

## **St. James's Place – Written evidence (SCG0037)**

St. James's Place (SJP) is the UK's leading provider of financial advice. We support one million clients move towards their goals and manage £184.4bn of assets on their behalf. Our 4,852 advisers, based in almost every town across the UK, offer expert, face-to-face advice to our clients. Within the Group we also manufacture investment products, pensions and run a number of unit trusts.

### **Introduction**

We welcome the opportunity to provide input into this call for evidence on the FCA and PRA's secondary competitiveness and growth objectives. Regulators play a crucial role in ensuring that the UK provides an environment in which firms can thrive and grow, and we were pleased to see the introduction of the FCA and PRA's secondary objective to support the growth of the economy.

In this response, we have focused on a small number of key policy areas, including where we believe change in these areas could enable the regulators to meet their secondary objective and support economic growth. We have also highlighted where we have concerns that initiatives may deter the regulators from meeting their secondary objective.

It is our central view that meeting the secondary objective effectively will be more about key central decisions, direction, and tone than anything which would lend itself easily to a 'tick box' approach. Given the scale and importance of financial services in the UK, a strong and stable regulatory regime is of huge strategic and economic importance. Regulation needs to be clear, fair, and predictable and the tone of speeches, statements, and public letters by senior regulators must be carefully judged in the knowledge that they are read by those deciding whether to invest into UK financial services or not.

Interaction between regulatory bodies is just as important, as any individual body. We welcome the recent joint Call for Input from the FCA and the FOS on Modernising the Redress System, which we hope will address the increasing risk of the FOS inadvertently becoming a pseudo or shadow regulator.

### **Disclosure Reform / 'Safetyism'**

The UK's exit from the EU has brought with it both negative impacts and positive opportunities. One opportunity is to ensure that we implement an agile and internationally competitive set of rules, tailored to the UK

market. The current approach to consumer communication is fettering both good consumer outcomes and the potential growth of the economy.

Many requirements are driven by EU regulations, which tend to assume that disclosure is an effective way of mitigating risk to customer outcomes. Under this assumption, a consumer is expected to read all of their disclosure documents, fully understand them, and respond to them rationally. It is commonly recognised by behavioural research, industry practitioners and the regulator themselves, that these assumptions are flawed. We would support a wholesale review of the existing regime, informed by behavioural research on consumer understanding, and with a focus on reducing excessive, unhelpful or overly complex mandatory disclosures.

We also believe there is an opportunity to achieve a cultural shift in consumer understanding of risk, by ensuring the information provided to consumers is more balanced. While investing inevitably carries risk, so too does not investing, or investing too little (including holding too much money in cash). Currently, the disclosure regime appears entirely focused on warning clients of the risk of the former, with the result that clients whose long-term needs and objectives might be put in jeopardy without sensible investment of their funds, are faced with pages of risk warnings implying that this course of action represents a material risk to their wellbeing. This emphasis on the risks of investing could deter people from investing altogether. Indeed, the FCA recently cited language as one of the main obstacles to investing for women, finding it was often 'alienating and inaccessible, with 63% finding the terminology off-putting' and, notably, while risk warnings are a regulatory requirement, 'it was also discovered that the warnings could deter women from investing altogether' (FCA, 2024).<sup>1</sup>

Reducing the quantity of disclosure is important, but if a shorter document is simply a distilled warning about the risks of investing, we remain guilty of failing to strike a balance – i.e., there are risks in not investing that likely cause greater harm than those who make mistakes while investing, namely savings being eroded by inflation.

Addressing these deficiencies will help consumers better understand the risks of investing in the first instance, as well as encouraging more consumers to allocate a more appropriate proportion of their income and savings into longer term investments. This will allow more UK consumers to meet their long-term needs and objectives but also drive additional capital into equity and bond markets, including in the UK.

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<sup>1</sup> <https://www.fca.org.uk/news/speeches/reaping-rewards-investing-women>

We look forward to engaging with the FCA's planned disclosure consultation paper when it is published.

## **Enforcement Proposals**

We do not believe that the recent proposals from the FCA to publish the names of firms under investigation align with their secondary objective, and like many others in the sector we have grave concerns over the implications of 'naming and shaming' firms under investigation before confirmation of any wrongdoing has been established.

As well as the reputational and subsequent commercial damage to the firm, there is also potential for customer harm if customers cancel products or services based on a concern that the firm is being investigated by the FCA. At best, this could result in unnecessary time and expense in sourcing a replacement provider. At worst, a large number of customers exiting in a short period could cause issues including poor customer service levels (due to increased activity levels that the firm's processes and staffing levels cannot cope with) or damage to the product itself, for example liquidity problems in collective investment schemes.

