FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

Harriett Baldwin MP
Chair of the Treasury Select Committee
House of Commons
London
SW1A 0AA

14 December 2022

Our Ref: C221201A

Dear Harriett,

With regard to topics discussed during our appearance on 7 November, please find further information below. This incorporates responses to the questions in your letter of 1 December.

FCA vacancies and recruitment

In our recent accountability session, acting Chair Rushanara Ali MP asked about our staff turnover and how long it is taking to get new staff members up to speed. You subsequently requested information about our full-time equivalent vacancies in your letter of 1 December.

Vacancies

In response to your specific question, the FCA had 402 vacancies for permanent roles as of 30 November 2022 and a further 47 vacancies which are for a fixed term.

A breakdown of these vacancies is shown below:

b) By division:

Authorisations	39
Enforcement & Market Oversight	94
Supervision, Policy and Competition - Consumers and Competition	74
Supervision, Policy and Competition - Markets	87
Data, Technology & Innovation	73
Operations	55
Risk & Compliance Oversight	16
Other	11

c) By contractual grade:

Executive Director	1
Director	1
Head of Department	4
Manager	56
Technical Specialist	28
Associate	341
Professional Support	18

d) By job family:

Directors	2
Head of Department	4
Corporate	69
Practising Legal	40
Regulatory	333
Supervision Hub	1

This data reflects those vacancies recorded on our systems that are unfilled and are currently being advertised or where interviews are in train. We have not included those roles where offers have been made against vacancies and candidates are going through final background checks or discussions over start dates. These numbers are necessarily dynamic and change on a daily basis.

These vacancies will have arisen because of backfilling for lateral internal moves and promotions, staff turnover and recruitment for new investments and responsibilities, including establishment of our office in Leeds earlier this year and expansion in Edinburgh.

As I mentioned at the Committee hearing on 7 November, our headcount (excluding temporary and contract staff and the Payment Systems Regulator) has grown from 3,878 at the end of March 2022 to approximately 4,256 (+378) at the end of November 2022. This growth is in line with our strategic plans. We expect our headcount will continue to grow by around a further 300 before the end of this financial year (March 2023).

It is also worth noting that a core element of our recent reforms to pay and grading has been putting in place a framework that encourages greater internal mobility between Divisions and roles, and we are pleased that this has been happening and opening opportunities for colleagues including over 700 internal promotions in the last twelve months. We are also keen to encourage an active internal labour market with greater mobility across our organisation. We would expect around half of the current vacancies to be filled by internal moves, which would then result in further vacancies being advertised internally and externally as part of our normal cycle of recruitment.

More generally, through all our resourcing we aim to ensure that there is an appropriate balance between colleagues with significant tenure and those that are entering the organisation for the first time. It may be of interest to the Committee to note that at the end of 2021 there were approximately 1,205 colleagues with 8+ years of service at the FCA and at the end of November 2022 the comparable figure is 1,334 (+129).

In response to part e) of your question, roles primarily requiring data and/or technology skills are predominantly based in our Data, Technology and Innovation Division. There are currently 73 vacancies for this division as per the table above. The highest number of vacancies is in the Enforcement and Market Oversight Division. These are focused on building capacity and resilience in our case and investigation teams as well as enabling us to act faster against firms causing harm to consumers and/or markets, as set out in our 2022/23 Business Plan under Problem Firms, where we have been steadily releasing new vacancies during the course of the year as we strengthen our focus and capabilities in this area.

From 1 April 2022 to 30 November 2022, 863 colleagues have joined the FCA, with 493 having left (since 1 January 2022 the equivalent figures being 1,066 joiners and 617 leavers). We expect to continue to expand our headcount steadily to meet a growing remit and to meet resource requirements, for example to deliver the Future Regulatory Framework and in the area of data analytics.

