very closely on access to cash with industry, including with some of the people giving evidence at your first session—Natalie Ceeney and the Post Office. We are supportive of the Government and their proposal about the infrastructure for cash. That is important, but we also have a part to play alongside our sister regulator, the Payment Systems Regulator, with industry to put forward the right approach for access to cash. Those are some of the things that we will be doing in the next one to three years.

The final point to make about what we will be doing in the next one to three years is tackling harm. In your first evidence session, there was mention made of online harm. It is clear that scams are on the increase. We have seen that as a result of COVID. We have limited powers to tackle those, but we are working very hard with some of the big tech industry, such as Google, where we see scams in pensions and in consumer investments, to try to get those taken down. We are working hard to tackle firms, certainly in the authorised space but also in the unregulated space, where there is fraudulent activity, as quickly as we can with the resources we have.

I hope that is helpful as an initial response to the first question. I am very happy to answer any questions in relation to that.

Baroness Tyler of Enfield: That is very helpful. Would you find it easier in setting your forward priorities if the Government had actually published their own financial inclusion strategy? It is a point that keeps coming up.

Sheldon Mills: Ultimately, financial inclusion is a matter for government. The way in which we take it into account in our work is that, where there are firms who may be providing access to certain financial services without offering financial services, we consider whether they are providing them on a free, fair and non-discriminatory basis. If we find that there is discrimination or that there are blockers or frictions to accessing those services, we will tackle those.

However, in ensuring that there are commercial services available to all who are excluded in society, we do our best to ensure that our rules and regulations are not in the way of that happening. We do our best to ensure that competition in the market works in a way that supports the development of services that reach right into the most vulnerable in society, but ultimately, when you get to the outer reaches of that vulnerability, that is a matter of social policy and not necessarily a matter for us.

Baroness Tyler of Enfield: Thank you. I suspect that we will come back to that point in a few minutes. Nisha, could I invite you to make a few introductory remarks?

Nisha Arora: Yes, of course, Baroness Tyler. I am director of consumer and retail policy at the FCA.

To pick up on the points that Sheldon made about our priorities for the next years, we heard at the previous evidence session what impact COVID has had on millions of people across the economy, which is why we have worked hard with industry and consumer groups in the last year to provide the necessary support for customers. That will still have to be a massive priority for us as those impacts play out.

We have seen an increase in vulnerabilities as a result of COVID, with an increase of 15% in people having characteristics of vulnerability. That is 27.7 million people having characteristics of vulnerability. That does not mean that they are all being harmed, but it makes them more susceptible to harm. We have prioritised work on that. We have issued guidance recently, and we can talk about that later, so that firms make sure that they understand the needs of their vulnerable customers, that they take those needs into account and that they respond and provide the additional care that is needed.

One of our priorities will be to make sure that firms are really taking that guidance seriously, putting it into practical action and making sure that all their customers, but particularly the most vulnerable, are treated fairly. That will be a big priority for us. As I say, we have been working in the credit area where the most vulnerable lie. The recommendations in your report last time focused very much on that sector. That is a big focus for us in the next few years.

Lastly, as Sheldon said, there is our work overall to improve the level of consumer protection in markets. That is where our work in response to the calls for a duty of care come in. We are committed to ensuring that there is the appropriate and the right level of protection in the market. We will be working on that in the coming years.

Q8 Baroness Tyler of Enfield: Thank you very much indeed. I always felt that one of the most important recommendations in our 2017 report was our recommendation that the remit of the FCA be expanded to include financial inclusion as one of its core statutory objectives, to ensure that financial inclusion was considered throughout all your work.

Many of the witnesses we have heard from, in the previous session and in our written evidence, have talked about the regulatory social policy divide, which you, Sheldon, alluded to, and particularly the problem of issues falling through the cracks because of it. What is your current position on our original recommendation about expanding your remit to include financial inclusion?

Sheldon Mills: As I said earlier—I hope I do not repeat myself too much—the question whether our remit should be expanded to include financial inclusion is ultimately one for government to consider.

I have a few remarks, though. There are distinctions to be drawn within the scope of financial inclusion. When we talk about financial inclusion, it generally refers to individuals, regardless of their background or income, having access to useful and affordable financial products and services. I think our current Financial Services and Markets Act—the FSMA framework—provides us with an approach that we can act on to support financial inclusion when we are advancing our statutory objectives within the FCA remit as set by government.

