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Dame Meg Hillier MP
House of Commons
London
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20 January 2025

Dear Dame Meg,

RE: Follow-up to Work of the Financial Conduct Authority (FCA) session

Thank you for your letter of 19 December and for this opportunity to expand on the discussions from our recent evidence session. I have addressed your questions in turn below.

The FCA Pension Plan

1. *Why you believe the FCA's scheme to be "well funded"?*
2. *Why the scheme had an actuarial loss, taking into account the recent economic and financial market environment?*

These questions raised relate to the Final Salary Section of the Plan. After the plan closed to future accrual in 2014, it was identified that the scheme's liabilities could not be met by its assets in the future and a recovery plan was agreed to achieve full funding by 31 March 2027. The measure used by the Trustee, the FCA and The Pensions Regulator (TPR) to ensure appropriate funding is the Technical Provision (TP) basis. By law, this basis is set by agreement between the Trustee and the FCA every three years (this legislation is referred to as the Scheme Specific Funding regulations, and spans several Pension Acts, most recently the Pension Schemes Act 2021). On this measure, the pension plan's funding position improved by c.£28m over the year to 31 March 2024 and on this basis, we consider the pension plan is "well-funded".

The pension plan is accounted for under IAS19, which is a standardised accounting measurement for company-operated pension funds to assist users of accounts in comparing companies' performances. Under IAS19, the reported balance sheet movement of our pension plan was an £8.6m worsening over the year, of which the actuarial loss on assets forms one part and is largely mirrored by falls in the liabilities. These 'losses' reflect the combined impact of market movements and plan experience on both the assets and liabilities, relative to what was expected to happen at the start of the year (as prescribed by the IAS19 reporting standard). We are required to report under IAS19, but it does

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not determine the funding requirements of the pension plan, nor the ultimate security of members' benefits.

Risk

3. *You noted that the pension deficit was not a "red risk concern" for the Board, and Mr Alder commented, "There are too many other things". What are the current 'red risk concerns' for the FCA Board? [Q164]*

We publish our principal risks for the external environment and own risks in our annual report. These are routinely assessed by the Board, through its Risk Committee. In line with our current strategy and business plan, the key areas of concern for the Board continue to be strengthening wholesale markets and market abuse, financial crime, the smarter regulatory framework and putting consumer needs first.

Own risks include:
- Perimeter
- Strategy, Planning and Prioritisation
- Regulatory Tools & Processes
- People
- Operational Resilience
- Technology
- Data and Information
- Public Confidence
- Finance

Recent top risks that the Risk Committee and Board have been engaged on include:
- Developing our new strategy
- Information management and our use of data
- AI
- Third party concentration risk management

Turning to the external environment, the principle challenges across the medium to long term which the Board has considered in the context of development of the next strategy include:
- Geopolitical instability & fragmentation
- Transition to higher medium term interest rates
- Low growth and productivity
- Sustainability of rising public debt
- Ageing population and later life income
- Growth of AI and digitalisation

Enforcement

4. *Last month Mr Alder described recent consultations on changes to FCA enforcement activities as part of "a broader discussion about quite a major reset in the way in which [the FCA] approach enforcement within*

the organisation". What prompted this discussion, and what is the overall plan following this discussion?

a. How did the board go about gathering options for this "reset" discussion, and how else did you consider approaching this issue?

As part of our wider programme of transformation, the Board considered how best to increase the deterrent impact of our enforcement work. This was informed by plans and options developed by new executive leadership of our Enforcement and Market Oversight Division that I appointed in April 2023. At the end of FY 2022/23, the average duration of our enforcement investigations was 41 months. We considered that impactful deterrence would be better served by a significant increase in pace and focus. Over the past few years, we have been steadily strengthening our authorisations gateway and being more assertive in our supervisory work to stop or prevent harm in real time by removing or restricting those who do not meet our standards. As a consequence, the Board recognised that there were valid alternatives to opening investigations in all cases of suspected misconduct.