Getting up to speed

All new colleagues participate in our Corporate Induction programme. The amount of additional training each new colleague requires is role and experience dependent. For example, new supervisors within our Supervision, Policy and Competition (SPC) Division undertake a six-month Supervision Learning Programme (SLP). Completion of this programme is mandatory. The learning itself is designed to provide the necessary underlying knowledge and skills required to establish a firm footing within Supervision.

In our Authorisations Division, each individual receives a two-week induction after which they go into team-specific training. Team-specific training will include running case officers through the case work process. There are also e-learning modules tailored to Authorisations, for how firms operate, enforcement, use of key systems, business types and financial promotions. The average timeline to completion is 3-6 months depending on team and experience.

In our Enforcement and Market Oversight Division, new permanent investigatory staff undertake our Investigation Foundation Course, a three-week course designed to cover the investigatory lifecycle from start to finish. Further bespoke induction and role-specific training is also available, some of which is mandatory.

Where the time taken to train new staff has resulted in temporary resourcing requirements, we have brought in qualified, expert third-party resource to meet need. For example, in Authorisations, this has helped reduce the caseload, down c.50% since December 2021, as we recruit and train for the long term.

The FCA continues to transform and build a high-performing workforce across the UK to ensure we can deliver against our objectives.

Authorisations and service standards

You requested further information regarding Authorisations and our service standards. From time to time, we have set ourselves voluntary service standards for high-volume applications where we believe it is reasonable for firms to expect quicker determination times than the statutory standard. Many voluntary standards were set at the inception of the FCA. Currently we have voluntary standards for approved persons, appointed representatives and payments agents, which reflect the approach and scrutiny that was taken at the time these were set. Following the recommendations of the Gloster report, which led to a more holistic review of firms seeking authorisation, we now apply additional scrutiny to these applications as part of our shift to a more assertive Gateway which means the historic voluntary standards are no longer appropriate.

The current metrics show the proportion of cases determined within a particular time period, but this gives limited insight as to how quickly actual cases are approved. Rather than setting new voluntary standards, we are considering how we can achieve a greater level of transparency in reporting our performance in these areas, including the frequency with which we report. We believe this approach supports rather than undermines the FCA's broader approach to using transparent metrics to measure performance. The data that we publish is agreed by the Board of the FCA, who have statutory responsibility for overseeing the effective use of the FCA's resources. The Board supports transparency on operational performance, which underpins our accountability, particularly to Parliament, and supports the Treasury too in fulfilling its responsibilities.

Blackmore Bonds

During the last accountability hearing, Siobhain McDonagh MP asked about our actions on the Blackmore Bonds scheme.

I thought it would be helpful to remind the Committee of the background in this case, before providing the information that we can under the legal restrictions relevant to our investigations.

Background

Blackmore Bond Plc ("Blackmore") is an unregulated firm that was founded in 2016. Blackmore obtained working capital by issuing fixed term debt securities, sometimes known as 'mini-bonds', to certain retail investors for investment in housing development projects which were either owned and managed by wholly owned subsidiaries of Blackmore (special purpose vehicles (SPVs)) or in which wholly owned SPVs had a substantial interest. The loans or mini-bonds were marketed as only being suitable for restricted, high net worth, sophisticated or self-certified sophisticated investors as defined under the FCA's Conduct of Business Rules.[1] Blackmore was not regulated by the FCA.

Blackmore issued six series of these mini-bonds between October 2016 and November 2018. Blackmore was placed into administration in April 2020, prompted by a creditors' winding up application initiated by one of the investors in relation to unpaid interest. Duff & Phelps (now "Kroll") were appointed as administrators and then on 12 May 2021 they were appointed liquidators. According to the Joint Administrators' Report to Creditors and Statement of Proposals dated 9 June 2020, the expected value of outstanding loans or mini-bonds is £46,810,163.

Under the terms of the loans or mini-bonds, Blackmore promised to pay quarterly coupon interest to bondholders. However, Blackmore failed to pay the quarterly coupon payment due in October 2019. No further interest payments were made after this date.