As a conduct regulator, we can act to improve, as I said, access to existing services where those issues fall within our consumer protection and our competition objectives. To give an example, we can make rules to address the unfair treatment of consumers or where access barriers create issues of competition. An example of that is the intervention under our consumer protection objective to improve access in the travel insurance sector for customers with pre-existing medical conditions.

We have issued guidance under our treating customers fairly principle to support financial inclusion. That includes, as Nisha may come on to later, our guidance on the fair treatment of vulnerable customers. It outlines, as I said, how firms should take into account the needs of consumers throughout the whole customer journey, including communications, product design and so on.

There has been a bit of discussion on bank branch closures. Through our statutory ambit, we have been able to say to banks during COVID, “When you’re thinking about closing branches, you must ensure that you think about the vulnerabilities of the population in the community where that branch resides. You must make an assessment of that and the impact on them. If you go ahead with closing the branch, you need to find other ways to service those people”. That links with some of the access to cash work that we have done to find alternative ways to service people where bank branches have closed.

We use our powers as flexibly as we can to support people in the financial inclusion space. However, if the Government wish us to go further, that would be a matter for them and how they wish to set our objectives.

Baroness Tyler of Enfield: You have made it very clear that you think that your overall remit is the Government’s decision, but do you know whether that point is being considered as part of the Treasury’s financial future regulatory framework review with you, which I think is taking place at the moment?

Sheldon Mills: I do not know whether Treasury has that under review. I am pretty sure from my discussions with Treasury that they will consider all amendments tabled by Parliament, and they will consider in the round how best to service people with financial services across society.

I am not here to speak for government or to support any party; I am just an independent regulator. Ultimately, I would say, I take the comments the previous session on the Financial Inclusion Policy Forum, it was noted that it is a talking shop. I have attended that forum, as have my colleagues and predecessors. I think there have been initiatives that have flowed from that forum, and it is a really important forum for ensuring that financial inclusion is kept at the top of the agenda of government, and of us as a regulator. Clearly, there are things that we all need to do to protect the most vulnerable, but I also think it is important that we continue discussing those, and have forums to do that.

Baroness Tyler of Enfield: Nisha, could I have your perspective, please?

Nisha Arora: One of the things we learned during the COVID crisis, and that was highlighted, was the importance of working across these issues with other parties. That includes the Government, the debt advice sector, consumer organisations and industry, because, as you say, Baroness Tyler, this crosses not only regulation but wider areas of social policy. I will give you examples of where that can be really powerful.

After we did our high-cost credit review and produced a report on alternatives to high-cost credit, we realised that we could not take all those actions ourselves. Where we could, we did, but many of our recommendations were directed to others, including to government. For example, we saw the opportunity for registered social landlords to take a greater role in how they direct tenants to services. We encouraged the Government to legislate to enable that to happen. It is by working together and across the regulatory government boundaries that we can achieve that. A lot of the ways in which we were able to respond so quickly, and effectively I hope, in response to the COVID impact were by doing just that—by working across those boundaries.

Baroness Tyler of Enfield: Thank you very much indeed. I invite Baroness Primarolo to ask the next question.

Q9 Baroness Primarolo: Sheldon, could you clarify a couple of points you made in your opening remarks about the regulatory principles? You referred to the fact that firms should treat customers fairly. That is quite weak in terms of consumer protection. It is not the same, by any means, as preventing harm to the consumer. It is further undermined by the fact that the Financial Services and Markets Act says that consumers have to take responsibility for their decisions. So that seems to undermine that.

When we add to that apparent conflict or imbalance the imbalance in market power between firms—the banks, the financial institutions—and the customer, how do we take forward, as you suggested we might be able to, the concept of a duty of care that actually prevents harm to the consumer? For instance, a financial institution that is regulated can still sell some financial instruments that end up not being regulated.

Where do you see the role of the FCA in developing that duty of care? What extra powers do you think the FCA would need to co-ordinate and

deliver that duty of care?

Sheldon Mills: Nisha will respond in more detail on the duty of care, but I will make a few opening remarks. I agree that, to a certain degree, the concept of treating customers fairly, without more development of what it means in practice, is not the most powerful tool to protect consumers in the commercial environment that you describe, which is that some consumers might have issues assessing and acting on information. We have heard about the financial education issues, et cetera. Within a digital environment, it can be quite complex for some consumers to access certain services, and it can be easier for firms to bamboozle consumers with lots of information that is readily accessible on their smartphone. Those are genuine issues that we come across as regulators in financial services and other markets.