We believe that the prospect of this sort of reputational damage from an FCA investigation will damage UK competitiveness. Successful multi-national brands are unlikely to want to put this at risk by expanding into a market where the bar for public censure is so low. This risk is also likely to deter investors considering investing in UK financial services. FCA investigations can be triggered purely because there are "circumstances suggesting" a breach of regulation has occurred.

We do not believe that legal disclaimers such as the proposed FCA comment that, "nothing is yet proven and the investigation is ongoing" will have any material impact on the reputational damage, or media coverage that results from publication of the firm under investigation. Indeed, given the widely understood negative market reaction to 'uncertainty', we believe that there is a chance that publication at the investigation stage could possibly be more damaging than an eventual publication of an enforcement outcome (where there is, at least, clarity and certainty).

We understand the FCA's desire to be more transparent about its investigative work and the importance of showing that the regulator is dealing with topics raised in the public domain. All of these objectives could be met without publishing the name of a firm involved and simply referring to a 'retail bank' or an 'asset manager'. The message to the wider sector of linking a live investigation with the specific areas of

concern under focus could help improve standards in the market without causing significant harm.

### **Regulatory Structure**

The functioning of each regulatory body and each regulation should rightly be considered carefully, but from a competitiveness perspective, it is often the interaction of different bodies and the operation of the system as a whole that has the greater impact. Take the role of the Financial Ombudsman Service ('the FOS') as an example.

The FOS plays an important role in society and its primary focus is one that we support: as a last port of call for many consumers who have sadly not had a good experience in dealing with a financial services firm. The role of the FOS in considering each case on its merits is an important principle, however, there is a risk of unintended consequences if the reach or implications of FOS decisions stretch beyond the individual.

Our experience, which seems to be shared by many others, is that without the application of useful checks and balances, there is a risk of scope-creep, pseudo regulation, and unintended consequences for the sector, all ultimately leading to consumer harm, and a further constraint on global competitiveness and growth.

We agree that the FOS should play an active but defined role within the broader statutory scheme conceived by Parliament/Government in the Financial Services and Markets Act 2000, which included significant powers being given to the expert regulator such as the power to investigate firms and establish a redress scheme, amongst many others. We also note the importance of the Wider Implication Framework in encouraging dialogue between the regulators and FOS where there are wider regulatory matters at hand on an industry level.

However, we believe this existing framework could be utilised more than is currently the case, to ensure that where, for example, there might be an industry review overseen by the regulator, that the FOS does not inadvertently become a pseudo or shadow regulator, setting precedent which undermines the regulatory review and threatens the stability of the sector with potentially damaging consumer outcomes.

Similarly, the apparent FCA expectation that firms should monitor FOS decisions to inform approaches to mitigating consumer harm sounds sensible in theory, but in practice is hugely onerous (arguably impossible for most firms) given the volume of decisions and again implies that FOS decisions are effectively setting regulatory precedent. We recognise that historic FOS decisions are often a useful source of insight when firms consider specific issues or concerns, but it would surely be preferable for

the FCA to formally endorse and publish any FOS decisions which represent an extrapolation of the rules, and/or to specifically draw firms' attention to decisions which they believe provide useful illustrations of how to comply (or not) with expectations.

We know that regulatory uncertainty is a central factor raised by overseas investors as to why they are not investing (or investing more) in the UK and in financial services. More specifically, we know of examples where FOS decisions which seem to set new regulatory precedent have even been directly referenced as a cause for concern by overseas investors.

We welcome the recent joint Call for Input from the FCA and the FOS on Modernising the Redress System in efforts to create stability for consumers and businesses, and we agree that this is an important initiative in order to bolster UK growth, and to enable the regulators to meet their secondary objective.

## **Dear CEO**

The interplay within the regulatory structure in the UK is one cause for uncertainty for those looking to invest in the UK. Another factor is simply the tone taken by regulators in public speeches, interventions, public letters, and statements.

Taking one example, the 'Dear CEO' letters published by the FCA, outlining concerns with industry practices and business models are important indicators of where the focus and attention is within the sector, but are also read closely by external investors. We note that the most recent 'Dear CEO' letter for our sub-sector (on 'expectations for financial advisers and investment intermediaries') was more constructive in tone than previous iterations which we know have unsettled investors who have been considering investing in the wealth management sector.

## **Ongoing dialogue**

We have attempted to set out some of our observations and suggestions for ways in which the regulators might best be able to meet the secondary objective. We remain committed to continuing to be a constructive partner with the regulators recognising the vitally important role the FS regulators play in maintaining the stability and supporting the success of the sector. We would be happy to discuss any of the points made in this submission further if that would be useful.

*29 November 2024*