Blackmore bondholders held a charge, administered by a third-party trustee, over the assets of Blackmore. Additionally, Blackmore obtained an insurance policy, called the Capital Guarantee Scheme, under which payments of up to £75,000 would be available to each investor if Blackmore became insolvent. We understand that, following the winding up of Blackmore, the third-party trustee has made claims to the insurer under this scheme, though the providers of the scheme have currently not accepted the claims.

Evidence supports that Blackmore and its SPVs were engaged in housing development of the kind represented in its promotional literature. The Information Memoranda relating to the bonds, which were approved by FCA authorised firms NCM Fund Services Ltd (NCM) and Northern Provident Investment Ltd (NPI), set out the nature of Blackmore's housing business as well as the key attributes of the mini-bond investment.

Blackmore's Information Memoranda contained various statements disclosing and warning consumers about the risks associated with the investment including that:

- investors' capital would be at risk and that investors may not get back the money they had invested;
- the investment is speculative and investors should seek independent financial advice;
- investments would not be covered by the Financial Services Compensation Scheme (FSCS);
- there were risks arising from the mini-bond being illiquid which might mean that investors lose some or all of their investment. This included risks arising from a failure to sell properties, the value of properties going down or specific issues arising with developments; and
- interest payments were not guaranteed.

The approved Information Memoranda for the mini-bonds set out specific risks associated with Blackmore's particular business model and disclosed that costs of up to 20% of overall bond

[1] See COBS 4.7.7 R, COBS 4.7.9 R and COBS 4.7.10R https://www.handbook.fca.org.uk/handbook/COBS/4/7.html#DES620

subscriptions may be incurred as part of raising capital. These costs were noted to include marketing and other distribution costs.

Additionally, the Information Memoranda stated that Blackmore's mini-bonds could not be transferred to another investor. In other words, there was no secondary market for the mini-bonds.

Under the rules at the time, Blackmore's mini-bonds were only able to be marketed to investors who could certify they were able to afford potential losses, were investing no more than 10% of their net assets (excluding certain assets such as their primary residence or withdrawals from pension savings), or satisfied relevant investment experience or sophistication criteria. We are continuing to examine aspects of the sales process and will take appropriate action if we identify breaches of our rules.

Blackmore's liquidators, Kroll, have stated that Blackmore experienced delays in selling properties that had been developed as part of its business. Additionally, in March 2019, Blackmore stopped raising debt finance from UK investors after the FCA took action which led to Northern Provident Investments Ltd ("NPI") withdrawing its approval of Blackmore's financial promotions, which prevented the further promotion of its mini-bonds. These factors, and others, appear likely to have crystallised liquidity risks that were disclosed in Blackmore's promotional materials.

The Insolvency Service has now examined the failure of Blackmore and completed its enquiries into the firm and the conduct of the directors. The Insolvency Service has confirmed that it is not proposing to take any action.

In April 2021, Kroll informed creditors there was a substantial deficiency in recoverable assets to meet the claims of creditors. Kroll have indicated it is likely they will need to issue proceedings to recover the sums that appear to have been promised under the Capital Guarantee Scheme.

Kroll are continuing to investigate transactions with other Blackmore group companies and associated parties, as well as continuing to review the work undertaken by third parties and professionals engaged by Blackmore, to see if any causes of action may arise out of the services they provided.

The FCA estimates there were approximately 2,200 mini-bond holders who have suffered losses as a result of the failure of Blackmore. The FCA has received 36 complaints in relation to this matter.

Overview of the FCA's regulatory regime in relation to mini-bonds

Blackmore issued a fixed term debt security, sometimes known as a 'mini-bond'. While there is no legal definition of a 'mini-bond' and it has been used to refer to several different types of security, we consider that the term 'mini-bond' usually refers to illiquid debt securities marketed to retail investors. More details about mini-bonds can be found on our website.[2]

In general, a business does not have to be regulated by the FCA to raise funds by issuing shares or debt securities (whether mini-bonds or otherwise). In other words, the issuing of mini-bonds is not ordinarily a regulated activity for the purposes of FSMA.