What we are committed to doing, as we have said publicly, and will move forward—Nisha will come to this—is ensuring that we consult publicly on what our treating customers fairly principle means in practice, and whether we can move to a new consumer principle that expresses and gives rise to a more powerful approach to ensuring that customers are protected within the new environment. I will pass over to Nisha to give more of the detail in relation to that, because I think that responds in part to your question.

Nisha Arora: First, on the point about consumer responsibility, there is also provision in the FSMA¹ with regard to firms needing to take into account the experience and expertise of consumers. We have said that we expect firms to take additional care where consumers are vulnerable, where there are information asymmetries and where they may have lower levels of capability or resilience and thus are vulnerable. We do expect that, and it is written throughout our vulnerability guidance. That is a really important aspect.

Coming to the general debate on the duty of care, we certainly share the committee's goal of protecting consumers from harm, promoting the responsible behaviour of firms, and supporting sound financial decision-making by customers to ensure that we have safe and competitive markets. In response to this committee's call for action for us to look at a duty of care, and in response to other people, we issued a discussion paper on the topic. We wanted to understand duty of care not just as a formulaic term. We did not want to jump to a solution before we understood the real problems in the markets, what harms consumers were experiencing and how best we tackle those.

We issued that discussion paper. People told us that the level of harm in markets is too high. We therefore said that we would respond to that and consult on options to change in order to ensure that we find the most effective way to deliver a higher level of consumer protection in markets. We want to see a higher level of consumer protection in markets. As Sheldon said, we said that we would review the words of our principles

¹ Financial Services and Markets Act 2000

and how we apply them in practice to ensure that happens. That is what we have been doing.

We look at our principles, because that is where we set out our overarching obligations to firms and markets. Indeed, one of our principles sets out something very akin to a traditional duty of care. It is about reasonable skill, care and due diligence. As Sheldon said, there are other principles on treating customers fairly. We are looking at whether that is enough, and whether the way we have applied those has been enough, and whether the way firms have responded to those principles, and our rules and our actions, is sufficient.

We will be consulting on our proposals for that shortly, in May. We look forward to hearing responses, including from this committee, on our intent, which is to ensure a good level of protection, the right level of protection, for consumers and markets, and the right outcomes to tackle the problems you have talked about, such as the information asymmetries and whether we are getting that right. We look forward to hearing from consultees about that.

Baroness Tyler of Enfield: Thank you so much. We have to move on to our next question. I invite Lord Empey to ask it.

Q10 Lord Empey: To some extent, Nisha has just covered it. When will the measures regulating buy now, pay later products be in place, and what will be done to protect consumers in the meantime? We are reminded that one of the big providers that was in business when we did the report is no longer in business. We are concerned about people being exploited, but we also understand that if there is no credit available, people probably cannot get a lot of the equipment that they need.

Nisha Arora: Our board has agreed the need for buy now, pay later to come within our regulation, and we are working urgently with government to do that. We need to make sure that the regime is proportionate and right, given the nature of those products, but we also need to act swiftly together. The timescales are in the hands of the Government and their timetable. I understand that the Economic Secretary to the Treasury, who is giving evidence to the committee later today, will be able to update on their timescales, as they will be kicking off the process for legislation and bringing BNPL into our regulation.

In the meantime, we have already started work on it. We have been working with the Government on their policy proposals. We have been working to design our authorisations framework for when firms come into our regulation, and our supervisory strategy. We have been working with others to tackle the harms that we can tackle at the moment. When firms come into our regulation, there will be some issues, some harms, that we will be able to tackle that we cannot now, such as unaffordable lending, or issues where people fall into debt and cannot pay their debt. We will be able to protect their treatment by firms.

There are some things that we can do and have been doing. For example, where there are regulated firms who carry out the exempt BNPL activities, and they conduct them in ways we think are poor, we have made interventions to tackle financial promotions, and we have had marketing materials withdrawn as a result.

