Finance & Leasing Association (FLA) – Written evidence (SCG0005)

Introduction

1. The Finance & Leasing Association (FLA) is the leading trade body for the UK business finance (leasing and hire purchase), consumer credit and motor finance sectors. Our members play an important role in facilitating the investment by households and businesses in greener products.

Executive Summary

2. FLA members require a stable and forward-looking regulatory framework to attract investment. This in turn will support the Government's economic growth mission.

~~3.~~ Examples of urgent change needed include reform of the Consumer Credit Act, which underpins unsecured lending of over £113 billion (2023) and to align the role of the Financial Ombudsman Service (FOS) more closely with that of the Financial Conduct Authority (FCA) such that it adjudicates on the basis of compliance with FCA rules and guidance rather than on fairness.

Overarching Questions

Q1. What opportunities or changes should be prioritised in order for the regulators to meet their secondary growth and competitiveness objectives effectively?

4. The priority for the new administration must be to foster a stable and predictable regulatory environment. This is the optimal way for the UK to attract overseas investment.

5. For consumer credit providers, this will be achieved via Consumer Credit Act reform (which is underway). For those funding businesses, the question of the regulatory perimeter must be addressed to provide certainty. The FLA's position is that the status quo – whereby lending or hire for over £25,000 for business purposes or funding limited companies or limited liability partnerships is captured by the CCA – is broadly the right approach.

Q2. To what extent are the regulators focused on the objective to promote international competitiveness and growth? Are there areas where the ability of the regulators to fulfil their secondary objectives might be constrained by having to fulfil their primary objectives?

6. Since the FCA took over supervision of consumer credit firms, it has felt that it its focus has been on consumer protection. However, we are seeing early signs that the FCA is increasingly focused on the promotion of international competitiveness and growth. In the context of the investigation into motor finance commissions, Nikhil Rathi stressed the importance of the FCA's market integrity objective which will be reflected in the final reckoning having been weighed up against consumer protection.

Q3. What are some of the barriers in the current regulatory framework (including the role and responsibilities of other regulators and bodies such as the Payment Systems Regulator, The Pensions Regulator and the Financial Ombudsman Service) that could hinder efforts to drive economic growth and international competitiveness in (a) the UK economy and (b) the financial services sector?

7. The UK's approach to the role of ADR sets it apart internationally. Firstly, the basis for the Financial Ombudsman Service's decision-making is governed by what it deemed "fair and reasonable" under FSMA in contrast to other jurisdictions where the judgment is predicated on the law (i.e. whether it conforms to FCA rules).

8. Secondly, the FOS in effect does not have a limitation period for bringing complaints, which is exceptional in an international context.

9. The UK's outlier status presents a gift to claims management companies (CMCs) and other firms which seek to exploit in the inconsistency of the FOS regime. It is no coincidence that over half of Europe's litigation cases have been brought in the UK[1]. This makes us very attractive proposition for litigation funders. It is too early to assess the potential impact of the Consumer Duty on future activity.

10. The FCA's recent Enforcement Guide proposals (known colloquially as "naming and shaming" firms) risk damaging growth in lending markets on a number of levels:

    a) **Mass spurious Data Subject Access Requests** by CMCs, who will see this as a golden opportunity to bring complaints despite the FCA's enforcement action not having reached any conclusions.
    b) **Reputational damage** for firms, resulting in investors withdrawing funding lines and adversely impacting the future operational and financial stability of the businesses concerned.

---

[1] Data from CMS Law shows the UK is the most active jurisdiction in Europe for class actions, with 54% of all class actions between 2016 to 2021 filed in this country, followed by 13% in the Netherlands.

c) **Uncertainty for customers**, who will not know if poor practice has occurred, whether they should close their accounts, what their next steps should be or where to go for further information**.**
d) **Extensive operational implications**, fuelled by high volume CMC, customer and funder contact, and firms having received only one day's notice to prepare.
e) **Unfair advantage**, as competitors will be able to exploit the situation over what could be a protracted period.
f) **Complaints being determined by FOS** before the FCA's enforcement activity has concluded – effectively pre-empting outcomes and potentially being at odds with the regulator.

Q5. How effectively have the FCA and PRA consulted or engaged with industry in relation to the new secondary growth and competitiveness objective?

11. The FCA published a statement on its approach in July 2023. At the same time, HM Treasury (HMT) consulted on performance data to underpin the new objective. The FLA broadly welcomed the fact that HMT took on board industry feedback.

Q6. In delivering their secondary objective on growth and competitiveness, what opportunities are there for the regulators to help to promote and support innovation in the financial services sector? How effective has the FCA's regulatory sandbox been for supporting greater innovation in the financial services industry?

12. Investment opportunities are greater outside the regulatory perimeter, for example for non-regulated small businesses. This has not been evolved since the advent of the regulatory sandbox.

Q7. How should the regulators ensure that any measures introduced to meet the secondary growth and competitiveness objectives work for businesses of all sizes across the sector, including startups, scaleups, and incumbents?

13. Asset finance (leasing and hire purchase) are a key part of the funding "mix" available to businesses. Small independent providers play a particularly important role in the lending market. In the USA, such entities are deemed "systemically important" by regulators and during the last credit crunch, the OECD identified that "*SMEs have long been heavily reliant on traditional bank finance, but especially the crisis has shown that it is therefore necessary to broaden the range of financing instruments available to SMEs and entrepreneurs to improve their financing*". SMEs may find it more difficult to access finance as a result of the new Basel 3.1 rules. The increased capital requirements under the new rules could mean that funders become more risk-averse and less willing to lend to SMEs,

particularly those with weaker credit profiles. This could result in a reduction in the availability of credit for SMEs, which could limit their ability to grow and invest in their businesses.

Q8. Are there any additional metrics over and above those already agreed by the regulators that would better enable stakeholders to track progress and support scrutiny of their work against the secondary growth and competitiveness objective? How should a measure of growth be included in these metrics?

14. The FLA is broadly content with the metrics outlined by HMT in its December 2023 response to *Financial Services Regulation: Measuring Success*. We suggested a metric on the volume of complaints data against the regulators but this was not taken forward.

Q9. Does the requirement within the secondary growth and competitiveness objectives to align with international standards create any constraints to fulfilling those objectives?

15. No, they are not in conflict.

Q11. Are there examples of regulatory policies in other jurisdictions that should be considered by UK regulators to help facilitate the new secondary objective? What might the FCA and PRA be able to learn and apply from comparable supervisors in other markets in terms of applying secondary objectives on growth and competitiveness?

16. As argued above, the UK is an international outlier in the way the ADR scheme operates. This creates an unpredictable environment for outside investment.

17. The FLA has commissioned a study on comparative regulatory burdens for consumer credit providers across a sample of OECD jurisdictions, a study we would be happy share with the Committee once it has been completed (expected to be Q1 2025).

About the FLA

The Finance & Leasing Association (FLA) is the leading trade body for the UK asset, consumer and motor finance providers of leasing and hire purchase. In 2023, FLA members provided £151 billion of new finance to UK businesses and households £52 billion of which helped consumers and businesses buy new and used cars, including over 78% of private new car registrations. In total, £63 billion was provided by non-bank lenders.

£113 billion was in the form of consumer credit, accounting for over a third of all new consumer credit written in the UK.

£38 billion of finance was provided to businesses – £23 billion of which went to small businesses – and the public sector to support investment in new equipment, representing over a third of the UK investment in machinery, equipment and purchased software in the UK last year.

11 October 2024