Consistent with the issuance of debt securities not being a regulated activity, Blackmore was not authorised by the FCA. In this case, it means that the FCA did not have supervisory

---

[2] https://www.fca.org.uk/consumers/mini-bonds

oversight of Blackmore and that relevant protections for customers of regulated firms, such as those provided by the FSCS, were generally not applicable. The exclusion of the FSCS was disclosed to bondholders in all of the firm's approved Information Memoranda.

In general, the FCA's statutory powers over unregulated activity by unauthorised firms is substantially limited in comparison with the powers we have over regulated firms. Where issues fall outside the FCA's statutory remit, we assist other agencies and regulators wherever we can. In addition, where appropriate, we can act in relation to financial promotions used to market mini-bonds where they are not clear, fair or are misleading (see below).

Financial Promotions

Though Blackmore was not authorised by the FCA, which means its activities were not subject to FCA supervision nor within the scope of protections provided by and to regulated firms, the financial promotion of mini-bonds is within the FCA's remit. Section 21 of FSMA requires the financial promotions used by unauthorised firms to promote certain types of investment to be approved by an FCA authorised firm. This means Information Memoranda and other promotions used to market Blackmore mini-bonds were required to be approved by an FCA authorised firm.

It is worth noting that the Financial Services and Markets Bill currently going through Parliament has proposed amendments to s21 of FSMA (the 's21 gateway'), which will require firms that approve, or wish to approve, financial promotions for unauthorised persons to apply to the FCA for permission. On 6th December 2022 we published proposals in CP22/27 on how we intend to operationalise the s21 gateway, including reporting requirements for approving firms.

Blackmore's mini-bonds were promoted by means of Information Memoranda (as well as other promotions) that were approved by two FCA authorised firms, NCM and NPI. Financial promotions relating to Series 1 to 4 of Blackmore's mini-bonds were approved by NCM and promotions relating to Series 5 and 6 were approved by NPI. Our rules required NCM and NPI to ensure that the promotions they approved complied with our financial promotion rules. This includes ensuring that the promotion is fair, clear and not misleading and that any restrictions on promotion contained in our rules are properly complied with.

So, while Blackmore's housing development activities, its liquidity, its payment of interest and repayment of mini-bonds are not subject to FCA authorisation or supervision, the financial promotions used to market the mini-bonds are within the FCA's remit because they are required to be approved by FCA authorised firms.

Action taken by the FCA and ongoing work

We are constrained from disclosing in detail the ways and means in which the FCA acted in relation to Blackmore because of statutory confidentiality requirements, and because certain lines of inquiry remain open. However, I set out the following which hopefully will be of assistance.

The FCA's focus, prior to Blackmore's failure, was directed to the FCA firms involved in approving Blackmore's Information Memoranda.

In March 2019, the FCA took action that resulted in NPI withdrawing its approval of Blackmore's financial promotions, which prevented the further promotion of Blackmore's mini-bonds. No further financial promotions were approved for Blackmore after this date. In February 2020, we imposed requirements on NPI for it to cease approving any further financial promotions for any firm. As part of these requirements, NPI placed a statement on their website that they would no longer be offering this service. We can now confirm the existence of these requirements publicly as they were previously confidential between the FCA and NPI.

Ms McDonagh stated that she understood that the FCA had confirmed in writing that it had 'missed an opportunity to act' in relation to Blackmore Bonds. Any suggestion that the FCA took no action in relation to Blackmore would not be correct. As the City of London Police has confirmed in a re-issued response to a Freedom of Information Request, the FCA shared intelligence in relation to Blackmore Bond Plc with City of London Police as early as 2017, although regrettably human error meant that the full suite of information was not sent across. The City of London Police also shared intelligence with the FCA, but not until February 2020.