We have deliberately streamlined our enforcement portfolio, reducing it by a third (from 220 to 147)[1] so we can focus more resource on increasing the pace of our priority operations. We cannot control the whole timeline of justice, for example when a case goes to trial, but we can speed up our investigations and prioritise the cases that will have the most impact. This has not led to a reduction in outcomes - we increased the number of public outcomes from 27 in 2023 to 41 in 2024.

This evolving approach been accompanied by a more integrated approach across the FCA to our use of regulatory tools. This means that we have raised the bar for opening an enforcement investigation and strengthened the pre-investigation triage process so that we generally only refer a regulated firm to enforcement where it would drive impactful deterrence across the industry and our other tools can't fix the problem. For example, we increased our use of Skilled Person Reviews by 84% in 2023/24 over the previous year. In Q1 (April-June) 2024/25, we commissioned a further 14 reviews, demonstrating a continued increased use of the tool compared to 2022/23.

We are investing in data and technology to improve our analytics and alerting capability, which is both strengthening our ability to highlight cases and speed up enforcement investigations. We have embedded new tools, such as development of a Digital Unified Intelligence Environment to connect the vast array of data and intelligence across our systems, and are looking at AI to unblock advancements and investment in market surveillance through our AI Tech Sprint.

We did consider alternative options, for example, increasing the headcount and resources devoted to enforcement over and above the increases we have already made. We did not consider this was the preferred option given the need to

[1] https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf p10, 3.2

manage resources across the FCA carefully. As I said at the Committee, we do not intend to increase our headcount significantly beyond our current levels and that calls on rigorous prioritisation across all our activities. This does mean that we will not pursue all cases and all intelligence that we receive – for example we receive on average 25,000 allegations of unauthorised business a year and pursuing all cases would not be feasible. We prioritise based on risk and estimated harm. I have made the point in the context of our enforcement transparency consultation that greater transparency in relation to our investigations will also highlight what we are not investigating through enforcement to assist your scrutiny of our work.

5. *How have concerns expressed about your 'Naming and shaming' consultation altered how you might prepare for, and conduct, future consultations?*

We accept that we could have been clearer in communications around our transparency proposals and the wider changes we have instigated to our enforcement approach. We should have more strongly signalled our thinking in advance of commencing a formal consultation process. This would have allowed us to test more views in advance of publication. We have taken this feedback on board. For instance, this could have been done through the regulatory initiatives grid, which is how we generally provide early sight of planned consultations. We included the second phase of the consultation in the interim grid in October. The consultation itself could have been clearer about some of the motivations for the proposals, which we consider remain sound. We could have more clearly explained some of the data to assist consultees, including the very significant numbers of cases already in the public domain and the split of cases between unauthorised and authorised/listed firms and the relatively small number of additional regulated firms affected by the proposed public interest test. Furthermore, where we have received a recommendation from a parliamentary committee to take a course of action, in this case the call for more transparency from the Public Accounts Committee in July 2022[2], it would have been helpful to draw attention to that in the initial consultation.

We very much welcome the responses and the extensive engagement we have had to our consultation on our new enforcement approach – including from firms, their advisers and consumer groups – and have taken on board the wide range of constructive feedback to help re-shape our proposals. Part 2 of our consultation closes on 17 February, and we will keep the Committee updated on this work.

Across the FCA, we are undertaking a dedicated and concerted effort to convene, listen to and engage with market participants and other stakeholders as part of our consultation processes. For instance, when undertaking our ambitious package of rules to reform the listing regime, we set up brand new ways of working through bitesize 'Engagement Papers' (or 'EPs'), enabling us to solicit views early and openly. And on our Call for Input on the Consumer Duty, we

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[2] https://committees.parliament.uk/publications/23164/documents/169426/default/

sought, and received, frank feedback about our regulatory approach, including through a series of bespoke roundtables with industry and consumer groups, and events with a wide range of stakeholders. We received over 170 responses to this Call for Input, highlighting the extent of the positive engagement we had from stakeholders.

a. *The FCA have proposed that the public interest test for 'Naming and shaming' now include a test around disruptions to the financial system or market. How would that be measured?*

We would consider the firm size, complexity and impact on markets and consumers, informed by extensive information and expertise across our organisation, including from our Primary and Wholesale Markets Teams and our Supervisory Teams.