We have worked with the Advertising Standards Authority when it has received complaints about the advertising of BNPL products. We worked with it last year on its guidance to firms on how to avoid misleading consumers about BNPL products. We are also working with the Financial Ombudsman Service to explore whether firms could come within its voluntary jurisdiction, so that people have recourse to independent voluntary dispute resolution. That is obviously a matter for the Financial Ombudsman Service, but we are working with it. In advance of this coming into our regulation, we and others are acting to ensure that the harms that we can tackle are dealt with.

Baroness Tyler of Enfield: We need to move on to our next question in about a minute, but, Sheldon, is there anything you want to add before we do?

Sheldon Mills: No, thank you.

Baroness Tyler of Enfield: I invite Viscount Brookeborough to ask the next question.

Q11 **Viscount Brookeborough:** My question is about the progress that has been made on the development of control options for vulnerable customers. There may be additional things that you wish to say on that. Surely, one of the key things is to identify the potentially vulnerable before they get as far as being a major problem. Are there any major developments in identifying people before they actually go over the cliff?

Nisha Arora: We have defined vulnerability in very broad terms. As I said, it covers 27.7 million people, so more than half the population have characteristics of vulnerability. Those characteristics can arise for health reasons, low financial capability or resilience, or because of a life event. The reason that we have done that, and said "Look at this widely", is because, as you say, those characteristics can mean that people will fall into harm and are at greater risk of harm. Our guidance says to firms that they have to think early; they have to pre-empt the problems. They cannot just react and deal with events as they happen, when harm has already occurred.

We have said to firms that the first thing they need to do is understand the needs of vulnerable consumers, understand what is causing the harm and tackle that in the very first place. We are seeing good developments in how firms are identifying vulnerabilities in their target market. We have said to them in our guidance, "Once you have understood those needs, make sure your staff can deal with those problems and address them, make sure they are well trained, and make sure that your whole customer journey, from product design, through to communications,

through to customer service, addresses the needs of those vulnerable consumers". It is all about proactivity and getting there before the problem starts.

If I have answered that question, shall I return to control options more specifically?

Viscount Brookeborough: Yes, thank you.

Nisha Arora: Control options on spending is exactly one of the responses that can be put in place to mitigate the harm for people with vulnerabilities, particularly those with addictions or mental health problems. Indeed, control options, in particular gambling blocks, were one of the examples we put in our vulnerability guidance, to say to firms, "This is how you can design really good products to avoid problems". The important thing about gambling blocks and control options is that they do not just help people with addictions or mental health vulnerabilities; they can help anyone at any time when they need help. It is a form of inclusive design. One of the things we are encouraging firms to do is to design inclusively. That goes to your earlier point about making sure that problems do not emerge in the first place.

We are seeing some good developments from firms. More products are being produced—gambling blocks, or other ways to control spending such as limits on cash withdrawals. That is good progress, and we have seen good progress with other responses to vulnerability, but we want to see more, which is the reason we published our guidance. We have seen good progress from some sectors, some firms, but we want to see those initiatives now spread across, rolled out more widely and taken up by firms across the whole financial services sector.

Importantly, we want firms to make that support available to consumers and make sure that consumers are aware of it. Quite often, we see a disconnect between the support that is available and the awareness of customers that it is available, so take-up is not as high as it could be. We want firms to roll out those initiatives. We want them to make consumers aware of them. By making consumers aware that support is available, it increases the trust that consumers can have to share their needs with firms and, in turn, firms can respond better. Those are things we would like to see in the market. There has been good progress, but we want to see more.

Baroness Tyler of Enfield: Sheldon, do you have anything to add?

Sheldon Mills: I would say only that this committee is about financial inclusion and exclusion, and we are doing a lot of work with our existing firms which are regulated to support vulnerable customers with control options. Self-evidently for those who are excluded from financial services in any way, shape or form, the measures do not necessarily have a similar impact. It is once you get in and are being provided with a service that they assist and really help. We can help through some of these things with the access points for people. If somebody is vulnerable and

they have issues in accessing services, the guidance will help, but for the sticky 3 million who were described earlier, it is only a certain amount of assistance or help.

Baroness Tyler of Enfield: Thank you very much indeed. We are sadly out of time. Thank you both very much for giving time to the committee. Again, we have covered a lot of ground in a short time, and I have no doubt that we will be picking up again some of the issues you have been raising, particularly in the last session with Ministers. I hand back to you, Lord Chair.

The Chair: I thank our witnesses very much, both Nisha and Sheldon, for that good evidence. I will draw this session to a close. Thank you. We have a very short break before the next evidence session.