There are also allegations that the FCA ignored intelligence relating to Amyma Ltd, which was involved in introducing investors to Blackmore's mini-bonds. We believe this stems from a draft complaint response disclosed in a Data Subject Access Request (DSAR) in relation to Amyma. As noted in the recent BBC Panorama programme, the FCA has explained that the discrepancy between the draft response to the complaint mentioned in the DSAR, and the final response, was due to new evidence coming to light and we do not agree with the assertion that we ignored intelligence about Amyma received in 2017.

In March 2019, the FCA took steps which led to the removal of Amyma's website. Following this, Amyma's Appointed Representative status was terminated in September 2019.

The FCA has liaised with the Insolvency Service during its investigations relating to Blackmore and its directors. As mentioned above, the Insolvency Service has completed its inquiries and confirmed it is not proposing to take any action. We are also closely examining the adequacy of the financial promotions issued by Blackmore and aspects of the sale process. Our work is on-going and we will take appropriate action if we identify breaches of our rules.

Finally, since the failure of LCF, Blackmore and other mini-bond issuing firms, the FCA has banned the mass-marketing of speculative illiquid securities, including speculative mini-bonds, to retail investors because of the high risks involved which many investors may not understand sufficiently. We made this permanent in January 2021 following a temporary ban in January 2020 that we put in place on an urgent basis.

OPBAS and AML data

Alison Thewliss MP requested information regarding the implementation by Professional Body Supervisors (PBSs) of risk-based approaches to anti-money laundering (AML) supervision in the accountancy and legal sectors they oversee.

Since 2018, under the supervision of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS), the PBSs have made significant improvements in their compliance with their obligations under the Money Laundering Regulations (MLRs). This progress, which we have detailed in our published OPBAS progress reports, has enabled OPBAS to focus on driving improvements in how effectively PBSs conduct their AML supervision.

As was noted, OPBAS's third report[3] identified the need for PBSs to improve their effectiveness, including in key areas such as implementation of risk-based approaches, enforcement and information and intelligence sharing. Since publication of that report, OPBAS has continued a programme of supervisory assessments with 25 PBSs, which includes deep dive reviews, supported by ongoing quarterly and other regular touchpoints across the PBS population, as well as cross-cutting supervisory activity in high-risk areas, including Trust and

[3] https://www.fca.org.uk/publication/opbas/supervisory-assessments-progress-themes-2020-21.pdf

Company Service Provider (TCSP) supervision and a cross-cutting look at the PBSs' risk-based approaches.

This work specifically follows up on weaknesses identified in the third-year report and aims to ensure that consistently high standards of supervision are achieved by the PBSs. Our most recent set of effectiveness assessments, which remain in progress, thus far indicate that PBSs have taken on board our previous messages and challenges to improve their overall effectiveness. This includes an ongoing focus on being able to demonstrate delivery of intended outcomes, supported by evidence.

Our work to support intelligence and information sharing has also continued with new Intelligence Sharing Expert Working Group (ISEWG) meetings in Scotland and Northern Ireland. These supplement the main ISEWG meetings with a more detailed look at devolved nation risks. OPBAS has also proactively engaged with PBSs, the Government, law enforcement and others in relation to sanctions exposure and compliance. We will report on the results of our annual supervisory assessments of PBSs in OPBAS's fourth report, which we are aiming to publish in the second quarter of 2023.

Alongside our supervisory work, OPBAS is also proposing to change the guidance that we give to PBSs on how to comply effectively with their AML obligations. We have recently consulted[4] on updating the OPBAS sourcebook, which is our main channel for providing PBSs with guidance. We expect the revised sourcebook, which we intend to publish in early 2023, to drive further improvements and strengthen the effectiveness of PBSs' AML supervision.

OPBAS intervenes where PBSs do not make the required progress, using our supervisory tools and, where appropriate, powers. Where OPBAS has identified deficiencies in PBSs' supervisory arrangements or practices, we have taken robust action. For example, we issue findings letters after every PBS assessment which set out areas for improvement, and require PBSs to develop action plans, the implementation of which is monitored regularly.