As set out in our proposals, we would also invite representations from the subject of the investigation on all issues, including potential disruption to the financial system or market, and we would consider obligations under the Market Abuse Regulation. If an announcement of an investigation may be market sensitive, we would ensure we handled this appropriately and in line with our procedures. In these circumstances, it is likely that the firm would also be issuing its own announcement in line with its separate disclosure and reporting obligation. For dual regulated firms, as we do today, we would engage with the PRA on any implications of a proposed announcement, including on prudential or financial stability risks.

Should we make an announcement, as part of our accountability to you, we would of course stand ready to answer questions from the Committee as to how we evaluated the criteria in the public interest test.

Mortgage coercion

6. *Can you outline what work the FCA is undertaking on combatting domestic financial abuse, and particularly on the use of joint mortgages for coercion?*

7. *In September, the charity Surviving Economic Abuse published a report on mortgage coercion. What assessment have you made of its recommendation that victims be allowed to make changes to joint mortgages without the consent of the abuser?*

    a. *Can this be done under the existing framework, or does it require changes to rules or legislation?*

Domestic financial abuse has a huge impact on the lives of those who experience it and there is no simple or quick fix. Working with others in industry, consumer organisations and government is essential, and economic abuse is in scope of the Treasury led Financial Inclusion Committee, of which the FCA is part.

Steps we have taken include:

- Making clear our regulatory expectations, including through our Guidance on the Fair Treatment of Vulnerable Customers which details domestic abuse as a factor likely to place those affected in vulnerable circumstances.[3] The Consumer Duty builds on this, with a particular emphasis on identifying and responding appropriately to consumers presenting characteristics of vulnerability who may be at greater risk of harm.
- Regarding unsecured lending, in March 2024 we wrote to firms explaining how they should treat potential victims appropriately, including how they should firms treat repayment of any debts and how they are recorded.[4] Using our convening influence, we have encouraged industry to agree use of a standard evidence form that victims can use to record their experience and relevant facts, including financial details, so that victims do not have to keep recounting traumatic experiences .
- Together with UK Finance, we engaged with specialist organisations to understand the harms experienced and help find ways to give victims back control of their accounts. This has included technical solutions to enable account owners to block abusive messages included in the reference fields in payment accounts (and not the payment itself).
- Internally, we have taken steps to raise awareness on domestic financial abuse through engagement events for supervisors with the charity Surviving Economic Abuse (SEA); development sessions with FCA staff and bringing in voices of those with lived experience of such abuse.

Harm related to difficulties of separation of joint accounts is a recognised issue across sectors, including joint mortgages. Joint and several liability means a lender may not be able to agree contractual changes without consent of all parties and, can seek full payment from one party to a mortgage if the other borrower cannot or will not pay. If that remaining borrower cannot afford to pay, this can result in arrears. This means that one borrower to a contract can economically abuse another by withholding payment or withhold consent to change the contract.

We provided support to SEA to inform its report, including explaining the flexibility that firms have under our rules to provide forbearance in the form of payment concessions.[5] Forbearance is not typically a contract variation and therefore does not necessarily require formal consent of all borrowers to agree. However, should one party actively refuse the concession, the lender may determine it cannot agree the change.

Being joint mortgages, with joint and several liability, lenders will generally require all parties to consent to contractual variations, including to transfer a mortgage into a sole name (in absence of a Court Order). The recommendation from SEA for only one borrower in a joint and several contract to make changes without the consent of the other borrower(s) may therefore require legislative

[3] https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf
[4] https://www.fca.org.uk/publication/correspondence/portfolio-letter-fca-strategy-for-consumer-lending.pdf
[5] https://www.fca.org.uk/publication/finalised-guidance/fg24-2.pdf

change by government and parliament. SEA's report recognised the need for legislative reform.

We hope this addresses your follow-up and additional questions, and I look forward to our next evidence session on the work of the Financial Conduct Authority to the Treasury Select Committee.

Yours sincerely,

Nikhil Rathi
Chief Executive