The willingness of PBSs to improve their systems and controls in response to OPBAS supervisory findings has meant OPBAS has so far not had to use its powers to publicly censure a PBS or recommend to the Treasury that they remove a PBS from Schedule 1 of the MLRs.

Mortgages – Data, mortgage prisoners and cladding

At the hearing, I set out that at the end of June 2022 there were close to 200,000 regulated mortgages in payment shortfall. That is around 2.4% of all regulated residential mortgages. In addition, we estimated based on our data that up to an additional 570,000 mortgage borrowers may be at risk of payment shortfall in the next two years. This number is sensitive to changes in interest rates, and factored in market interest rate expectations as of 23 September, as well as external forecasts of changes in real incomes between 2020 and 2022.

Specifically, we assumed that all households would experience a 10% fall in their real incomes over this period, applying economy-level forecasts. This provides a preliminary perspective, but in reality, there will be distributional effects: some households will experience a greater fall in real income (perhaps because of job loss), and others may experience much smaller reductions (or increases). Our definition of a mortgage borrower being at risk of payment shortfall is that a borrower has more than 30% of their gross household income going towards their mortgage payments. This does not necessarily mean that those at risk will miss a mortgage payment because some people will be able to reduce their spending or make use of savings to help them meet their mortgage commitments.

---

[4] https://www.fca.org.uk/publication/consultation/cp22-16.pdf

We agreed to share any further research on the impact of economic changes on mortgage borrowers. Our analysis is being updated to take account of changes in interest rate market expectations, and we are exploring new methodologies to take a deeper analytical review of key macroeconomic developments (such as unemployment). I will be happy to further update you as this work is completed and assured.

As a data-led regulator, we regularly review market and consumer data for all borrowers. We continually monitor key insights, and routinely engage with the sector and consumer groups. Many mortgage borrowers face higher mortgage payments alongside other increases in the cost of living, and borrowers may approach lenders needing or wanting to reduce, or smooth increases in, their monthly payments. We have published guidance for consultation which sets out how firms can support their borrowers.[5]

Mortgage Prisoners

The underlying issues that can result in borrowers becoming mortgage prisoners are often multifaceted. Those issues are likely to be a source of real distress for the borrowers affected.

We define mortgage prisoners as borrowers who are up to date with payments and are unable to switch to a new mortgage deal (with a new lender or with their existing firm), and who could potentially benefit from switching depending on their loan and borrower risk characteristics. Mortgage prisoners, like many other borrowers, may have been affected by the recent changes in interest rates and increases in the cost of living.

In 2021, we undertook comprehensive analysis on closed book mortgages with inactive firms. We focused on this group because the vast majority of mortgage prisoners have a mortgage from a firm that is no longer lending to new customers, and most of these mortgages were sold before 2008/09. This review found that borrowers who took out mortgages after this time (when lender risk appetites tightened) are more likely to be able to switch in the open market. Further, the overwhelming majority of active lenders will offer a new deal to existing customers who are up to date with payments as part of a voluntary industry agreement.

Our review was laid before Parliament last November by the Economic Secretary to the Treasury. It contained analysis and an estimate of the number of mortgage prisoners and their characteristics, carried out at a point in time, and is available online.[6] Section 6 sets out our findings. A summary table of key characteristics can be found at para 6.13. Annex 2 contains more technical detail on our analysis.

In the first half of 2021, there were 195,000 mortgages in closed books with inactive firms. We estimated that 47,000 of which were likely to be mortgage prisoners. We also estimated that 6,000 mortgage prisoners might be close to the risk appetite of active lenders and we encouraged lenders to consider if they could amend their lending criteria to lend to these borrowers.

We have taken several steps to help these borrowers, as we set out in our Review and in evidence given to the Committee.

Our Modified Affordability Assessment[7] reduced regulatory barriers by enabling lenders to simplify their approach when assessing affordability for borrowers who are up to date with their

---

[5] https://www.fca.org.uk/news/statements/guidance-firms-supporting-mortgage-borrowers-rising-cost-living

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1036355/Mortgage_Prisoners_Review_CP576_FINAL.pdf

[7] https://www.fca.org.uk/publication/policy/ps19-27.pdf

mortgage payments, and want to switch lender providing they meet certain conditions such as not looking to borrow more.

Under this modified assessment, mortgage lenders can enter into a new mortgage contract with an eligible consumer if they can demonstrate that the new mortgage is more affordable than the present one. We should be clear that we cannot force any firm to lend to borrowers who fall outside of their risk appetite.

Since the 2021 review was published, borrowers who are not on fixed rate deals will have seen their payments increase. This is true for mortgage prisoners as it is for other mortgage borrowers. Both introductory and reversionary rates for borrowers who are able to switch have also increased significantly and, at the current time, there is little difference between median reversionary rates and median introductory rates, which currently sit at 6.24% and 5.88% respectively.

The median introductory rate for non-prime products – for borrowers who are credit-impaired but nevertheless meet lenders' risk appetites – is currently 7.04% (Moneyfacts data, correct at 28 November). Available information indicates that changes to interest rates, including for borrowers with inactive lenders or in closed books, have largely followed increases to the Bank of England base rate.

The evidence from our review points to solutions for mortgage prisoners that either encourage lenders to help borrowers who are close to their current lending criteria, or that help borrowers improve their chances of switching. We published data to enable lenders to help borrowers in this way.

We remain committed to supporting work by industry and Government on the difficult issues mortgage prisoners face, and we welcome practical and proportionate initiatives from industry or others to provide these borrowers with tools or materials that may help them switch their mortgage where they would benefit from doing so.

Cladding (mortgages)

We understand the real concerns and worries of consumers living in properties that contain potentially unsafe cladding materials or have other fire safety issues. In September we took steps to ensure the buildings insurance market operates better for leaseholders, setting out a range of recommendations and other potential remedies designed to give homeowners greater protections from high prices.

The Building Safety Fund was set up by the Government to meet the costs of addressing the risks associated with cladding in high-rise (over 18m) residential buildings, where the building owner or developer cannot do so.

There will be borrowers who may be unable to remortgage with a new lender because they are yet to obtain the External Wall System (EWS1) certificate. In July 2018 UK Finance (UKF), the Building Societies Association (BSA) and the Intermediary Mortgage Lenders Association announced a voluntary agreement[8] whereby their members committed to ensuring that the great majority of borrowers could access the offer of a new product with their existing lender.

Citing this agreement, mortgage lenders have said[9] that existing borrowers potentially affected by cladding issues who are coming to or have reached the end of their fixed rate period should therefore have the offer of a new deal. We have not seen evidence to suggest this is not

---

[8] https://www.ukfinance.org.uk/lenders-help-ineligible-homeowners-tied-reversion-rates-switch-products
[9] https://www.ukfinance.org.uk/news-and-insight/mortgages/fire-safety-cladding-building-safety-bill

happening, and the existence of a new deal for these customers means that they are able to switch.

Our rules do not prevent a lender from providing a mortgage on properties lacking an EWS1 certificate stating the building does not require remediation. Major lenders committed, through a statement[10] also supported by UKF and the BSA in July 2022, to lending on properties that will be self-remediated by developers or captured under a recognised government scheme. This is subject to any mortgage application meeting the individual lender's policy requirements. The FCA does not have responsibility for the operation of the Building Safety Fund, or the operation of the EWS1 schemes. Questions about the operation of the Fund are best addressed by the Department for Levelling Up, Housing and Communities and the EWS1 form by industry bodies respectively.

We will continue to closely monitor the mortgage market and we will take action where we see detriment that can be addressed within our powers.

Enforcement

Our investigation into the circumstances leading to the suspension of the LF Woodford Equity Income Fund (WEIF) has continued to make good progress and remains a priority for the FCA. This is a complex investigation involving multiple parties. We recognise the public interest in this matter and that the time taken to investigate and review material causes frustration among those affected and who are, understandably, looking for answers. However, it is vital we investigate thoroughly.

As you may be aware, on 21 September 2022, we confirmed that we have completed our investigation into the WEIF's Authorised Corporate Director (Link Fund Solutions), which you can see on our website[11] and issued them with a draft Warning Notice. Issuing a draft Warning Notice is a normal step in the FCA's enforcement process and provides a recipient with an opportunity to resolve the case by agreement. Our redress proposal reflects the FCA's current view of the failings of the firm in managing the liquidity of the fund. The FCA is focused on ensuring that the right funding is in place so affected consumers are able to access as much redress as possible. Given the FCA's enforcement case and the fact that settlement discussions are ongoing, the FCA is not currently able to provide any further information, other than updates that we publish on our investigation on the FCA website.[12]

There are multiple additional parties under investigation in relation to the circumstances that led to the suspension of the WEIF. These investigations are at an advanced stage. As the Committee will know, the process of taking regulatory action under FSMA is set out in the statute. It is not a public process. Publication is also subject to statutory restraints. If any enforcement action is taken, in the interests of fairness, we cannot identify who it is against and what the allegations are until certain stages have been completed. The timing of any outcome will also be contingent on whether the proceedings are contested.

Three-year strategy

By setting higher standards for firms, the Consumer Duty is central to the FCA's transformation to become a more innovative, assertive and adaptive regulator and is a key part of the FCA's new three-year strategy to improve outcomes for consumers and in markets throughout the UK.

---

[10] https://www.ukfinance.org.uk/policy-and-guidance/guidance/statement-industry-support-leaseholder-protections-within-building
[11] https://www.fca.org.uk/news/statements/fca-statement-regarding-potential-enforcement-action-against-link-fund-solutions-ltd
[12] https://www.fca.org.uk/news/news-stories/lf-woodford-equity-income-fund-investigation

One of the three key areas of our three-year strategy[13] is *setting and testing higher standards*. Our new Consumer Duty will ensure every firm considers the actual impact of their products and services on consumers. We want firms to focus on delivering good outcomes for their customers. The Duty sets clearer and higher expectations for the standard of care firms give customers, requiring firms to act in good faith, avoid foreseeable harm to their customers and support and empower them to make good financial decisions. Firms will have to ensure that:

- they provide products and services that meet the needs of their customers and offer fair value;
- consumers are equipped with information to make effective, timely and informed decisions about products and services; and
- consumers receive good customer service.

These proposals aim to ensure firms consider the needs of their customers – including those with characteristics of vulnerability – and how they behave, at every stage of the customer journey. As well as acting to deliver good customer outcomes, firms will need to understand and evidence whether those outcomes are being met.

We will embed the new Consumer Duty in our supervision and enforcement, so we increasingly focus on the outcomes consumers experience. Combined with our more data-led approach, this should enable us to more quickly identify practices that negatively affect those outcomes and to intervene assertively before practices become entrenched. Measuring outcomes is essential to the strategy and we will be measuring the success of the Duty. As part of that, we have published[14] a set of metrics for measuring the impact of our work against our topline outcomes. We are, of course, in constant dialogue with regulated firms to ensure clarity as to our expectations under the Duty ahead of its implementation.

I hope that the Committee finds these responses helpful.

Yours sincerely,

Nikhil Rathi

Nikhil Rathi
Chief Executive

[13] https://www.fca.org.uk/publication/corporate/our-strategy-2022-25.pdf
[14] https://www.fca.org.uk/data/fca-outcomes-metrics#:~:text=There%20are%204%20consistent%20topline,for%20consumers%20and%20wholesale%20markets.